

## **FIRST AMENDMENT TO CONCESSION AGREEMENT**

**THIS FIRST AMENDMENT TO CONCESSION AGREEMENT** (“First Amendment”) is made and entered into as of the date stated on the signature page, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, for and on behalf of the Department of Aviation (the “City”), and **WH SMITH DEN LLC, d/b/a WH SMITH**, a Florida limited liability company authorized to conduct business in the State of Colorado (the “Concessionaire”) (collectively, the “Parties”).

### **WITNESSETH:**

**WHEREAS**, the City owns and operates Denver International Airport (“DEN” or the “Airport”); and

**WHEREAS**, the Parties entered into a Concession Agreement, Contract No. 20191173 (the “Existing Agreement”) for the operation of a concession at DEN;

**WHEREAS**, the City operates a strong, diverse, concessions program serving millions of passengers who travel through DEN each year (“Concessions Program”);

**WHEREAS**, concessionaires providing goods and services support the City in creating a world-class experience for travelers;

**WHEREAS**, certain concessionaires did not receive term extensions during the COVID-19 pandemic and did not receive term extensions through the Premium Value Concession Program;

**WHEREAS**, to align with the City’s commitment of ensuring a fair and sustainable business environment for all concessionaires, the City wants to extend the term for these concessionaires, that are in good standing, to conform with the Concessions Program’s current term limits (the “Extension”);

**NOW, THEREFORE**, for and in consideration of the privileges granted by the Existing Agreement and other good and valuable consideration, the sufficiency of which is acknowledged, the Parties hereto agree as follows:

1. The Term and the Expiration Date contained in Section 1.01 of the Existing Agreement are extended by two (2) years. Hereafter, the Term will be nine (9) years, and the Expiration Date of the Agreement is December 29, 2032.

2. Concessionaire must maintain strict compliance with Airport Concession Disadvantaged Business Enterprise (“ACDBE”) regulations, including full and timely compliance with the City’s reviews, inquiries, investigations, and orders related to ACDBE requirements. If the City finds at any time that the Concessionaire is in violation(s) within reasonable time after notice, the City may, through letter executed by DEN’s Chief Executive Officer (“CEO”) and in accordance with ACDBE regulations, unilaterally void the Extension and revert the Term and Expiration Date back to the original Term and Expiration Date modified by this Amendment. This remedy is in addition to all remedies available to the City.

3. Concessionaire shall maintain, refurbish, and repair the concession premises as needed and as reasonably directed by the City during the Extension to ensure the concession continuously appears and operates as a first-class concession. Failure by the Concessionaire to so maintain, refurbish, or repair the premises shall give the City cause to void the Extension through letter executed by the CEO. This remedy is in addition to all remedies available to the City.

4. The following terms within the Summary Page of the Existing Agreement are hereby deleted and replaced with the following:

Location	Address/Space	Sq. Ft.	Min. Invest. Per Sq. Ft.	Trade Name
Conc. A West Subcore 2	8700 Pena Blvd. #AC-31 / R17-1-2- W41-S3-1	1,287.6	\$650.00	WH Smith
Premises Total		1,287.6 sq. ft.		
Term		9 years		
Effective Date		January 3, 2022		
Required Opening Date		January 17, 2024		
Mid-Term Refurbishment Completion Date		January 17, 2028		
Expiration Date		December 29, 2032		

5. Article XXI. "General Provisions", Section 21.01 entitled "AMERICANS WITH DISABILITIES ACT" of the Existing Agreement is hereby deleted in its entirety and replaced with the following:

#### **"SECTION 21.01 AMERICANS WITH DISABILITIES ACT ("ADA").**

Concessionaire shall provide the services specified in this Agreement in a manner that complies with the ADA (42 USC § 12101, et. seq) and other federal, state, and local accessibility requirements. Concessionaire shall not discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Concessionaire, its employees, agents or assigns may constitute a material breach of this Agreement. If requested by City, Concessionaire shall engage a qualified disability contractor to review Concessionaire's work for compliance with the ADA (and any subsequent amendments to the statute) and all other related federal, state, and local disability requirements, and Concessionaire shall remedy any noncompliance found by the qualified disability contractor as soon as practicable."

