

**COOPERATION AGREEMENT**

**BY AND AMONG**

**THE CITY AND COUNTY OF DENVER**

**AND**

**THE NATIONAL WESTERN CENTER AUTHORITY**

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## COOPERATION AGREEMENT

THIS COOPERATION AGREEMENT ("Agreement") is made and entered into as of the Effective Date (as hereinafter defined), by and among the CITY AND COUNTY OF DENVER, a home-rule city and a municipal corporation of the State of Colorado (the "City"), and the NATIONAL WESTERN CENTER AUTHORITY, a Colorado non-profit corporation (the "Authority"). The City and the Authority are referred to herein individually as a "Party" and collectively as the "Parties."

### RECITALS

A. The City is a home-rule city and a municipal corporation duly organized and existing under and pursuant to Article XX of the Colorado Constitution and the charter of the City (the "Charter"). The City owns the property known as the "National Western Center" located in the City and County of Denver, Colorado ("Denver").

B. The Western Stock Show Association, a Colorado nonprofit corporation (the "WSSA"), has held the National Western Stock Show annually at the historic site of the Denver Union Stockyards Company since 1906. The existing National Western Stock Show facilities are located on approximately one hundred and thirty (130) acres of land in Denver (the "Stock Show Property").

C. In 2013, the City, the WSSA, the Colorado State University System ("CSU"), the Denver Museum of Nature & Science, and the History Colorado Center entered into a Memorandum of Understanding to cooperate in the planning and redevelopment of the existing National Western Stock Show facilities to better integrate the Stock Show Property with surrounding neighborhoods and to build and operate a new approximately two hundred and fifty (250) acre multi-purpose campus (the "NWC Campus").

D. In 2015, the City approved the master plan for the NWC Campus which outlines a multi-phased plan "to construct three million square feet of new, flexible facilities (the "Campus Facilities") supporting expanded capacity for educational, entertainment, and cultural programming events" (the "Master Plan"). The City then referred Ballot Measure 2C to Denver voters to authorize the issuance of bonds secured by an extension of the City's lodgers and car rental tax, without raising taxes, to invest in the redevelopment of the National Western Complex into the National Western Center and the expansion of the Colorado Convention Center. On November 3, 2015, Ballot Measure 2C was overwhelmingly approved in each City precinct and attained 65% of the votes cast.

E. In 2017, the City, the WSSA, and CSU entered into the National Western Center Framework Agreement dated September 28, 2017 (the "Framework Agreement") to provide for the funding, governance, design, construction, operation, and maintenance of the NWC Campus and create the joint formation of the Authority to govern, oversee, manage, maintain, and operate the NWC Campus, and upon formation, become a party to the Framework Agreement.

F. In 2018, the City and the Authority entered into the Master Lease Agreement dated May 4, 2018 (the "Master Lease"), pursuant to the Framework Agreement, whereby the City agreed to grant a leasehold interest in and to the property located within the NWC Campus, including the right to use the leased premises for any lawful uses consistent with the mission and vision of the NWC Campus, the Master Lease, and the Framework Agreement, on and subject to the terms and conditions set forth in the Master Lease. The purpose of the Master Lease is to permit the Authority to operate, maintain, sublease, program, and manage the leased premises. The Parties agree that the City will retain ownership of all Campus Facilities.

G. The City and the Authority are committed to working toward the goal of completing Phases 1-2 of the Master Plan to realize the full economic potential of the NWC Campus and the investments in the Campus Facilities that have been made to-date.

H. Consistent with the vision of the Framework Agreement, the Parties intend that the NWC Campus become self-sustaining as soon as reasonably achievable consistent with the mission and vision of the NWC Campus. Accordingly, the Parties are pursuing the development of a hotel on the NWC Campus as an additional opportunity, together with completion of the Campus Facilities in Phases 1-2 of the Master Plan, in support of realizing this goal.

I. The Authority, in cooperation with the City, is planning and pursuing the execution of remaining work to complete Phases 1-2 of the Master Plan, including the development of approximately seventeen (17) acres of land located within the NWC Campus, including the area in which the Developer (as defined below) will perform the Work (as defined below) (the "Site") as and when provided for in accordance with the project agreements.

J. This Agreement contemplates that the Authority, with the City's support, will issue a Request for Proposals ("RFP") for the potential development of the Site, including the development of the equestrian center contemplated in the Master Plan (the "Equestrian Center"), a full-service hotel (the "Hotel"), and parking for the NWC Campus and to support the needs of the Hotel (the "Parking Garage," which shall consist of the "Campus Parking" and the "Hotel Parking"). The design and construction of the Equestrian Center, Parking Garage, and Hotel; related work on the Site, operations and maintenance of the Hotel; and potential programming of adjoining Campus Facilities in Phases 1-2 of the Master Plan for events, together comprise the "Project."

K. The Project aims to further the vision and guiding principles of the National Western Center and NWC Campus as described in the Master Plan, contribute to the long-term success of the National Western Center, and provide additional opportunities for education, entertainment, and recreational activities, while seeking to generate revenues for the City and the Authority. Although the development of a hotel was not originally contemplated under the Master Plan, the City and the Authority agree that this additional opportunity would enhance activation of the NWC Campus and could support its self-sustainability.

L. The Parties intend for the Authority to issue an RFP for the procurement of the Project. The Authority has agreed to issue the RFP and procure a team to execute the Project (the "Developer") as contemplated by the Framework Agreement, and in cooperation with the City, in accordance with this Agreement. The Parties desire to build upon the design work for the Equestrian Center that has already been completed by the City, and to utilize such work as the basis from which the Developer's work will start.

M. In furtherance of the Project goals, the Authority agrees to cause the design of the Equestrian Center and Hotel by the Developer, and in close coordination with the City, to negotiate the final Development Agreement with the Developer in accordance with this Agreement. The Development Agreement will contemplate the financing and construction of the Equestrian Center, Hotel, and Parking Garage; rights to host events in certain Campus Facilities; allocation of certain specified revenues to support development of the Equestrian Center, Hotel, and Parking Garage; and the operations and maintenance of the Hotel during the term (the "Development Agreement"). If approved by the City at the conclusion of the Predevelopment Period, the Development Agreement will provide for City funds to support the financing of the Project; specify any required revenue share to the City; and authorize the final design, construction, and operation of the Project.

N. The Parties desire to enter into this Agreement to set forth the Parties' expectations and obligations regarding the overall development of the Project and provide guidance to the Authority through the procurement process and the Predevelopment Period, including the negotiation and requirements of the Development Agreement.

NOW, THEREFORE, it is mutually agreed by the City and the Authority as follows:

**AGREEMENT**

**PART A: FOUNDATIONAL MATTERS**

**1. DEFINITIONS**

Capitalized terms shall have the meanings set forth herein and in **Exhibit A** (the "Definitions") attached hereto and incorporated herein. Capitalized terms not defined in the text of this Agreement shall have the meaning set forth in the Definitions.

