

## **PARKS USE AGREEMENT**

This **PARKS USE AGREEMENT** (the "**Agreement**") is entered, as of the date on the City's signature page below, by and between the **CITY AND COUNTY OF DENVER** (the "**City**"), a Colorado municipal corporation, and **DOWNTOWN DENVER EVENTS, INC.**, a Colorado nonprofit corporation (the "**User**"), whose address is 1515 Arapahoe Street, Tower 2, Suite 400 Denver, CO 80202

### **RECITALS**

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

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

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

**WHEREAS**, Skyline Park will ultimately benefit from this multi-day event based on the User's commitment to activate Skyline Park in accordance with this Agreement; and

**WHEREAS**, the City and the User concur that this Agreement appropriately and fairly establishes the terms and conditions upon which the multi-day event will occur;

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

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

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

1.2 **Applicable Law**. "Applicable Law" shall mean any federal, state or local law, governmental rule, regulation or ordinance, or judicial order or decree, including without limitation the Denver Charter; Denver Revised Municipal Code; rules, regulations, and policies of the City departments and agencies; and executive orders of the City's Mayor, as any of the

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

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

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

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

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

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

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

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

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

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

1.12 Damage Deposit. “Damage Deposit” shall have the meaning set forth in Section 4.3 herein.

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

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

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

1.16 Entertainment. “Entertainment” shall have the meaning set forth in Section 3.7 herein.

1.17 Event. “Event” shall have the meaning set forth in Section 2.1 herein.

1.18 Event Dates. “Event Dates” shall have the meaning set forth in Section 2.2 herein, and shall include such dates as agreed or modified in accordance with this Agreement.

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

1.20 Event Site. “Event Site” shall have the meaning set forth in Section 2.3 herein, and shall include such locations as agreed or modified in accordance with this Agreement.

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

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

1.23 Fees. “Fees” shall have the meaning set forth in Section 4.1 herein.

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

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

1.26 Gross Revenues. “Gross Revenues” shall have the meaning set forth in Section 4.1 herein.

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

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

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

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

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

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

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

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

- 1.35 Plans. “Plans” shall have the meaning set forth in Article 12.
- 1.36 Security Plan. “Security Plan” shall have the meaning set forth in Section 12.2.3 herein.
- 1.37 Set Up Plan. “Set Up Plan” shall have the meaning set forth in Section 12.3 herein.
- 1.38 Signage Plan. “Signage Plan” shall have the meaning set forth in Section 12.4 herein.
- 1.39 Site Drawing. “Site Drawing” shall have meaning set forth in Section 2.3.1 herein and, more specifically, **Exhibit A** to this Agreement.
- 1.40 Subcontractor. “Subcontractor” shall mean any and all subcontractors, independent contractors, suppliers, vendors, concessionaires, caterers, and/or other entities or agents that the User contracts with or engages to perform the User’s responsibilities or services under this Agreement or to provide for sales and services authorized under this Agreement.
- 1.41 Term. “Term” shall have the meaning set forth in Section 7.1 herein.
- 1.42 Traffic Control Plan. “Traffic Control Plan” shall have the meaning set forth in Section 12.1 herein.
- 1.43 User Services. “User Services” shall have the meaning set forth in Section 5.2 herein.
- 1.44 Water Supply Plan. “Water Supply Plan” shall have the meaning set forth in Section 12.6 herein.

2. **EVENTS**.

2.1 Event. The User agrees to install, operate and maintain Facilities and Concession operations at the Event Site specified in Section 2.3 herein for the Permitted Activities specified in Article 3 herein during the Event Dates specified in Section 2.2 herein (“**Event**”).

2.2 Event Dates.

2.2.1 Except as otherwise agreed in writing by the Manager and the User, the Event shall occur each year during the Term of the Agreement as follows: for the year 2017, between June 1, 2017 through October 7, 2017; for the year 2018, between May 1, 2018 through October 31, 2018; and for the year 2019, between May 1, 2019 through October 31, 2019 (“**Event Dates**”).

2.2.2 There is no requirement that the User present Permitted Activities on each and every day during the Event Dates, but the User shall provide prior written notification to the Manager if the User intends not to present all or certain Permitted Activities or anticipates not being able to present all or certain Permitted Activities for reasons other than Force Majeure for

five (5) or more consecutive days or ten (10) or more total days during the Event Dates, excluding days for Load-In and Load-Out. The User shall remain responsible for maintaining and securing the Facilities and Personal Property at the Event Site despite the duration or reasons for not presenting Permitted Activities.