6. The following new Article X, Section 10.11 is added to the Existing Agreement:

#### **"SECTION 10.11 PREVAILING WAGE.**

A. To the extent required by law, Concessionaire shall comply with, and agrees to be bound by, all requirements, conditions and City determinations regarding the Payment of Prevailing Wages Ordinance, D.R.M.C. §§ 20-76 through 20-79, 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 Agreement were encumbered.

- i. Prevailing wage and fringe rates will adjust on the yearly anniversary of the actual date of bid or proposal issuance, if applicable, or the date of the written encumbrance if no bid/proposal issuance date is applicable.
- ii. Concessionaire shall provide the Auditor with a list of all subcontractors providing any services under the Agreement.
- iii. Concessionaire shall provide the Auditor with electronically-certified payroll records for all covered workers employed under this Agreement.
- iv. 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).
- v. If Concessionaire 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 Concessionaire fails to pay required wages and fringe benefits.”

7. The following new Article X, Section 10.12 is added to the Existing Agreement:

#### **“SECTION 10.12 MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE (“MWBE”)**

A. This Agreement is subject to D.R.M.C Article III, Divisions 1 and 3 of Chapter 28, designated as §§ 28-31 to 28-40 and 28-51 to 28-90 (the “**MWBE Ordinance**”); and any Rule and Regulations promulgated pursuant thereto. The initial Concessionaire commitment for MWBE participation for this Agreement is stated in Section 1.01 Summary of Contract Provisions, as stipulated in the DSBO MWBE Commitment Form submitted by the Concessionaire.

- i. Prior to the Notice to Proceed being issued by the City, the Concessionaire shall provide completed and updated DSBO forms, entitled “Commitment to MWBE Participation” and “Letter of Intent” (“**LOI**”). The LOI evidences Concessionaire’s understanding that they will enter into a contractual relationship with the listed MWBE firm or that Concessionaire’s general contractor, subcontractor(s), subconsultant(s), and/or supplier(s) will do so. A separate LOI is required for each MWBE subcontractor, subconsultant, and/or supplier at all tiers.

The collective LOI amounts must be consistent with the total committed MWBE participation percent stated on the Commitment to MWBE Participation form.

B. Under D.R.M.C. § 28-68, the Concessionaire and its contractors and consultants have an ongoing, affirmative obligation to maintain for the duration of this Agreement, at a minimum, compliance with the MWBE participation upon which this Agreement was awarded, unless the City initiates a material modification to the scope of work effecting MWBE's performing on this Agreement through change order, contract amendment, force account, or other modification under D.R.M.C. § 28-70. The Concessionaire acknowledges that:

- i. The MWBE commitment stated in Section 1.01 Summary of Contract Provisions is only applicable to the initial construction and buildout of the Premises. Future construction work under this Agreement, including but not limited to the Mid-Term Refurbishment, will be subject to a new MWBE goal established by DSBO. If any such future construction scope of work's value is determined to be over \$150,000.00, the Concessionaire must contact DSBO as soon as possible to request an MWBE participation goal on the refurbishment and/or other construction work to be completed. Contact should be made in the form of an email to [goals@denvergov.org](mailto:goals@denvergov.org). If an MWBE participation goal is established by DSBO, the Concessionaire must submit the required Commitment to MWBE Participation form and Letter(s) of Intent for each City and County of Denver certified MWBE firm prior to receiving a Notice to Proceed form the City. Failure to submit the required DSBO forms could prevent NTP from being executed. Contact should be made in the form of an email to [dsbo@flydenver.com](mailto:dsbo@flydenver.com).
- ii. If change orders or any other contract modifications are issued under the Agreement, the Concessionaire and its contractors and consultants shall have a continuing obligation to promptly inform DSBO in writing of any agreed upon increase or decrease in the scope of work of such contract, upon any of the bases under D.R.M.C. § 28-70, regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification of the change by the City.
- iii. If change orders or other amendments or modifications are issued that include an increase in the scope of work of any construction project under this Agreement, whether by amendment, change order, force account or otherwise, which increases the dollar value of the contract, whether or not such change is within the scope of work designated for performance by an MWBE at the time of contract award, such change orders or contract modification shall be promptly submitted to DSBO for notification purposes.
- iv. Those amendments, change orders, force accounts or other contract modifications that involve a changed scope of work that cannot be performed by existing project subcontractors or subconsultants are subject to the