**2. ENTRY INTO AND EFFECTIVENESS OF CONTRACT**

**2.1 Effectiveness and Term**

This Agreement will come into effect on and from the Effective Date and will continue until the earlier of (i) the date on which a termination is effective, (ii) the date of execution of the Development Agreement with the Developer, unless otherwise expressly provided for under the terms of the Development Agreement, or (iii) the third (3<sup>rd</sup>) anniversary of the Effective Date (the "Term"), subject to **Section 26.6**.

**3. TERMINATION**

**3.1 With or Without Cause**

The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon thirty (30) days prior written notice to the Authority. However, nothing gives the Authority the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the City.

**3.2 Criminal Activity**

Notwithstanding the preceding paragraph, the City may terminate the Agreement if the Authority or any of its officers or employees 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 Consultant's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

**3.3 No Claims**

Upon termination of the Agreement, with or without cause, the Authority shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except that the Authority shall be entitled to compensation for work requested by the City and satisfactorily performed by the Authority in accordance with this Agreement prior to termination.

**3.4 Return of City Property**

If the Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools, and facilities it owns that are in the Authority's possession, custody, or control



by whatever method the City deems expedient. The Authority shall deliver all documents in any form that were prepared under the Agreement and all other items, materials, and documents that have been paid for by the City to the City. These documents and materials are the property of the City. The Authority shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE".

#### **4. LINES OF AUTHORITY FOR CONTRACT ADMINISTRATION**

##### **4.1 For the Authority**

The Chief Executive Officer of the Authority or their designee or successor in function (the "CEO") shall administer and coordinate all activities contemplated under this Agreement and otherwise act on behalf of the Authority under this Agreement. The CEO may designate an individual to act as the CEO's authorized representative for this Agreement (the "Authority Representative").

##### **4.2 For the City**

- a. The Executive Director of the Mayor's Office of the National Western Center or their designee or successor in function ("NWCO") shall administer and coordinate all activities contemplated under this Agreement and otherwise act on behalf of the City under this Agreement, except with respect to matters addressed under **PART E** which shall be administered and coordinated by the Manager of Finance, or their designee or successor in function ("DOF"). NWCO may designate an individual to act on behalf of the City as NWCO's authorized representative for this Agreement, with the exception of those decisions and actions that specifically require the Executive Director's approval (the "NWCO Representative"). NWCO expressly reserves the right from time-to-time to designate another NWCO Representative to perform on NWCO's behalf by written notice to the Authority.
- b. With respect to any matters requiring "Approval" by the City under this Agreement, such approvals shall be given in writing by the NWCO Representative and the Authority shall be entitled to rely on such Approval as being given by either NWCO or DOF as provided for in this **Section 4.2** (a "City Approval"). The City's goal is to provide an efficient City Approval process to facilitate the Authority's ability to effectively cause the development of the Project.

#### **5. PROJECT OVERVIEW**

##### **5.1 Project Goals**

The Authority, with the City's support, is pursuing completion of the Campus Facilities in Phases 1-2 of the Master Plan, including the development of the Equestrian Center and Campus Parking to contribute to the long-term success of the National Western Center. The City's and the Authority's goals and vision for the Project align with the vision and guiding principles of the National Western Center and overall NWC Campus, and specifically Phases 1-2, as described in the Master Plan. Likewise, the inclusion of the Hotel as an additional opportunity is intended to support the long-term success of the NWC Campus and furthers the Parties' goal of activating the campus and also having the NWC Campus become self-sustaining as soon as reasonably achievable. The processes and requirements for the procurement, the Predevelopment Period, and Development Agreement set out in this Agreement are intended to support the achievement of the Project goals in furtherance of such vision and guiding principles.

**5.2 The Equestrian Center**

The Project will include the development of the Equestrian Center, as contemplated by the Master Plan, which is expected to consist of an arena, paddocks, horse barn, and related facilities, including the anticipated program requirements described in **Section 10** or as otherwise Approved by the City.

**5.3 Hotel Development**

The Project will include the development of the Hotel, which is anticipated to be a full-service hotel including the anticipated program requirements described in **Section 11** or as otherwise Approved by the City.

**5.4 Parking Development**

The Project will include the development of a new parking facility, which is intended to provide the Campus Parking to make available dedicated parking spaces for the Equestrian Center and the NWC Campus, as well as the Hotel Parking as is required or desirable to support the commercial viability of the Hotel. The Parking Garage will include the anticipated program requirements described in **Section 12** or as otherwise Approved by the City.

**5.5 Hotel Operations and NWC Campus Events**

The Project contemplates that the selected Developer will operate and maintain the Hotel for the term of the future Development Agreement. In order to support both the commercial viability of the Hotel and to activate the NWC Campus as a whole, the Developer will also be required to contemplate the programming of events using both Hotel facilities and other specified Campus Facilities, as appropriate.

**6. OVERVIEW OF AGREEMENT**

This Agreement provides an overview of the Project development with respect to the City's and the Authority's rights and obligations by setting forth the procurement process, anticipated program requirements, obligations during the Predevelopment Period, including the requirements of the Project agreements to be negotiated between the Authority and the Developer, and the City's anticipated financial support. The City will be under no obligation to proceed with the Project until such time that a definitive Development Agreement is approved by City Council.

**PART B: PROCUREMENT REQUIREMENTS**

**7. ROLE OF THE PARTIES**

**7.1 Role of the Authority and the City**

- a. The Authority shall be responsible for procuring the Developer team in accordance with this **PART B**.
- b. The Developer team shall be responsible for implementing all elements of the Project as described above (the “Work”).
- c. The City shall support the Authority throughout the procurement process.

**7.2 City’s Rights**

The City shall have the right to:

- a. amend and/or supplement the procurement requirements set forth herein;
- b. prepare the procurement documents jointly with the Authority, and review and Approve the procurement documents;
- c. attend and participate in all meetings that may be held in connection with the procurement process; and
- d. serve jointly with the Authority on all evaluation committees and the selection team.

**7.3 Procurement Process Overview**

The Authority shall carry out the procurement process in accordance with this **PART B** and as otherwise specified, modified, or supplemented by the City. The Authority shall obtain City Approval prior to issuance of any procurement documents. The Authority shall include in the procurement documents all required federal provisions to the extent it is determined that federal funding or financing programs are expected to be utilized as part of the Project and any requirements that the City, in its sole discretion, determines are necessary or prudent to ensure a fair, open, and competitive process.

**7.4 Procurement Schedule**

The Authority shall carry out the procurement process in accordance with the schedule set forth in this **Section 7.4**, subject to modification with City Approval.