2.2.3 The proposed hours of operation of the Event shall be submitted in writing at least thirty days prior to the start of Load-In for approval by the Manager. Maintenance crews and watchmen and other security assigned to protect the User's Facilities and Personal Property situated in the Event Site are allowed to be on site in the park during Parks Curfew for that purpose.

2.3 Event Site. Except as otherwise agreed in writing in accordance with this Section 2.3, the Event will be held, during the Term of this Agreement, in Block 2 of Skyline Park, between 16<sup>th</sup> and 17<sup>th</sup> Streets along Arapahoe Street ("**Event Site**").

2.3.1 The specific boundaries of the Event Site within Block 2 of Skyline Park shall be as depicted in the drawing contained in Exhibit A attached hereto and incorporated herein by reference ("**Site Drawing**"), subject to modification through a revised drawing as mutually agreed in writing by the Manager and the User.

2.3.3 Any modification of Event Site, as shown on the Site Drawing shall be subject to the prior written approval of the Manager and the terms and conditions the Manager deems necessary for the proper and safe operation of the Event and to accommodate and protect the rights of other scheduled permitted events or authorized uses in or near the Event Site and the patrons of the park.

2.4 Load-In and Load-Out. The dates and locations for delivering and installing the Facilities and Personal Property on site and setting up for the Event ("**Load-In**") along with the dates and locations for dismantling and removing the Facilities and Personal Property and cleaning up and restoring the Event Site following the Event Dates ("**Load-Out**"), including access to and use of the Event Site and the surrounding park during Load-In and Load-Out, shall be as provided in the approved Set Up Plan, with Load-In occurring approximately fourteen (14) days prior to the Event Dates each year and Load-Out occurring approximately fourteen (14) days following the end of the Event Dates each year. Load-in and Load-Out may occur during Parks Curfew provided that prior written permission is obtained from the City Liaison. All dates, times, locations, and activities for Load-In and Load-Out must reasonably accommodate, and protect the rights of, other scheduled or permitted events in or near the Event Site.

### 3. AUTHORIZATION.

#### 3.1 Permit & Permitted Activities.

3.1.1 By this Agreement and subject to the terms and conditions of this Agreement, the City grants a permit to the User for the right to install, operate and maintain the approved Facilities and the approved Concession at the Event Site; to conduct the Event at the Event Site during the Event Dates; to perform Load-In and Load-Out, as provided in the Set Up Plan; to perform all work and take all actions as contemplated by the approved Plans under Article 12; and to engage in the activities and uses specified in this Article 3 (the "**Permitted**

**Activities**”) (collectively, the “**Event Permit**”). No other permit otherwise issued by the Denver Department of Parks and Recreation will be required. The Event Permit is granted on the condition that the User fully and faithfully performs all obligations specified in this Agreement.

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

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

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

3.2 Public Use. Access to and use of the Event Site shall be free to the public except for such sales and services as authorized in this Article 3. The public shall have access to all portions of the Event Site except for enclosed or secured Facilities and shall not be under any obligation to make any purchase from the User or the Subcontractor. The User shall regulate the public access and use to assure compliance with all occupancy and safety restrictions under Applicable Law.

3.3 Concession. The Event Permit includes the exclusive right to sell and serve, or contract with or otherwise permit a Subcontractor to sell and serve, food, beverages and merchandise related to the Event within the Event Site during Event Dates (“**Concession**”).

3.3.1 This “exclusive” right shall not limit the authority of the City to permit other concessions or privileges to sell and serve food, beverages and merchandise within the surrounding park or other City-owned property but outside of the Event Site.

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

3.3.3 The Event Permit shall be conditional on the User conducting the Concession in accordance with the Concession Plan, and the User and its Subcontractor obtaining, paying for and complying with all necessary permits and licenses required for such Concession, such as sales tax licenses, health and safety permits, and whatever other authorizations may be required for the Concession by Applicable Law.

3.3.4 The Concession’s sales and services shall be conducted within an enclosed or partially enclosed tent, booth or canopy structure of such dimensions and at such location as depicted for the Event in the Concession Plan (“**Concession Site**”). The secure storage for food

and beverages is allowed outside of the Concession Site but within the Event Site in secured Facilities located as depicted in the Concession Plan.

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

3.3.6 Food and beverages typical of a beer garden-type operation will be served by the User or the Subcontractor as part of the Concession food and beverage service. These include burgers, bratwursts, pretzels, beer and wine.