applicable goal and related requirements. The Concessionaire must ensure that its contractors and consultants satisfy the requirements with respect to such changed scope of work by soliciting new MWBEs in accordance with D.R.M.C. § 28-70. The Concessionaires must ensure that its contractors and consultants also satisfy the requirements under D.R.M.C. §§ 28-60 and 28-73, with regard to changes in scope or participation. The Concessionaire must ensure that it or its contractors and consultants supply to the DSBO Director all required documentation under D.R.M.C. §§ 28-60, 28-70, and 28-73, with respect to the modified dollar value or work under the contract.

- v. If applicable, for contracts of one million dollars (\$1,000,000.00) and over, the Concessionaire will ensure that its contractors and consultants are required to comply with the D.R.M.C. §§ 28-72 regarding prompt payment to MWBEs. Payment to MWBE subcontractors/subconsultants shall be made no later than thirty-five (35) days after receipt of the MWBE subcontractor or subconsultant's invoice.
- vi. Failure to comply with these provisions may subject the Concessionaire to sanctions set forth in § 28-76 of the MWBE Ordinance.
- vii. Should any questions arise regarding specific circumstances, the Concessionaire and its contractors and consultants should consult the MWBE Ordinance or may contact the Project's designated DSBO representative at [DSBO@flydenver.com](mailto:DSBO@flydenver.com).”

8. Article V, Section 5.05 entitled “RECORD KEEPING, REPORTS, ANNUAL STATEMENT, AND END OF YEAR ADJUSTMENT,” Subsection F, of the Existing Agreement is hereby deleted and replaced with the following:

**“F. Annual Statement.** No later than February 28 after the end of each year of operation after the first Contract Year, Concessionaire will, at its sole cost and expense, provide an “Annual Statement” to City prepared by an Independent Certified Public Accountant (“CPA”). There may be no limitation on the scope of the engagement that would preclude the Independent CPA from expressing an unqualified opinion as to the correctness and completeness of the reported Gross Revenue. The engagement will include a schedule of Gross Revenue and Privilege Fees for each month of the Concessionaire’s operation in the Contract Year, prepared in accordance with the comprehensive basis of accounting defined herein and reported in a format acceptable to City. The engagement will be conducted in accordance with Generally Accepted Auditing Standards and shall include an opinion from the Independent CPA on whether the Gross Revenue, Privilege Fees, and all other fees or charges payable under this Agreement have been completely and accurately presented, calculated, reported, and paid according to the terms of this Agreement. City reserves the right to reject Concessionaire’s choice of Independent CPA, where in City’s view the Independent CPA does not have the appropriate standing, reputation, or independence from the Concessionaire. The City may further define or modify the requirements for the Annual Statement through updates to the Concessions Handbook or by the CEO’s signed directive.”

9. Article V, Section 5.07 entitled “CITY’S RIGHT TO PERFORM AUDITS, INSPECTIONS, ATTESTATION ENGAGEMENTS,” Subsection A, of the Existing Agreement is hereby deleted in its entirety and replaced with the following:

“A. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine, copy and retain copies, at City’s election in paper or electronic form, any pertinent books, documents, papers and records related to Concessionaire’s performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Concessionaire shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audit pursuant to this paragraph shall require Parties to make disclosures in violation of state or federal privacy laws. Parties shall at all times comply with D.R.M.C. 20-276.”