<b>PROCUREMENT MILESTONES</b>	
RFP Issuance	Q3 2023
Procurement	Q3-Q4 2023
Selection	Q4 2023
Enter into Predevelopment Agreement	Q1 2024
Initial Predevelopment Work	Q1 2024
Final Predevelopment Work	Q3 2024
Consideration of Development Agreement	Q4 2024
Final Design/Construction	Starting Q1 2025
Project Completion	Estimated 2027

**8. PROPOSER TEAM REQUIREMENTS**

The Authority shall be required to include provisions in the RFP describing the Proposer team requirements and identifying certain team members as may be required by the City and the Authority.

**9. QUALIFICATIONS**

**9.1 Technical and Financial Proposal Requirements**

The Authority shall cause the Proposer to provide certain information describing the Proposer team’s qualifications which may include, but is not limited to, the following matters:

- a. Team qualifications and background;
- b. Project approach (e.g., a detailed narrative describing the Proposer’s conceptual approach to the Project and conceptual plans for the Project);
- c. Project experience (e.g., a detailed narrative detailing the Proposer’s prior experience and reference project experience);
- d. Events programming experience and approach;
- e. Hotel operations experience and approach;
- f. Community engagement and social equity experience and approach;
- g. Municipal financing experience; and
- h. Financial capacity (including certain financial documents, as determined and required by the City, to evaluate the Proposer’s financial capacity, such as financial statements).

**9.2 Additional City Requirements**

The Authority shall require compliance with the City’s social ordinances and additional requirements, consistent with Section 3(p) of the Framework Agreement, in the procurement documents and project agreements as applicable, including, but not limited to, satisfying the following requirements (collectively, the “City Requirements”):

- a. The Prevailing Wages Ordinance, Chapter 20, Article IV, §§ 20-76 through 20-79 of the Denver Revised Municipal Code (“D.R.M.C.”) and any determinations made by the City pursuant thereto as well as the City’s Minimum Wage Protections, Chapter 20, Article IV, §§ 20-82 through 20-84, D.R.M.C, and any determinations made by the City pursuant thereto. In the event a covered worker falls under both ordinances, such worker shall be paid the greater of the two rates;
- b. Compliance with Minority/Women Owned Business Enterprise Requirements including all applicable provisions of Article III, Divisions 1 and 3 of Chapter 28 of the D.R.M.C. and all rules and regulations promulgated pursuant thereto;
- c. Applicable LEED certification requirements for all new buildings that are public elements and major renovations to buildings that are public elements in accordance with Denver Executive Order 123;
- d. Connecting to the existing district energy system to utilize recycled thermal energy in support of the sustainability and resiliency of the NWC Campus;

- e. Green Building Ordinance requirements pursuant to Chapter 10, Article XIII, §§ 10-300 *et seq.*, D.R.M.C.;
- f. Public art requirements pursuant to the City's Public Art Ordinance (Chapter 20, Article IV, §§ 20-85 *et seq.*, D.R.M.C.);
- g. All applicable laws concerning nondiscrimination;
- h. The City's workforce requirements pursuant to Chapter 28, Article XI, §§ 28-320 through 28-329, D.R.M.C.;
- i. Community support and outreach participation;
- j. Collaboration with organized labor, such as negotiating collective bargaining agreements, if any, covering any Hotel employees, and determining and implementing personnel policies and practices relating to any applicable rights under the National Labor Relations Act or any applicable labor laws in relation to the operation of the Hotel; and
- k. Partnerships, including possibly with the Metropolitan State University of Denver, School of Hospitality ("MSU") and CSU to establish and implement a program to provide internships/employment and provide workforce training in connection with the development and operation of the Hotel.

### **9.3 Rights of the City and the Authority During Evaluation Process**

The Authority anticipates using one or more evaluation committees representing different skillsets, knowledge, and experience to review and evaluate the Proposals in accordance with the criteria set forth in the RFP. The final composition of the evaluation committees shall be subject to City Approval. During the evaluation process, the Authority may, or may cause, the following:

- a. Request written clarification or additional information from a Proposer or may request that the Proposer verify or certify certain aspects of its Proposal;
- b. Schedule interviews with Proposers on a one-on-one basis for the purpose of enhancing the evaluation committees' understanding of the Proposals and obtaining clarifications of the materials contained in the Proposals;
- c. Contact the firm and personnel references supplied by the Proposer as well as other potential references not listed; and
- d. Require Proposers to submit written confirmation of any new information and clarifications and re-evaluate Proposals to include the clarifications and additional information.

#### **9.3.1 Exercise of Discretion of Evaluation Process**

The evaluation methodology used by the Authority will be subject to City Approval based on the City's assessment of the best interests of the Project, its stakeholders, and the City. The Authority's determination of a preferred Proposer shall be made in consultation with NWCO, DOF, and any other agencies identified by the City.

## PART C: PROGRAM REQUIREMENTS

### 10. ANTICIPATED PROGRAM FOR THE EQUESTRIAN CENTER

#### 10.1 General Overview

The Authority shall deliver the Equestrian Center consistent with the minimum requirements of this **Section 10** or as otherwise Approved by the City. The Equestrian Center will comprise an arena, paddocks, and a horse barn. The Reference Design and other materials included in the Reference Documents form the basis for the Equestrian Center program that is to be procured by the Authority pursuant to this **Section 10**; provided, however, that the Reference Design may be modified during the Predevelopment Period as provided for in this Agreement.

#### 10.2 Equestrian Center Elements

- a. The show arena is anticipated to include approximately 4,500 seats and have two (2) levels:
  - i. a concourse level, including pedestrian circulation and space for thirty-seven (37) vendor booths and two (2) permanent food and beverage spaces; and
  - ii. an event level, including approximately 150 feet by 300 feet arena floor, consisting of a lobby, loading docks, storage, offices, and return circulation to the paddock.
- b. In addition to the arena, the Equestrian Center is anticipated to be comprised of the following facility elements:
  - i. two (2) 24,000-square-foot paddocks; and
  - ii. a horse barn with approximately 572 stalls.

#### 10.3 Preferred Program

The Authority shall encourage the Developer to consider incorporating other facility elements that are part of the City's "Preferred Program," which may include additional horse stalls, larger horse stalls, overflow horse stalls, etc. The Authority shall also encourage the Developer to identify Preferred Program elements that the Developer believes provide a significant net financial benefit to the Project and/or the NWC Campus, including sufficient information to support the Developer's proposal to include such elements to allow the City and the Authority to evaluate such proposal.

### 11. ANTICIPATED PROGRAM REQUIREMENTS FOR THE HOTEL

#### 11.1 General Overview

The Authority shall deliver the Hotel consistent with the minimum requirements of this **Section 11** or as otherwise Approved by the City. The Hotel is anticipated to be a full-service hotel, inclusive of food and beverage operations, and located on the Site.