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

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

3.4.1 The right of the User or the Subcontractor to engage in the service and sale of Permitted Alcohol to the public within the Event Site shall be subject to the User obtaining and complying with all relevant licenses, permits and approvals issued in accordance with Applicable Law and acting in accordance with this Section 3.4. User shall be entitled to assign to the Subcontractor any liquor license and other government use, license or permit necessary to engage in the service and sale of Permitted Alcohol to the public within the Event Site and to otherwise operate and manage the Concession and the Event within the Event Site on the Event Dates.

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

3.4.3 No service or sale of Permitted Alcohol shall be allowed outside of the Concession Site and no consumption of Permitted Alcohol shall be allowed outside of the Event Site. If any other regulation or licensing restriction should further limit the location for the sale, service and/or consumption of Permitted Alcohol, the User and the Subcontractor shall comply with said regulation or licensing restriction.

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

3.4.5 The User shall, or shall require its Subcontractor to, obtain and maintain liquor legal liability insurance for the sale and service of Permitted Alcohol during the Event as

provided in Section 10.9. Said liquor liability insurance must be in effect continuously during the Event Dates and for sixty (60) days thereafter. The liquor legal liability insurance shall not lessen or limit the liability of the User as provided in Article 11.

3.5 Advertising, Sponsorship and Signage. The Event Permit includes the right to permit and sell temporary advertising and sponsorship rights and install temporary signage related to the Event during the Event Dates and within the Event Site and such other locations as approved in advance and in writing by the Manager and in accordance with Applicable Law and the approved Signage Plan. All advertising and other signage must be promptly removed each year at the end of the Event Dates for that year. The User shall provide, upon request by the City Liaison, copies of any sponsorship or similar agreements the User enters.

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

3.7 Entertainment. The User may provide entertainment common and customary for seasonal beer gardens (“**Entertainment**”). The Entertainment must be family friendly and provided in a manner sensitive to the surrounding businesses and the public not attending the Event. The location of Entertainment within the Event Site shall be as noted on the Facilities Plan. The City’s noise ordinances and regulations shall be strictly adhered to by the User and its Subcontractors who provide the Entertainment. Complaints about noise shall be properly and promptly addressed by the User and the Subcontractors in a manner that adequately resolves the complaints. No Entertainment may be provided during Parks Curfew.

#### 4. **FEES DAMAGE DEPOSIT.**

##### 4.1 Fees.

4.1.1 For the Event Dates in 2017, the User shall not be required to pay the City any compensation under this Agreement.

4.1.2 For the Event Dates in 2018 and 2019, the User shall pay, without offset, to the City the amount of Twenty Thousand Dollars (\$20,000) by October 31<sup>st</sup> of each year (the “**Fees**”).

4.1.3 The User shall reimburse the City for all expenses incurred by the City for electrical service for the Event as specified in Section 5.4.1 within fifteen (15) calendar days of being invoiced by the City.

4.1.4 The Fees to be paid by the User for an Event shall be waived if the entire Event is cancelled or shall be prorated if the Event is shortened due to construction or major repairs at the Event Site or on adjoining property to the Event Site or due to Force Majeure.



4.1.5 Subject to the reimbursement obligations of Section 4.1.3 hereof, payment of the Fees under this Section 4.1 are in full satisfaction of all permitting fees ordinarily charged by the Denver Department of Parks and Recreation for events in parks, but the payment of the Fees shall not result in the limitation, reduction or waiver of any fee or charge imposed and collected by other City departments or any other governmental entity with authority over any aspect of the Event or the use of City property.

4.1.6 All revenues generated by or arising from the operation of the Event (“**Gross Revenues**”), after payment of Fees to the City in accordance with this Section 4.1, shall be and remain the exclusive property of User.

4.1.7 On or before the 15<sup>th</sup> day of November of each year in which the Event is held, the User shall provide the Manager with a full accounting of the Gross Revenues for that year’s Event.

4.2 Damage Deposit. The User shall deposit with the City no later than fifteen (15) calendar days prior to the first day of Load-In a damage deposit in the amount of Ten Thousand Dollars (\$10,000.00) (“**Damage Deposit**”). The Damage Deposit is intended to assure that adequate compensation for costs is available to the City to cover any costs the City incurs or may incur in the event that the User or the User’s Subcontractor should fail to clean up the Event Site, the surrounding park and other nearby property as to all waste, stains, litter and debris resulting from or associated with the Event, or in the event that the User or the User’s Subcontractor should fail to repair or replace (with items of equal or better quality) all property damaged in the Event Site, the surrounding park or other nearby property which damages resulted from or were associated with the Event. The User shall perform all clean-up and shall make such repairs and replacement as authorized under Section 5.2.13 without requiring the City to resort to claiming the Damage Deposit. Should the User fail to perform as specified herein by the end of last day of the Load-Out, the City shall be entitled to retain such portions of the Damage Deposit as reasonably necessary to perform the clean-up, repairs, and replacement, and if the City’s costs for such work exceed the amount of the Damage Deposit, the City shall not be limited by the Damage Deposit in its claim for actual damages. If the City has no claim against the Damage Deposit, the Damage Deposit shall be returned to the User within thirty (30) calendar days following the last day of Load-Out, or if the entire amount of the Damage Deposit is not required for the City to perform clean-up, repairs, or replacement, the remaining portion of the Damage Deposit shall be returned to the User within sixty (60) calendar days following the last day of Load-Out.