10. Article VII, Section 7.07 entitled “PAYMENT OF CITY MINIMUM WAGE” of the Existing Agreement is hereby deleted in its entirety and replaced with the following:

#### **“7.07 COMPLIANCE WITH DENVER WAGE LAWS.**

To the extent applicable to the Concessionaire’s provision of Services hereunder, the Concessionaire shall comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the City’s Minimum Wage and Civil Wage Theft Ordinances, Sections 58-1 through 58-26 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, the Concessionaire expressly acknowledges that the Concessionaire is aware of the requirements of the City’s Minimum Wage and Civil Wage Theft Ordinances and that any failure by the Concessionaire, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.”

11. The new **Appendix B** attached to this First Amendment is hereby added to the Existing Agreement.

12. The new “**RTD Exhibit**” attached to this First Amendment is hereby added to the Existing Agreement.

13. **Exhibit E** of the Existing Agreement is hereby deleted and replaced with the **Exhibit E** attached to this First Amendment.

14. Except as otherwise provided herein, all provisions, terms and conditions of the Existing Agreement shall remain in full force and effect as if fully set forth herein.

15. This First Amendment shall not be effective or binding on the City until approved and fully executed by all signatories of the City and County of Denver.

**END OF AMENDMENT**  
**SIGNATURE PAGES AND EXHIBITS TO FOLLOW**

**Contract Control Number:** PLANE-202579413-01 / LEGACY-201951173-01  
**Contractor Name:** WH SMITH DEN LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

---

**APPROVED AS TO FORM:**

Attorney for the City and County of Denver

By:

---

**REGISTERED AND COUNTERSIGNED:**

By:

---

By:

---

**Contract Control Number:** PLANE-202579413-01 / LEGACY-201951173-01  
**Contractor Name:** WH SMITH DEN LLC

Signed by:  
By:   
7BA89FFEECB9430...

Greg Tobias  
Name: \_\_\_\_\_  
(please print)  
Secretary & General Counsel  
Title: \_\_\_\_\_  
(please print)

ATTEST: [if required]

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

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

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

## **APPENDIX B**

### **GENERAL CIVIL RIGHTS PROVISIONS**

The Concessionaire agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Concessionaire transfers its obligation to another, the transferee is obligated in the same manner as the Concessionaire.

This provision obligates the Concessionaire for the period during which the property is owned, used or possessed by the Concessionaire and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

**RTD EXHIBIT**

## RTD Exhibit

### EcoPass Program

1. The City may, in its discretion, annually execute a contract (the “**RTD Master Contract**”) with the Regional Transportation District (“**RTD**”) to allow Concessionaire and other eligible DEN concessionaires to enroll their Eligible Employees in RTD’s EcoPass Program (as the terms “**Eligible Employee**” and “**EcoPass Program**” are defined in the applicable RTD Master Contract). The City will execute these contracts for the benefit of the concessionaires who the City and RTD determine are eligible to participate in the EcoPass Program, on the condition that each eligible concessionaire participates in the EcoPass Program and compensates the City for its proportional number of Eligible Employees. The City is under no obligation to execute an RTD Master Contract and may at its sole discretion elect not to.

2. Every RTD Master Contract that the City executes for the above purpose will by its existence obligate the Concessionaire to participate in the EcoPass Program under the terms of this Exhibit. Concessionaire will enroll all Eligible Employees at DEN in the EcoPass Program. Concessionaire agrees that this obligation extends to all Eligible Employees that are employed by Concessionaire at DEN, including Eligible Employees that work at concession locations that are not under this Agreement, regardless of whether these obligations are found in the respective contracts for such other concession locations.

3. Any terms or conditions from an RTD Master Contract that by their nature implicate Concessionaire and require certain performance by Concessionaire for the City to fulfill its obligations under the RTD Master Contract are by reference incorporated in this Exhibit. Any dispute or ambiguity regarding Concessionaire’s obligations in connection with any RTD Master Contract will be resolved by the City in the City’s reasonable discretion.