#### 11.2 Hotel Elements

- a. The Hotel is anticipated to include approximately two hundred (200) rooms and meeting space consisting of approximately 20,000 to 30,000 square feet.
- b. The Hotel is anticipated to provide amenities and services for Hotel guests (e.g., coffee shop, restaurant, bar, business center, etc.) typical of full-service hotels.

## **12. ANTICIPATED PROGRAM REQUIREMENTS FOR THE PARKING GARAGE**

### **12.1 General Overview**

The Authority shall deliver the Parking Garage consistent with the minimum requirements of this **Section 12** or as otherwise Approved by the City. The Parking Garage will provide dedicated parking spaces for the NWC Campus.

### **12.2 Parking Garage Elements**

- a. The Campus Parking portion of the Parking Garage is anticipated to include a minimum of approximately 580 parking spaces for the NWC Campus uses.
- b. The Developer may provide additional Hotel Parking as required or as beneficial for the commercial viability of the Hotel, which may be included as part of the Parking Garage with appropriate physical, operational, or other separation from the Campus Parking, subject to negotiation and final determination during the Predevelopment Period.
- c. The Reference Design contemplates that the Parking Garage will consist of two (2) levels. The Developer may consider reconfiguration of the Parking Garage to accommodate all elements of the Project on the Site.

## **13. SITE REQUIREMENTS**

The Authority shall cause the Developer to adhere to the site requirements set forth in this **Section 13** in addition to any applicable City Requirements.

### **13.1 Site Improvement Elements**

- a. The Project includes all site improvements adjoining the Equestrian Center, Hotel, and Parking Garage on the Site, including vehicular circulation, loading and unloading space, service space, site build-to documentation, and all pedestrian circulation improvements.
- b. Specifically, the Project also includes plaza improvements on the Site, including the areas between the CSU Vida building and the Equestrian Center, other plaza construction on the Site to provide contiguity with the plaza elements being constructed under other NWCO contracts (the "Main Campus Plaza"), and any required modifications to the Main Campus Plaza to accommodate the Project.

### **13.2 Design Documents**

- a. As of the Effective Date, the City and the Authority have prepared certain documents, information, reports, and materials for the design of the Equestrian Center, including the Reference Documents and the Reference Design (collectively, the "Design Documents").
- b. The Parties may jointly amend and/or supplement the Design Documents.
- c. The Authority shall cause some or all of the Design Documents, as the City and the Authority may determine, to be made available to the Developer for informational purposes to serve as the reference design from which the Developer's work will start. The Authority expressly acknowledges and agrees that the City does not guarantee the accuracy of any such information and assumes no liability therewith.

### **13.3 The Armour Building**

The Armour & Company Administrative Building (the "Armour Building") is an existing building located on the Site which has been designated as a historic landmark structure pursuant to

Ordinance No. 20181539, Series of 2019, of the City Council of the City and County of Denver (the "City Council"). If relocation is required, the Authority shall cause the Developer to include the costs of such relocation in the Project Financial Plan (as defined below), identify a site for the relocated Armour Building, obtain any necessary approvals and permits, and to include the relocation as an obligation of the Developer under the Development Agreement.

**13.4 Strategic Architecture and Design Leadership Review**

The Authority shall cause the Developer to submit the design of all improvements for review by the Strategic Architecture and Design Leadership ("SADL") Design Review committee and the City and County of Denver's Department of Community Planning and Development, and to adhere to the SADL Design Review submittal requirements and process. In addition, the design of all improvements will be subject to Approval by the City in accordance with this Agreement.



**PART D: CITY REQUIREMENTS DURING THE PREDEVELOPMENT PERIOD**

**14. ROLE OF THE PARTIES**

**14.1 Role of the Authority and the City**

- a. The Authority shall, at a minimum, be responsible for preconstruction, design development, and negotiating the Development Agreement under a Predevelopment Agreement with the Developer in accordance with this **PART D**.
- b. The City shall support the Authority throughout the Predevelopment Period and the Development Period.

**14.2 City’s Rights**

The City shall have the right to:

- a. amend and/or supplement the Predevelopment Period requirements and the Development Agreement requirements set forth herein;
- b. prepare the form of Development Agreement jointly with the Authority and review and Approve the final Development Agreement;
- c. review and Approve of financing structures and parameters;
- d. review and Approve the required Deliverables and design development at each stage during the Predevelopment Period;
- e. designate a project manager or other City representative, who will participate at all points in the progression of the design of the Project and who shall be given notice of all meetings during the Predevelopment Period; and
- f. identify additional City representatives to attend and participate in any other meetings that may be held during the Predevelopment Period.

**15. PREDEVELOPMENT AGREEMENT AND WORK**

**15.1 Deliverables and Key Deliverables**

The Authority shall cause the Developer to prepare and deliver certain written documents, drawings, reports, plans, requests, notices, or other material or information (“Deliverables”) in accordance with the process set forth in **Section 15.3** for approval, acceptance, and any other consent, approval, or like assent, including the Deliverables set forth in this **Section 15.1** (“Key Deliverables”). The Authority may amend and/or supplement the Key Deliverables, subject to the City’s review and City Approval.

KEY DELIVERABLE	DESCRIPTION OF KEY DELIVERABLE
<b>WORK PROCESS-RELATED DELIVERABLES</b>	
<b>Work Process Management Plan</b>	Provides a basis for the Developer to manage, and the City and the Authority to oversee and provide input on, the progression of the Work.
<b>Baseline Schedule</b>	Provides the City and the Authority a preliminary schedule for the completion of design and construction work with respect to each phase of the Project under the Development Agreement.
<b>FINANCIAL DELIVERABLES</b>	