4.3 Walk-Through Inspections and Records. The User shall appoint a representative authorized to act on behalf of the User with respect to the duties and actions under this Section 4.3. The User’s representative and the City Liaison or other representative of the City designated by the Manager shall arrange times for walk-throughs as specified herein. The initial walk-through will be conducted at least twenty-one (21) calendar days before the first day of Load-In for the Event; and a post-event walk-through will be conducted immediately (weather permitting) following the last day of Load-Out for any Event. A report of the condition of the Event Site and the surrounding park and adjoining right of way (if any) before and after the Event and Load-In and Load-Out, including contemporaneous pictures, shall be prepared and signed by both representatives. This report shall provide the basis for determining what clean-up,

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

4.4 Payment Method. The Fees and Damage Deposit, along with payments for electrical service, shall be tendered by check made out to the Denver Manager of Finance and delivered to the Finance and Administration Division, Department of Parks and Recreation, 201 West Colfax, Department 602, Denver, Colorado 80202. The Event Permit shall not be deemed to be in effect until the Damage Deposit has been submitted as required herein and available funds are verified.

## 5. USER RESPONSIBILITIES.

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

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

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

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

5.2.3 Contracting with and supervising all Subcontractors for the Concession, including those providing catering and other food service, waiting and bussing service, maintenance and cleaning, etc., and assuring complete faithful performance of the contracted duties and obligations;

5.2.4 Staging, supervising and adequately controlling Load-In and Load-Out for the Event;

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

5.2.6 Installing and maintaining security and perimeter fencing and barricades as necessary to control access to the Event Site and to provide for appropriate crowd control and public safety;

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

5.2.8 Providing clean-up crews, washing equipment, garbage carts, trash receptacles, recycling containers, pick-up of trash and cleaning of debris generated by or associated with the Event, and proper removal and disposal of trash and debris, on a daily basis and as needed, including trash and debris put into City-owned trash receptacles in and near the Event Site;

5.2.9 Providing for all snow and ice removal in and around the Concession Site as necessary to provide for safe and adequate public access, with all snow and ice piles to be placed in such a manner and at such locations as approved by the City Liaison;

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

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

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

5.2.13 Repairing and/or replacing, as authorized and directed by the Manager, of any damaged real or personal property owned or leased by the City within or in the vicinity of the Event Site and the surrounding park and other property, which damage was the result of or associated with the acts or omissions of the User and/or its Subcontractor(s) with respect to the Event;

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

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

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

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

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

- 5.3.2 Costs and expenses associated with the Concession and Entertainment;
- 5.3.3 Charges and fees imposed by the City as provided in this Agreement;
- 5.3.4 Costs associated with any necessary sidewalk, street or public lane closures; and
- 5.3.5 Costs associated with required police, fire, and medical services provided for the Event.

5.4 Electrical Service and Water Supply.

5.4.1 The User will have access to the electrical system in the park where the Event Site is located and, at its own expense, the User shall arrange for any special electrical connection to said electrical system and for sub-metering all electrical usage for the Event. The User shall reimburse the City for all electrical service for the Event as specified in Section 4.1 and Section 4.4.

5.4.2 If the User has to provide some portion of the required electrical needs for the Event through generators or other electrical connections provided by the User at its expense, the User shall obtain and pay for any permits, licenses, or approvals for the installation and operation of the generators and other electrical connections, which must be installed and operated in a manner so that they do not damage, or adversely impact or impede the public use of, the park or the streets, including excessive noise and fumes.

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

5.4.4 The User hereby expressly waives any and all claims for compensation from the City and the Denver Water Board for any and all loss or damage sustained by reason of any defect, deficiency, failure or impairment of the water supply system, drainage system, or electrical system on, near or otherwise related to the Event Site.