4. Within 30 days after notice from the City, Concessionaire will provide the City with the total number of Eligible Employees to be enrolled in the following year’s EcoPass Program.

5. Concessionaire will pay in full the amount billed for its Eligible Employees within 30 days from the date of the City’s invoice. Late payments are subject to accrued interest according to the Agreement’s terms for late payment. Payments that are over 10 days late may be treated as a default, permitting the City to draw from the applicable Surety, Performance Bond, or Letter of Credit, or exercise any other right or remedy available for default under the Agreement.

6. Concessionaire will promptly provide any relevant documentation requested by the City or RTD in connection with Concessionaire’s Eligible Employees’ participation in the EcoPass Program.

7. Concessionaire is solely responsible for administering the EcoPass Program for its Eligible Employees in accordance with RTD’s guidance and requirements.

8. The City makes no guarantee or warranty regarding Concessionaire’s satisfaction with or use of the EcoPass Program. Concessionaire will hold the City harmless for any loss,

damage, injury, or claim that may arise from Concessionaire's participation in the EcoPass Program, including but not limited to early termination by the City or RTD of the EcoPass Program.

9. Because the form and substance of a given RTD Master Contract and the EcoPass Program may change over time, if any ambiguity arises in this Exhibit due to changes in party names, program titles, definitions, or other terms in an RTD Master Contract, the ambiguity will be resolved by the City in its reasonable discretion.

10. The Parties agree that unforeseen changes to the EcoPass Program or the terms and conditions of the RTD Master Contract may require the Parties to modify their obligations under this Exhibit to give effect to its intent. Therefore, the Parties agree that the City may amend this Exhibit by letter executed by the CEO or the CEO's Authorized Representative, without the need for formal amendment.

## **EXHIBIT E**

### **CITY AND COUNTY OF DENVER INSURANCE REQUIREMENTS FOR DEPARTMENT OF AVIATION CONCESSION AGREEMENT**

#### **A. Certificate Holder and Submission Instructions**

Commercial Operator must provide a Certificate of Insurance as follows:

Certificate Holder: CITY AND COUNTY OF DENVER  
Denver International Airport  
8500 Peña Boulevard  
Denver CO 80249

- ACORD Form (or equivalent) certificate is required.
- Commercial Operator must be evidenced as a Named Insured party.
- Electronic submission only, hard copy documents will not be accepted.
- Reference on the certificate must include the City-assigned Contract Number, if applicable.

The official repository for Certificates of Insurance (COIs) within DEN is PINS Advantage. Upon contract initiation, an email will be sent to the Commercial Operator with instructions to upload the COIs for insurance compliance. The City may at any time modify submission requirements, including the use of third-party software and/or services, which may include an additional fee to the Commercial Operator.

#### **B. Defined Terms**

1. “Agreement” as used in this exhibit refers to the contractual agreement to which this exhibit is attached, irrespective of any other title or name it may otherwise have.
2. “Commercial Operator” as used in this exhibit refers to the party contracting with the City and County of Denver pursuant to the attached Agreement.

#### **C. Coverages and Limits**

##### **1. Commercial General Liability**

Commercial Operator shall maintain insurance coverage including bodily injury, property damage, personal injury, advertising injury, independent contractors, and products and completed operations in minimum limits of \$1,000,000 each occurrence, \$2,000,000 products and completed operations annual aggregate; if policy contains a general aggregate, a minimum limit of \$2,000,000 annual per location aggregate must be maintained.