<b>Cost Estimates</b>	Provide a consolidated basis for the Authority and the Developer to anticipate, plan, and negotiate regarding potential costs and expenditures associated with the Project and each phase of the Project, including as to how such may be addressed in the Development Agreement.
<b>Revenue Forecast</b>	Provides a basis for the Authority and the Developer to prepare revenue forecasts and related assumptions to be included in the project plan, if any, and the Project Financial Plans, and to otherwise anticipate, plan, and negotiate regarding revenues and other economic benefits associated with the Project and each phase of the Project.
<b>Project Financial Plans (with Pro Forma)</b>	Incorporating the Cost Estimates and Revenue Forecasts, provide the City and the Authority comprehensive and detailed funding and financing plans for the Project (the "Project Financial Plan").
<b>DESIGN DELIVERABLES (the "INITIAL PREDEVELOPMENT WORK")</b>	
<b>Phase Definitions</b>	Provide a scope of work for the proposed phase of the Project, reflecting the outcomes of the design deliverables and which provides a sufficient level of detail to allow for purposes of negotiating and agreeing as to the form of Development Agreement.
<b>Overall Site Plan</b>	Provides the City and the Authority an overview of the proposed development including the Equestrian Center, Hotel, and Parking Garage.
<b>Basis of Design Deliverables Package</b>	Comprised of several different elements within which the drawing and design element is intended to reflect a ten percent (10%) concept level of design.
<b>50% Design Development Deliverables Package</b>	Comprised of several different elements within which the drawing and design elements are intended to reflect approximately fifty percent (50%) design development drawings.
<b>DESIGN DELIVERABLES (the "FINAL PREDEVELOPMENT WORK")</b>	
<b>100% Design Development Deliverables Package</b>	Comprised of several different elements within which the drawing and design elements are intended to reflect approximately one hundred percent (100%) design development drawings, or further design development as necessary for specific Project components to enable negotiation of a guaranteed maximum price (GMP).
<b>OTHER KEY DELIVERABLES</b>	
<b>Events / Programming Plan Deliverables</b>	Comprised of draft plans that provide the City and the Authority a comprehensive and detailed approach regarding the events / programming plan.
<b>Supplemental Plans and Reports (Additional Infrastructure)</b>	Comprised of drafts of all customary narrative plans regarding material aspects of the performance of the Development Agreement Work to the extent such are identified or required to be provided and approved in draft form as conditions precedent to execution of the Development Agreement and the initiation of the Development Agreement Work.
<b>Weekly Report</b>	Provides the City and the Authority with the current status of the Work and to enable the Authority and the Developer to collaborate

	and identify issues and opportunities to support the timely and successful completion of the Work and negotiation of the Development Agreement.
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## 15.2 City Ownership of Deliverables

The Authority acknowledges and agrees that the City shall retain ownership of all Deliverables pursuant to this **Section 15.2**. The Authority shall include the following provision in the Project agreements with the Developer to be applicable to all Deliverables under the Project agreements:

The data used in compiling, and the results of, any tests, surveys, or inspections at the Site, as well as all photographs, drawings, specifications, studies, audits, reports, models, and other items of like kind prepared by the Developer, its employees and consultants, excluding proprietary systems such as estimating programs, shall be the property of the City whether the Project for which they are made is executed or not, but the Developer shall be permitted to retain reproducible copies of all of the foregoing documents for the information and reference, and the originals of all of the foregoing documents including all electronic format copies shall be delivered to the City promptly upon completion thereof. All work products prepared by the Developer under the Project agreements, when delivered to the Authority and accepted by the Authority, shall become the property of the City and the City shall have unlimited ownership rights. Further, the Developer agrees to allow the City to review any of the procedures used in performing the work and services hereunder, and to make available for inspection the field notes and other documents used in the preparation for and performance of any of the services and work performed hereunder. With respect thereto, the Developer agrees to and does hereby grant to the City an exclusive royalty-free license to all data which the Developer may cover by copyright.

## 15.3 Deliverables Process

Except as otherwise expressly provided for in this Agreement, the Predevelopment Agreement, or otherwise with the Authority's discretionary consent, the following provisions of this **Section 15.3** apply to all Deliverables under the Predevelopment Agreement, including Key Deliverables.

### 15.3.1 Developer's Preparation and Delivery of Deliverables

- a. The Authority shall cause the Developer to provide electronic copies of all Deliverables in both .pdf and editable native formats (.docx, .xlsx, .pptx, .dwg, .dxf, .rvt, .jpg, etc.), unless otherwise specified.
- b. Whenever the Predevelopment Agreement requires the Developer to submit a Deliverable to the Authority, the Authority shall cause the Developer to deliver such Deliverable in manner, form, and substance reasonably acceptable to the City.
- c. Subject to the restrictions in this **Section 15.3**, regarding third-party Deliverables that must be first submitted to the Authority, if the Developer provides a third party with a Deliverable or other notice, application, or other communication relating to the Work, the Authority shall cause the Developer to make available a duplicate thereof to the City and the Authority. The Authority shall also cause the Developer to make available to the City copies of all correspondence or communications by or between it and third parties relating to the Work and the Project.

- d. Based on the City's feedback, the Authority shall cause the Developer to provide a log of where and how each past comment was addressed with each Deliverable. The Authority shall also cause the Developer to direct specific attention, in writing, to revisions on resubmitted Deliverables.

**15.4 Federal Provisions**

The Authority shall include in the Predevelopment Agreement all required federal provisions to the extent it is determined that federal funding or financing programs are expected to be utilized as part of the Project.

**16. DEVELOPMENT AGREEMENT**

**16.1 Development Agreement Negotiation Process**

- a. The Authority shall endeavor in good faith to negotiate with the Developer to mutually agree on the terms of the Development Agreement, subject to the City's review and City Approval of the Development Agreement.
- b. For purposes of negotiating the Development Agreement, the Authority agrees that the Development Agreement will be negotiated on the terms of this Agreement, including and incorporating any applicable City Requirements, Key Deliverables, and/or other terms and conditions the City determines are necessary or beneficial to the Project.
- c. The Authority shall require the Developer to prepare and deliver a cost estimate to the Authority to provide a consolidated basis for the Authority and the Developer to anticipate, plan, and negotiate regarding potential costs and expenditures associated with the Work, including how such potential costs and expenditures may be addressed in the Development Agreement.
- d. All City funding commitments contemplated in the Development Agreement between the Authority and the Developer will require additional City Council approval and appropriation.

**16.2 Federal Provisions**

The Authority shall include in the Development Agreement all required federal provisions to the extent it is determined that federal funding or financing programs are expected to be utilized as part of the Project.

## PART E: CITY FINANCIAL COMMITMENTS

### 17. CITY PAYMENTS DURING THE PREDEVELOPMENT PERIOD

#### 17.1 Compensation and Payment; Invoicing

- a. The City shall reimburse the Authority for the Authority's actual costs incurred under this Agreement, not to exceed the Maximum Contract Amounts set forth in **Section 17.1.2b**. The Authority acknowledges and agrees that such reimbursement shall constitute the Authority's sole compensation for services rendered and costs incurred under this Agreement.
- b. The Authority shall submit any agreements for third-party reimbursable costs to the City for Approval prior to incurring any costs under such agreements.
- c. For reimbursement of third-party costs, the Authority shall provide the City with a single monthly invoice for such costs in a format and with a level of detail acceptable to the City including all supporting documentation required by the City. The City's Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under this Agreement.
- d. In the event the Authority anticipates the payment of all third-party invoices in a given month will exceed available Authority cash on hand, the City may agree to advance certain funding to the Authority with release of payment to any third party by the Authority subject to receipt of a monthly invoice for such costs in a format and with a level of detail acceptable to the City.
- e. For reimbursement of internal Authority staff costs, the City and the Authority shall agree on a process for confirming staffing allocation and related costs and a cash flow payment schedule to align with anticipated payroll needs.