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

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

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

5.8 Compliance with Parks Laws. Except as expressly modified herein or as otherwise modified by written directive of the Manager, the prohibitions and restrictions for uses and activities in a City-owned park set forth in Article I of Chapter 39 of the Denver Revised Municipal Ordinance (“**DRMC**”) shall be applicable and must be complied with. Smoking within any enclosure, tent (even if not fully enclosed), kitchen or dining area, or any location where patrons may congregate while drinking or eating within the Event Site is a violation under section 39-10(e), DRMC.

## 6. **CITY RESPONSIBILITIES.**

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

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

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

6.1.3 Winterizing and charging irrigation systems in and near the Event Site. The City will also repair said irrigation systems unless the repair(s) are needed due to damage caused by the User, the User’s employees, agents, contractors or customers in which case the User shall pay for such repairs. The City reserves the right to determine who will perform the repairs.

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

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

7.1 Term. The term of this Agreement will commence on June 1, 2017 and expire at 11:00 p.m. on November 15, 2019 (the "Term"), unless sooner terminated in accordance with the terms of this Agreement, including without limitation those provisions set forth in Article 8 herein. If the time needed to complete performance of any provisions of this Agreement extends beyond the Term specified above (including, but not limited to, any payment of Fees, the Damage Deposit, and inspections under Article 4 of this Agreement and any provisions that expressly survive the expiration or termination of this Agreement), this Agreement shall remain in full force and effect but only as to such provisions.

7.2 Year Added to Term; Cancellation of an Event.

7.2.1 Should an Event authorized under this Agreement be substantially disrupted or prevented for ninety (90) days or more due to construction or major repairs at the Event Site or on adjoining property to the Event Site or due to Force Majeure, then the User shall be entitled to have the Term extended to allow for another Event in the following year; provided, however, that the Term extension will have to be contained in an amendment to this Agreement and signed by the Mayor and other City officials in accordance with the City Charter (but City Council approval will not be required for such an extension).

7.2.2 Should an Event authorized under this Agreement be substantially disrupted or prevented for less than ninety (90) days due to construction or major repairs at the Event Site or on adjoining property to the Event Site or due to Force Majeure, then the User may submit a request to the Manager to have the Term extended to allow for another Event in the following year; provided, however, that the Term extension will have to be approved by the Manager and contained in an amendment to this Agreement approved by City Council and signed by the Mayor and other City officials in accordance with the City Charter.

7.2.3 In any event, Section 4.1.4 shall be applicable. However, the Fees specified shall in Section 4.1.2 shall be applicable for the year added to the Term.

7.3 Mutual Termination; Termination for Convenience.

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

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

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

## 8. DEFAULT AND REMEDIES

8.1 Default by User. The following shall constitute a “**Default by User**” under this Agreement:

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

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

8.1.3 Any material violation of a requirement or specification contained in a Plan approved under Article 12, if not cured within five (5) business days of written notice but no later than two (2) calendar days during an Event if the City deems the material violation to be a threat to the public health, safety and welfare in the City’s written notice to the User (otherwise not curable);

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

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

8.1.6 The User or any of its officers or directors are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature, in connection with the User’s business (this is not curable); or

8.1.7 A material breach or default by the User of any term or condition under this Agreement (other than those specified in Sections 8.1.1 through 8.1.6) if such breach or default is not cured by the User within ten (10) business days after written notice thereof or such other cure period specified in the City’s written notice to the User; provided, however, that if a curable breach cannot be reasonably cured during such ten (10) day period but the User commences in good faith and with due diligence an effort to cure within said ten (10) day period, then the time for cure may be extended for such period of time mutually agreed by the Parties but, if there is no mutual agreement, no longer than twenty (20) business days after the original notice of default; provided, further, that a material breach or default cannot be cured by the cure period being extended beyond the end of the Event Dates and Load-Out.

8.1.8 Any cure rights set forth in this Section 8.1 shall not excuse the obligation of the User to take timely and proper action to prevent, stop, mitigate, or alleviate any recent or

impending damage to the Event Site, City-owned property or neighboring property or any existing or imminent threat or danger to public health and safety.

8.2 Default By City. At no time shall the City be deemed to be in material breach or default under this Agreement unless and until the User shall have given to the City notice in writing, specifying such material breach or default and the City has failed to cure the material breach or default within ten (10) business days following said written notice or, if the breach or default cannot be reasonably cured during such ten (10) day period but the City commences in good faith to make a timely effort to cure within said ten (10) day period, then the time for cure may be extended for such period of time mutually agreed by the Parties but, if there is no mutual agreement, no longer than twenty (20) business days after the original written notice of Default; provided, further, that a material breach or default existing at the time of Load-In which prevents the User making effective use of the Event Site must be cured within two (2) calendar days of written notice being received by the City.