- a. Coverage shall include Contractual Liability covering liability assumed under this Agreement (including defense costs assumed under contract) within the scope of coverages provided.
- b. Coverage shall include Mobile Equipment Liability, if used to perform services under this Agreement.
- c. If a “per location” policy aggregate is required, “location” shall mean the entire airport premises.
- d. Coverage shall include Fire Damage Legal Liability in a minimum limit of \$100,000 per fire.
- e. Coverage shall include Liquor Legal Liability in minimum limits of \$2,000,000 each occurrence, \$2,000,000 annual aggregate, if Concessionaire serves or sells alcoholic beverages in its operations. This coverage may also be provided under a separate Liquor Legal Liability policy.

##### **2. Business Automobile Liability**

Commercial Operator shall maintain a minimum limit of \$1,000,000 combined single limit each occurrence for bodily injury and property damage for all owned, leased, hired and/or non-owned vehicles used in performing services under this Agreement.

- a. If operating vehicles unescorted airside at DEN, a \$10,000,000 combined single limit each occurrence for bodily injury and property damage is required. DEN has established an Airside Unescorted Excess Auto Liability Program to support Commercial Operators in meeting the \$10,000,000 auto liability requirement for unescorted airside driving privileges. This program offers \$9,000,000 in excess coverage over a \$1,000,000 base liability. For more information, please visit: [DEN AirsideDrive Program](#).
- b. If Commercial Operator does not have blanket coverage on all owned and/or operated vehicles and will require unescorted airside driving privileges, then a schedule of insured vehicles (including year, make, model and VIN number) must be submitted with the Certificate of Insurance.
- c. If transporting waste, hazardous material, or regulated substances, Commercial Operator shall carry a Broadened Pollution Endorsement and an MCS 90 endorsement on its policy.
- d. If Commercial Operator does not own any fleet vehicles and Commercial Operator's owners, officers, directors, and/or employees use their personal vehicles to perform services under this Agreement, Commercial Operator shall ensure that Personal Automobile Liability including a Business Use Endorsement is maintained by the vehicle owner, and if appropriate, Non-Owned Auto Liability by the Commercial Operator. This provision does not apply to persons solely commuting to and from the airport.
- e. If Commercial Operator will be completing all services to DEN under this Agreement remotely and not be driving to locations under direction of the City to perform services this requirement is waived.

3. Workers' Compensation and Employer's Liability Insurance

Commercial Operator shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits no less than \$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.

- a. Colorado Workers' Compensation Act allows for certain, limited exemptions from Worker's Compensation insurance coverage requirements. It is the sole responsibility of the Commercial Operator to determine their eligibility for providing this coverage, executing all required documentation with the State of Colorado, and obtaining all necessary approvals. Verification document(s) evidencing exemption status must be submitted with the Certificate of Insurance.

4. Builder's Risk Insurance or Installation Floater:

During the duration of any tenant buildout activity, Commercial Operator shall provide, coverage on a Completed Value Replacement Cost Basis, including value of subsequent modifications, change orders, and cost of material supplied or installed by others, comprising total value of the entire project at the site. Such insurance shall:

- a. apply from the time any covered property becomes the responsibility of the Commercial Operator, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site;
- b. be maintained until formal acceptance of the project by DEN or the placement of permanent property insurance coverage, whichever is later;
- c. include interests of the City and if applicable, affiliated, or associate entities, the General Commercial Operator, subcontractors, and sub-tier contractors in the project;
- d. be written on a Special Completed Value Covered Cause of Loss form and shall include theft, vandalism, malicious mischief, collapse, false-work, temporary buildings, transit, debris removal, demolition, increased cost of construction, flood (including water damage), earthquake, and if applicable, all below and above ground structures, piping, foundations including underground water and sewer mains, pilings including the ground on which the structure rests and excavation, backfilling, filling and grading;
- e. include a Beneficial Occupancy Clause, specifically permitting occupancy of the building during

construction. Commercial Operator shall take reasonable steps to obtain consent of the insurer and delete any provisions with regard to restrictions within any Occupancy Clauses within the Builder's Risk Policy;

- f. include Equipment Breakdown Coverage (a.k.a. Boiler & Machinery), if appropriate, which shall specifically cover insured equipment during installation and testing (including cold and hot testing).