#### 17.1.2 Maximum Contract Amount

- a. Notwithstanding any other provision of this Agreement, the City's maximum payment obligation will not exceed FIVE MILLION DOLLARS AND NO CENTS (\$5,000,000.00) (the "Maximum Contract Amount"). The City is not obligated to execute an agreement or any amendments for any further services, including any services performed by the Authority beyond that specifically described in this Agreement. Any services performed beyond those set forth herein are performed at the Authority's risk and without authorization under this Agreement.
- b. Unless otherwise Approved by the City, of the Maximum Contract Amount:
  - i. a maximum amount of FIVE-HUNDRED THOUSAND DOLLARS AND NO CENTS (\$500,000.00) may be used for the Authority's procurement activities, inclusive of internal costs of the Authority and third-party agreement to support performance of the Authority's obligations under this Agreement; and
  - ii. a maximum amount of FOUR MILLION FIVE-HUNDRED THOUSAND DOLLARS AND NO CENTS (\$4,500,000.00) may fund the Predevelopment Work by the selected Developer team.
- c. The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the City Council, paid into the Treasury of the City, and encumbered for the purpose of this Agreement. The City does not by this Agreement

irrevocably pledge cash reserves for payment or performance in future fiscal years. This Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

**18. ADDITIONAL PREDEVELOPMENT FINANCIAL SUPPORT**

Performance of the Final Predevelopment Work may require additional City funding, in which case such additional funding will require additional City Council approval.

**19. TARGET ANNUAL CITY CONTRIBUTION**

During the Predevelopment Period, the project financing mechanism that is developed may contemplate annual contributions from the City, or other forms of credit support, for the financing of the Equestrian Center, Hotel, Parking Garage, and other Project elements. The City anticipates that the Authority will work collaboratively with the Developer toward a solution that utilizes tax-exempt and/or taxable municipal bond or other financing options that are non-recourse to the City and that minimize financial support required from the City.

**20. MISCELLANEOUS**

**20.1 Annual Appropriation**

The City and the Authority acknowledge and agree that any and all City payments shall constitute currently appropriated expenditures of the City. The City's obligation with respect to the City payments shall not create a general obligation or other indebtedness or multiple fiscal year direct or indirect debt or other financial obligation of the City within the meaning of its Charter or any constitutional debt limitation, including Article X, Section 20 of the Colorado Constitution. This Agreement shall not obligate or compel the City to make City payments beyond those appropriated with City Approval.

**20.2 Reimbursement to the City**

Any amount paid to the Authority under this Agreement may be included in the Project Financial Plans and, unless otherwise reasonably determined by the City and the Authority not to be feasible, be included for reimbursement to the City in the financing contemplated under the Development Agreement.

**PART F: MISCELLANEOUS**

**21. NOTICES**

All notices, certificates, or other communications given hereunder shall be deemed sufficiently given on the third (3<sup>rd</sup>) day following the day on which the same have been mailed by first class, postage prepaid, addressed to the City and County and the Authority, at the address set forth for such Party below. The City and the Authority may, by notice given hereunder, designate any different addresses to which subsequent notices, certificates, or other communications shall be sent.

**If to the City:**

City and County of Denver  
Mayor  
1437 Bannock Street  
Denver, Colorado 80202

With copies to:

Executive Director  
Office of the National Western Center  
City and County of Denver  
5125-B Race Court  
Denver, Colorado 80216

And:

Manager of Finance  
City and County of Denver  
201 W. Colfax Avenue  
Department 1010  
Denver, Colorado 80202

And:

City Attorney  
City and County of Denver  
1437 Bannock Street  
Suite 353  
Denver, Colorado 80202

**If to the Authority:**

Chief Executive Officer  
4701 N. Marion Street, Suite 401  
Denver, Colorado 80216

With copies to:

Director of Real Estate  
4701 N. Marion Street, Suite 401  
Denver, Colorado 80216

And:

Chief Financial Officer  
4701 N. Marion Street, Suite 401  
Denver, Colorado 80216

## **22. DISPUTE RESOLUTION**

### **22.1 Resolution by Party Representatives**

All claims, disputes, and matters in question arising out of or relating to this Agreement or the breach thereof shall first be referred to the CEO of the Authority, the Executive Director of NWCO, and the Manager of Finance for resolution. Any Party may initiate such referral by written notice to the other Party stating the nature of the matter in dispute. Such representatives shall meet in good faith, and, if resolution cannot be reached through negotiation within thirty (30) days following delivery of such notice, such matters may be submitted to non-binding mediation pursuant to **Section 22.2** as a condition precedent to pursuing judicial resolution.

### **22.2 Mediation**

If a matter in dispute is submitted to mediation, the Parties shall in good faith seek to agree upon a mediator to mediate the matter in dispute. In the event that the Parties cannot mutually agree upon a mediator within fifteen (15) days from the date of the first written request for mediation made by either Party, then both Parties shall select a third-party representative who shall select the mediator not later than thirty (30) days following the date of such first written request for mediation. The mediator shall determine what rules shall govern the mediation; provided, however, in no event shall such mandatory mediation be binding. If the Parties are unable to resolve such matter in dispute within sixty (60) days following initiation of mediation, the Parties in dispute may seek judicial resolution.

## **23. DEFAULT, CURE, AND REMEDIES**

### **23.1 Defaults and Cross-Defaults**

- a. The Authority shall be in default under this Agreement if the Authority fails to keep, perform, and observe any promise, covenant, or agreement set forth in this Agreement, and such failure continues for a period of more than thirty (30) days after delivery by the City of a written notice of such breach; provided, however, that if a breach cannot reasonably be cured within such thirty (30) day period, the Authority shall not be in default provided that the Authority: (i) commences a cure of the breach during such thirty (30) day period; and (ii) diligently pursues such cure to completion no later than ninety (90) days after its receipt of a notice of default, or such longer period, if reasonably required to complete such cure.
- b. If the Framework Agreement is terminated for any reason, this Agreement also shall terminate and be of no further force and effect, except as otherwise provided herein.



### **23.1.2 Remedies**

- a. If the Authority defaults under **Section 23.1**, the City may exercise one or more of the following remedies:
  - i. The City may elect to allow this Agreement to continue in full force; or
  - ii. The City may terminate this Agreement after giving thirty (30) days' advance written notice to the Authority of its intention to terminate, at the end of which time all the rights hereunder of the Authority shall terminate, unless the default, which shall have been stated in such notice, shall have been cured within such thirty (30) days. Notwithstanding the foregoing, the Authority shall be allowed only two (2) notices of default hereunder which it may cure within the time specified in this **Section 23.1.2**. The third (3<sup>rd</sup>) notice shall be final and shall, at the option of the City, terminate all of the rights hereunder of the Authority.
- b. The remedies provided in this Agreement shall be cumulative and shall in no way affect any other remedy available to the City or the Authority under law or equity.