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

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

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

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

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

9.2 Liens and Claims. The User shall not permit any mechanic's or materialman's liens or any other liens to be imposed upon any City-owned property, or any part thereof, by reason of any work or labor performed or materials furnished by any person or legal entity to or on behalf of the User, either pursuant to C.R.S. § 38-26-107 or by any other authority. The User shall promptly pay when due, and shall require its Subcontractors to pay when due, all bills, debts and obligations incurred in connection with this Agreement and the Event and shall not



permit the same to become delinquent. The User shall not permit any lien, judgment, execution or adjudication of bankruptcy which will in any way impair the rights of the City under this Agreement or to the City's property. The User shall timely obtain and submit all documentation or other certifications necessary to demonstrate, to the satisfaction of the City Liaison, that all liens and claims for labor, materials, equipment, or other services or goods have been released and waived or released upon the User posting an appropriate and sufficient bond or other surety, and that all City-owned property is free of any liens or claims associated with work performed by or on behalf of User.

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

## 10. **INSURANCE**

10.1 General Conditions. The User shall secure, at least thirty (30) days in advance of the Event, the following insurance covering all operations, activities, and services contemplated under this Agreement and provide the City with a written schedule of the intended insurance coverages required by this Agreement which shall include their effective starting dates (which must be satisfactory to Denver Risk Management) and the duration of the coverages which shall be no shorter than thirty (30) days prior to the start of Load-In (or the Event if there is no Load-In) and thirty (30) days subsequent to the end of Load-Out (or the Event if there is no Load-Out) during the Term of this Agreement and any extensions thereof. The User shall keep the required insurance coverage in force at all times during the effective dates specified on the written schedule, as approved by Denver Risk Management. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-VIII" or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies is to be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the City offices identified in Section 17.8 of this Agreement. Such notice shall reference the City contract number listed on the City's signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, the User shall provide written notice of cancellation, non-renewal and any reduction in coverage to the City offices identified in Section 17.8 by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the User. The User shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the User. The User shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

10.2 Proof of Insurance. The User shall provide a copy of this Agreement to its insurance agent or broker. The User may not commence any work or operations at the Event Site or any Load-In and Load-Out areas prior to placement of coverage as required under this Agreement. The User certifies that a current certificate of insurance, in compliance with this Article 10, shall be provided to the City in final form no later than thirty (30) days prior to the

start of the Load-In (or the start of the Event if there is no Load-In). The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of the User's breach of this Agreement or of any of the City's rights or remedies under this Agreement. Denver Risk Management may require additional proof of insurance, including but not limited to policies and endorsements.

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

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

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

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

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

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

10.9 Liquor Legal Liability. The User shall maintain, or shall cause the Subcontractors who sell or serve Permitted Alcohol to maintain, Liquor Legal Liability coverage with limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

10.10 Additional Provisions.

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

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

10.10.12 For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services were provided, whichever is earlier.

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

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

## 11. **INDEMNIFICATION AND DEFENSE**

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

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

11.3 Copyright Indemnification. The User warrants that all copyrighted material used, performed, displayed or otherwise made public in association with the Event has been duly licensed and authorized by the copyright owners or their representatives and agrees to indemnify and hold the City harmless from any and all claims, losses, or expenses incurred with regard thereto.

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

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

## 12. **PLANS**

All Plans listed below and required by the City's Department of Parks and Recreation for the Event (the "**Plans**") shall be incorporated into and made part of this Agreement upon final approval of the Plans by the specified Manager(s).

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

### 12.2 Public Safety Plans.

12.2.1 Fire Safety Protection Plan. After consultation with the City Liaison and the appropriate officials of the Denver Fire Department, the User shall prepare, or arrange for the professional preparation of, the Fire Safety Protection Plan (the "**Fire Plan**"). The Fire Plan shall be submitted by the User to the Manager and to the Denver Executive Director of Safety, for

their review and approval. The Fire Plan shall identify, in detail, all measures the User shall take to comply with the directions and requirements of the Denver Fire Department and Applicable Law, including the provision of safe exits from the Event Site, fire lanes to the Event Site, and fire safety for the Concession Site.

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

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

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

12.4 Signage Plan and Standards. After consultation with the City Liaison and the appropriate officials of the Denver Department of Parks and Recreation, the User shall prepare, or arrange for the professional preparation of, the Signage Plan and Standards (the "**Signage Plan**") The Signage Plan shall be submitted by the User to the Manager, for the Manager's review and approval. The Signage Plan shall identify, in detail, all measures the User shall take to comply with the directions and requirements of the Manager and Applicable Law, including

provisions for the standards and process for the installation and removal of all temporary signs and advertising and compliance with the terms and conditions of Section 3.5.