## 5. Commercial Crime

Commercial Operator shall maintain a minimum limit of \$1,000,000 per occurrence covering, but not limited to, loss arising from employee theft, employee dishonesty, forgery or alteration, robbery, burglary, embezzlement, disappearance, destruction; money orders and counterfeit currency; depositor's forgery; computer fraud, on premises and in transit.

## 6. Property Insurance

Commercial Operator is solely responsible for any loss or damage to its real or business personal property located on DEN premises including, but not limited to, tenant improvements and betterments, materials, supplies, tools, equipment, vehicles, inventory, furnishings, structures and any personal property of its employees, subcontractors or other entities on DEN premises on behalf of Commercial Operator. If Commercial Operator carries property insurance on its property located on DEN premises, a waiver of subrogation as outlined in Section F will be required from its insurer.

## 7. Property Insurance – Contractor Improvements and Betterments

Commercial Operator shall maintain All-Risk Form Property Insurance on a replacement cost basis. If leased property is located in a flood or earthquake zone (including land subsidence), flood and/or earthquake insurance shall be provided separately or within the property policy.

- a. City shall be included as First Loss Payee, as its interests may appear.
- b. The City and County of Denver shall maintain All-Risk Form Property Insurance coverage for the real property occupied by Commercial Operator.

## 8. Property Insurance – Business Interruption Coverage

Business Interruption Coverage in such amounts as will reimburse Contactor for direct or indirect loss of earnings attributable to the perils commonly covered by business interruption insurance, which shall include losses arising from mechanical failures on or interruption of services to DEN premises.

## 9. Excess/Umbrella Liability

Combination of primary and excess coverage may be used to achieve minimum required coverage limits. Excess/Umbrella policy(ies) must follow form of the primary policies with which they are related to provide the minimum limits and be verified as such on any submitted Certificate of Insurance.

## D. Reference to Project and/or Contract

The City Project Name, Title of Agreement and/or Contract Number and description shall be noted on the Certificate of Insurance, if applicable.

## E. Additional Insured

For all coverages required under this Agreement (excluding Workers' Compensation, Employer's Liability and Professional Liability, if required), Commercial Operator's insurer(s) shall include the City and County of Denver, its elected and appointed officials, successors, agents, employees, and volunteers as Additional Insureds by policy endorsement.

## F. Waiver of Subrogation

For all coverages required under this Agreement (excluding Professional Liability, if required), Commercial Operator's insurer(s) shall waive subrogation rights against the City and County of Denver, its elected and appointed officials, successors, agents, employees, and volunteers by policy endorsement.

If Commercial Operator will be completing all services to the City under this Agreement remotely and not be traveling to locations under direction of the City to perform services, this requirement is waived specific to Workers' Compensation coverage.

If Commercial Operator and its employees performing services under this Agreement are domiciled in a monopolistic state this requirement shall not apply to Workers' Compensation policy(ies) issued by a state fund. However, Commercial Operator understands any subrogation against the City from its state-funded Workers' Compensation insurer arising from a claim related to this Agreement shall become the responsibility of the Commercial Operator under Section 14.01 Defense and Indemnification of this Agreement subject to the terms, conditions and limitations therein.

## **G Notice of Material Change, Cancellation or Nonrenewal**

Each certificate and related policy shall contain a valid provision requiring notification to the Certificate Holder in the event any of the required policies be canceled or non-renewed or reduction in required coverage before the expiration date thereof.

1. Such notice shall reference the DEN assigned contract number related to this Agreement.
2. Such notice shall be sent thirty (30) calendar days prior to such cancellation or non-renewal or reduction in required coverage unless due to non-payment of premiums for which notice shall be sent ten (10) calendar days prior.
3. If such written notice is unavailable from the insurer or afforded as outlined above, Commercial Operator shall provide written notice of cancellation, non-renewal and any reduction in required coverage to the Certificate Holder within three (3) business days of receiving such notice by its insurer(s) and include documentation of the formal notice received from its insurer(s) as verification. Commercial Operator shall replace cancelled or nonrenewed policies with no lapse in coverage and provide an updated Certificate of Insurance to DEN.
4. In the event any general aggregate or other aggregate limits are reduced below the required minimum per occurrence limits, Commercial Operator will procure, at its own expense, coverage at the requirement minimum per occurrence limits. If Commercial Operator cannot replenish coverage within ten (10) calendar days, it must notify the City immediately.