### **23.1.3 No Personal Liability**

- a. Notwithstanding any other provision of this **Section 23.1.3** or of this Agreement, no director, officer, employee, or agent of the Authority shall be personally liable to the City for any breach or default of this Agreement other than a breach or default that results from such person committing fraud. The City agrees that the doctrine of piercing the corporate veil shall not be used by the City to seek or obtain any personal liability or judgment against any director, officer, employee, or agent of the Authority, regardless of whether or not the Authority is at all times in compliance with the Colorado Nonprofit Corporation Act.
- b. No elected official, director, officer, agent, or employee of the City shall be charged personally or held contractually liable by or to the Authority under any term or provision of this Agreement, or because of any breach thereof, or because of its or their execution, approval, or attempted execution of this Agreement, except to the extent that any such action is the result of fraud by such person.

## **24. CITY REQUIREMENTS**

### **24.1 City Standard Indemnification Provision**

- a. To the fullest extent permitted by law, the Authority agrees to defend, indemnify, reimburse, and hold harmless the City, its appointed and elected officials, agents, and employees for, from, and against all liabilities, claims, judgments, suits, or demands for damages to persons or property arising out of, resulting from, or related to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner consistent with the applicable law to indemnify the City for any acts or omissions of the Authority or its subcontractors either passive or active, irrespective of fault, including the City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.
- b. The Authority's obligation to defend and indemnify may be determined after the Authority's liability or fault has been determined by adjudication, alternative dispute

resolution, or otherwise resolved by mutual agreement between the Parties. The Authority's duty to defend and indemnify the City shall relate back to the time written notice of the Claim is first provided to the City, regardless of whether suit has been filed and even if the Authority is not named as a defendant. The Authority's duty to defend and indemnify the City to the extent permitted by law shall arise even if the City is the only party sued by claimant and/or claimant alleges that the City's negligence or willful misconduct was the sole cause of claimant's damages.

- c. The Authority will defend any and all Claims which may be brought or threatened against the City and will pay on behalf of the City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of the City shall be in addition to any other legal remedies available to the City and shall not be considered the City's exclusive remedy.
- d. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Authority under the terms of this indemnification obligation. The Authority shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.
- e. This defense and indemnification obligation shall survive the expiration or termination of this Agreement. The Authority shall include this indemnity provision in any Authority-Developer agreements. The Authority shall cause any developer to include this indemnity provision in contracts and subcontracts related to this Agreement.

## **24.2 Colorado Governmental Immunity Act**

The Parties hereto understand and agree that each Party is relying upon, and has not waived, the monetary limitations and all other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*

## **24.3 Insurance Requirements**

### **24.3.1 General Provisions**

The Authority agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods, or services provided pursuant to this Agreement. The Authority shall keep the required insurance coverage in force at all times during the term of the Agreement, including any extension thereof, and during any warranty period. The required 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. Each policy shall require notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in Section 21. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, the Authority shall provide written notice of cancellation, non-renewal, and any reduction in coverage to the parties identified in Section 21 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. The Authority 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 Authority. The Authority 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.

**24.3.2 Proof of Insurance**

The Authority may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. The Authority certifies that the certificate of insurance complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the certificate of insurance. 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 Authority's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

**24.3.3 Subrogation**

The City and the Authority each waive any rights of subrogation that either Party may have with respect to insurance proceeds received by the other Party.

**24.3.4 Subcontractors and Subconsultants**

All subconsultants, subcontractors, independent contractors, suppliers, or other entities providing goods or services required by this Agreement shall be subject to all of the requirements herein. The Authority shall require all of its subcontractors and subconsultants of any tier to provide insurance coverage in types and amounts required by the Authority, but in amounts of at least \$1,000,000 Commercial General Liability, Business Auto Liability insurance of \$1,000,000 combined single limit, statutory Workers' Compensation coverage, and \$1,000,000 professional liability for any subcontractor performing design or engineering work. The Authority shall work with the City's Risk Management Office on insurance requirements of any contractor performing design and construction work. The Authority agrees to provide proof of insurance for all such subcontractors, subconsultants, independent contractors, suppliers, or other entities upon request by the City.

**24.3.5 Workers' Compensation and Employer's Liability**

The Authority shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with minimum 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.

**24.3.6 Commercial General Liability**

The Authority shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate. The City and County of Denver, its elected and appointed officials, employees, and volunteers shall be included as Additional Insured.

**24.3.7 Business Auto Liability**

The Authority shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate.

**24.4 Taxes, Charges, and Penalties**

The City is not liable for the payment of taxes, late charges, or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. §§ 20-107, *et seq.* The Authority shall promptly pay when due, all taxes, bills, debts, and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment, or execution to be filed against City property.

**24.5 Examination of Records and Audits**

- 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 the Authority's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement.
- b. The Authority 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.
- c. 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 audits pursuant to this **Section 24.5** shall require the Authority to make disclosures in violation of state or federal privacy laws. The Authority shall at all times comply with D.R.M.C. § 20-276.

**24.6 Independent Contractor**

The Authority shall at all times have the status of an independent contractor without the right or authority to impose tort or contractual liability upon the City, and nothing in this Agreement shall create a joint venture or partnership between the City and the Authority. Neither the Authority nor any of its employees are employees or Directors of the City under Chapter 18 of the D.R.M.C, or for any purpose whatsoever.

**24.7 No Authority to Bind City to Contracts**

The Authority lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the D.R.M.C.

**24.8 Conflict of Interest**

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

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

**24.9 No Discrimination in Employment**

In connection with the performance of work under the Agreement, the Authority may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Authority shall cause the Developer to insert the foregoing provision in all subcontracts.

**24.10 Alcohol and Drugs Policy; Smoking Policy**

- a. The Authority, and its officers, employees, and agents shall cooperate with the provisions of Executive Order No. 94 and Attachment A thereto concerning the use, possession, or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City barring the Authority from City facilities or participating in City operations. The Authority, as an employer, shall adhere to the federal, state, and local laws regarding alcohol and drug abuse. Further, the Authority shall, through its personnel rules and regulations, or otherwise, maintain a policy against the possession, use or sale of illegal drugs or the unauthorized use by employees of alcohol in the workplace in order to promote safe, healthful, and efficient operations. The Authority agrees not to use any funds received from the City under this Agreement for the purchase, acquisition, or receipt of consumable alcohol.
- b. The Authority agrees to adopt and enforce a "no smoking" policy in all areas of the Site, except for limited, designated areas available for employee smoking, during the development of the Project. The Authority's written smoking policy shall be in conformance with Executive Order No. 99 and any generally applicable rules, regulations, or policies adopted by the City.