12.5 Trash, Recycling, and Site Clean Up Plan. After consultation with the City Liaison and the appropriate officials of the Denver Department of Parks and Recreation, the User shall prepare, or arrange for the professional preparation of, the Trash, Recycling, and Site Clean Up Plan (the "**Clean Up Plan**"). The Clean Up Plan shall be submitted by the User to the Manager, for the Manager's review and approval. The Clean Up Plan shall identify, in detail, all measures the User shall take to comply with the directions and requirements of the Manager and Applicable Law, including provisions for litter pick-up, site cleaning, and trash removal on a daily basis and as needed (during Load-In, Load-Out, and the Event) and for promoting waste materials recycling whenever possible. It shall also identify the process and commitments as to post-event clean-up, including but not limited to trash and debris disposal, building material removal, stain cleaning, and water and other liquid disposal from the Event Site.

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

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

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

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

12.9 Review and Approval Process. For each of the Plans identified in Sections 12.1 through 12.8, a complete Plan shall be submitted by the User to the specified Manager(s) no later than forty-five (45) calendar days prior to the first day of the Load-In for the Event. A copy of all Plans shall be simultaneously provided to the City Liaison. The Manager(s) shall review and provide to the User in writing no later than fifteen (15) business days after the User's submittal of such Plan either: (i) an approval of such Plan, or (ii) if not approved, a list of all modifications required to the Plan. Upon receiving a modified Plan fully responsive to the changes previously identified by the Manager(s), the Manager(s) will review and respond in writing to the modified Plan within five (5) business days of the User's submission of such modified Plan. No Event Permit shall be effective until all required Plans are approved or, if further modifications to the Plans are authorized by the Manager(s) to be addressed by the User after the start of the Event, conditionally approved by the Manager(s).

### 13. **RECORDS**

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

13.2 Confidential Information. As used in this Agreement, the term "**Confidential Information**" means all written information or documents, in hard copy or electronic form, that (i) is disclosed or provided by or through the User to the City pursuant to performance of this Agreement; and (ii) has been clearly marked or indicated in writing as being confidential by the User. Confidential Information does include this Agreement, any exhibits to this Agreement, any Certificate of Insurance submitted in accordance with Article 10, or any Plan submitted in accordance with Article 12. Confidential Information will be treated by the City as confidential proprietary information of the User pursuant to the provisions of the Colorado Open Records Act and under any rule of court except as otherwise provided under this Section 13.2. The Parties understand that all the written information or documents provided or produced under this Agreement may be subject to the Colorado Open Records Act., § 24-72-201, *et seq.*, C.R.S. In the event of a request to the City for disclosure of any such information or documents deemed under this Agreement as Confidential Information, the City shall advise the User of such request in order to give the User the opportunity to object to the disclosure of any of the User's Confidential Information. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such requested Confidential Information to the court for judicial determination of the issue of disclosure, and the User agrees to intervene in such lawsuit to protect and assert the User's claims of privilege and against disclosure of such Confidential

Information or waive the same. The User further agrees to defend, indemnify and save and hold harmless the City, its elected and appointed officials, agents and employees, from any claim, damages, expense, loss or costs arising out of the User's intervention to protect and assert the User's claim of privilege against disclosure including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

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

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

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

14.3 Abandoned Property. The City shall have the sole right to collect and have custody of abandoned property of some appreciable value left by attendees of the Event or park patrons.

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

15.1 Names and Logos of the City and Department of Parks and Recreation. The City may grant to the User the non-exclusive right to use the names and logos of the City and the Denver Department of Parks and Recreation in connection with producing the Event; provided



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

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

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

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

16.1 General Compliance with Laws. The User shall comply with all Applicable Law in connection with this Agreement. The User shall use reasonable efforts to ensure that the attendees at the Events and the User's Subcontractor(s) shall comply with all Applicable Law in and around the Event Site. The City shall not be required to take any action which is inconsistent with Applicable Law. Nothing in this Agreement is intended to supersede, modify, or replace Applicable Law unless such intent is expressly stated in this Agreement.

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

16.3 Colorado Governmental Immunity Act. The Parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations and all other rights,

immunities and protection provided by the Colorado Governmental Act, § 24-10-101, *et seq.*, C.R.S. and other law. All notice requirements provided by such laws shall be strictly complied with.

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

## 17. MISCELLANEOUS

### 17.1 Legal Authority.

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

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

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

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

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

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

bind or obligate the User. No employee of the User shall be deemed an employee of the City. No employee of the City shall be deemed an employee of the User.