## **H. Cooperation**

Commercial Operator agrees to fully cooperate in connection with any investigation or inquiry and accept any formally tendered claim related to this Agreement, whether received from the City or its representative.

Commercial Operator's failure to fully cooperate may, as determined in the City's sole discretion, provide cause for default under the Agreement. The City understands acceptance of a tendered claim does not constitute acceptance of liability.

## **I. Additional Provisions**

1. Deductibles or any type of retention are the sole responsibility of the Commercial Operator.
2. Defense costs shall be in addition to the limits of liability. If this provision is unavailable that limitation must be evidenced on the Certificate of Insurance.
3. Coverage required may not contain an exclusion related to operations on airport premises.
4. A severability of interests or separation of insureds provision (no insured vs. insured exclusion) is included under all policies where Additional Insured status is required.
5. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City under all policies where Additional Insured status is required.
6. If the Commercial Operator procures or maintains insurance policies with coverages or limits beyond those stated herein, such greater policies will apply to their full effect and not be reduced or limited by the minimum requirements stated herein.
7. All policies shall be written on an occurrence form. If an occurrence form is unavailable or not industry norm for a given policy type, claims-made coverage will be accepted by the City provided the retroactive date is on or before the Agreement Effective Date or the first date when any goods or services were provided to the City, whichever is earlier, and continuous coverage will be maintained or an extended reporting period placed

for three years (eight years for construction-related agreements) beginning at the time work under this Agreement is completed or the Agreement is terminated, whichever is later.

8. Certificates of Insurance must specify the issuing companies, policy numbers and policy periods for each required form of coverage. The certificates for each insurance policy are to be signed by an authorized representative and must be submitted to the City at the time Commercial Operator signed this Agreement.
9. The insurance shall be underwritten by an insurer licensed or authorized to do business in the State of Colorado and rated by A.M. Best Company as A- VIII or better.
10. Certificate of Insurance and Related Endorsements: The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements shall not act as a waiver of Commercial Operator's breach of this Agreement or of any of the City's rights or remedies under this Agreement. All coverage requirements shall be enforced unless waived or otherwise modified in writing by DEN Risk Management. Commercial Operator is solely responsible for ensuring all formal policy endorsements are issued by their insurers to support the requirements.
11. The City shall have the right to verify, at any time, all coverage, information, or representations, and the insured and its insurance representatives shall promptly and fully cooperate in any such audit the City may elect to undertake including provision of copies of insurance policies upon request. In the case of such audit, the City may be subject to a non-disclosure agreement and/or redactions of policy information unrelated to verification of required coverage.
12. No material changes, modifications, or interlineations to required insurance coverage shall be allowed without the review and written approval of DEN Risk Management.
13. Commercial Operator shall be responsible for ensuring the City is provided updated Certificate(s) of Insurance prior to each policy renewal.
14. Commercial Operator's failure to maintain required insurance shall be the basis for immediate suspension and cause for termination of this Agreement, at the City's sole discretion and without penalty to the City.

**J. Part 230 and the DEN Airport Rules and Regulations**

If the minimum insurance requirements set forth herein differ from the equivalent types of insurance requirements in Part 230 of the DEN Airport Rules and Regulations, the greater and broader insurance requirements shall supersede those lesser requirements, unless expressly excepted in writing by DEN Risk Management. Part 230 applies to Commercial Operator and its subcontractors of any tier. Part 230 and the DEN Airport Rules and Regulations may be found: [DEN Airport Rules and Regulations](#).