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

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

17.7 Disputes, Venue and Governing Law.

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

17.7.2 This Agreement shall be construed and enforced pursuant to the laws of the State of Colorado and any applicable federal law, without regard to any statute or rule of law specifying a different choice of law, and applicable local law.

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

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

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

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

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

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

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

#### 17.9 Construction of this Agreement.

17.9.1 Paragraph Headings. The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

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

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

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

17.9.5 Severability. It is understood and agreed by the Parties that if any part, term, or provision of this Agreement is held by a court of law (following all legal rights of appeal or the expiration of time therefore) to be illegal or in conflict with any law of the State of

Colorado or the City Charter or City ordinance, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid; provided, however, if the invalidated term was a critical or material consideration of either Party in entering this Agreement, the Parties shall work together, in good faith, to come up with an amendment to this Agreement that substantially satisfies the previously intended consideration while being in compliance with any Applicable Law and the judgment of the court.

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

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

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

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

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SIGNATURE BLOCKS BEGIN ON THE NEXT PAGE.]**

**Contract Control Number:**

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:** PARKS-201733626-00

**Contractor Name:** Downtown Denver Events, Inc.

By: Tamara Das

Name: Tamara Doox  
(please print)

Title: CEO  
(please print)

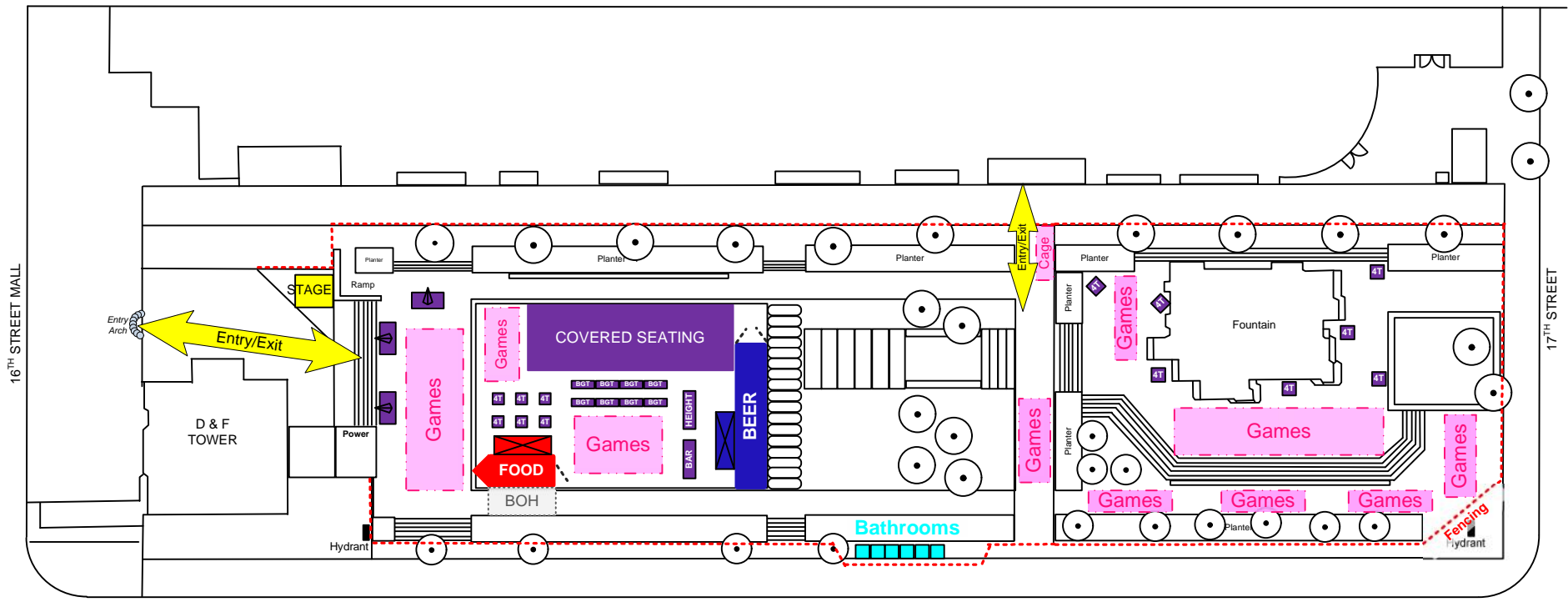
**ATTEST: [if required]**

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

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

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





ARAPAHOE STREET

ARAPAHOE STREET

# Downtown Denver Partnership

Skyline Beer Garden – Summer 2017

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

DRAFT  
Updated  
3/6/17