**24.11 Compliance with All Laws and Regulations**

The Authority agrees not to use, or permit the Site to be used, for any purpose prohibited by the laws of the United States or the State of Colorado, or the ordinances or home rule charter of the City, or not otherwise authorized hereunder, and it further agrees that it will use the Site in accordance with all applicable federal, state, and local laws and all general rules and regulations, as amended and adopted by the City. The Authority further agrees to submit any report(s) or

information that the City is required by law or regulation to obtain from the Authority or that the City may reasonably request relating to the Authority's operations.

**25. PARTIES TO CONTRACT**

**25.1 Binding Effect; Successors and Assigns**

This Agreement shall be binding upon and inure to the benefit of the City and the Authority and each of their respective permitted successors and assigns.

**25.2 Assignments and Transfers**

The Authority covenants and agrees not to assign, pledge, or transfer its rights or obligations under this Agreement, in whole or in part, without the prior written consent of the City. Any merger, consolidation, partnership, joint venture, or liquidation of the Authority shall constitute a transfer by the Authority under this **Section 25.2**. Such consent may be granted or denied at the sole and absolute discretion of the City. Any assignment or transfer without such consent will be ineffective and void, and will be cause for termination of this Agreement by the City. The City has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Authority shall remain responsible to the City; and (ii) no contractual relationship will be created between the City and any assignee or transferee.

**25.3 Inurement**

The rights and obligations of the Parties to the Agreement inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

**25.4 Limitation On Third-Party Beneficiaries**

The Parties agree that this Agreement is solely for the benefit of the Parties and nothing herein is intended to create any third-party beneficiary rights for third parties. Any person or entity other than the City or the Authority receiving services or benefits pursuant to the Agreement is an incidental beneficiary only. Notwithstanding the foregoing, the duties, obligations, and responsibilities of the Parties with respect to third parties will remain as imposed by Law.

**26. CONSTRUCTION OF CONTRACT**

**26.1 Counterparts and Effective Date**

This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective upon approval of the City Council and upon all required signatures of the City and the Authority. The Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council. As used herein, the term "Effective Date" shall mean the date appearing on the signature page of the City.

**26.2 Entire Contract**

This Agreement, including any annex, exhibit, or schedule that may be attached hereto, constitutes the entire agreement between the City and the Authority with regard to its subject matter. No prior, contemporaneous, or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any

officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.

**26.3 Severability**

In case any one or more of the provisions contained in this Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. Furthermore, if any amendment to this Agreement should be invalid, illegal, or unenforceable in any respect, the validity and enforceability of the Agreement as in effect prior to such amendment shall not in any way be affected or impaired thereby. The Parties shall endeavor in good faith negotiations to replace the invalid, illegal, or unenforceable provisions with valid provisions, the economic effect of which comes as close as possible to that of the invalid, illegal, or unenforceable provisions.

**26.4 Amendments and Waivers**

No amendment or waiver of any provision of this Agreement, nor consent to any departure herefrom, in any event, shall be effective unless the same shall be in writing and signed by the Parties, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Authority. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach. This Agreement may be modified, amended, changed, or terminated, in whole or in part, without City Council's approval unless the City Council's approval is required by the Charter.

**26.5 Order of Precedence**

In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

**26.6 Survival**

All rights and obligations that by their nature are to be performed after any termination of this Agreement shall survive any such termination. Without limiting the generality of this provision, the Authority's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

**26.7 Legal Authority**

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

dispute as to the legal authority of either the Authority or the person signing the Agreement to enter into the Agreement.

**26.8 Governing Law; Venue**

The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, D.R.M.C., ordinances, regulations, and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District (Denver District Court).

**26.9 No Construction Against Drafting Party**

The Parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

**26.10 Advertising and Public Disclosure**

The Authority shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Authority's advertising or public relations materials without first obtaining the written approval of the City. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Authority shall notify the City in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

**26.11 Confidential Information**

The Authority acknowledges and accepts that, in performance of all work under the terms of this Agreement, the Authority may have access to Proprietary Data or confidential information that may be owned or controlled by the City, and that the disclosure of such Proprietary Data or information may be damaging to the City or third parties. The Authority agrees that all Proprietary Data, confidential information, or any other data or information provided or otherwise disclosed by the City to the Authority shall be held in confidence and used only in the performance of its obligations under this Agreement. The Authority shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent contractor would to protect its own proprietary or confidential data. "Proprietary Data" shall mean any materials or information which may be designated or marked "Proprietary" or "Confidential", or which would not be documents subject to disclosure pursuant to the Colorado Open Records Act or City ordinance, and provided or made available to the Authority by the City. Such Proprietary Data may be in hardcopy, printed, digital, or electronic format.

**26.12 Electronic Signatures and Records**

The Authority consents to the use of electronic signatures. The Agreement, and any other documents requiring a signature under the Agreement, may be signed electronically 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.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

*[Signature pages follow]*

**Contract Control Number:** DOTI-202368116-00  
**Contractor Name:** NATIONAL WESTERN CENTER AUTHORITY

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

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_

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

DOTI-202368116-00  
NATIONAL WESTERN CENTER AUTHORITY

By:  \_\_\_\_\_  
C3B5851A02484E0...

Name: Brad Buchanan  
(please print)

Title: CEO  
(please print)

ATTEST: [if required]

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

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

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

**EXHIBIT A  
DEFINITIONS**

1. **“Agreement”** has the meaning given to it in the Preamble hereto.
2. **“Armour Building”** has the meaning given to it in Section 13.3.
3. **“Authority”** has the meaning given to it in the Preamble hereto.
4. **“Authority Representative”** has the meaning given to it in Section 4.1.
5. **“Campus Facilities”** has the meaning given to it in Recital D.
6. **“Campus Parking”** has the meaning given to it in Recital J.
7. **“CEO”** has the meaning given to it in Section 4.1.
8. **“Charter”** has the meaning given to it in Recital A.
9. **“City”** has the meaning given to it in the Preamble hereto.
10. **“City Approval”** or **“Approval”** have the meaning given to them in Section 4.2.b.
11. **“City Auditor”** means the City Auditor of the City and County of Denver, Colorado.
12. **“City Council”** has the meaning given to it in Section 13.3.
13. **“City Requirements”** has the meaning given to it in Section 9.2.
14. **“Claims”** has the meaning given to it in Section 24.1.a.
15. **“Confidential”** has the meaning given to it in Section 26.11.
16. **“CSU”** has the meaning given to it in Recital C.
17. **“Definitions”** has the meaning given to it in Section 1.
18. **“Deliverables”** has the meaning given to it in Section 15.1.
19. **“Denver”** has the meaning given to it in Recital A.
20. **“Design Documents”** has the meaning given to it in Section 13.2.a.
21. **“Developer”** has the meaning given to it in Recital L.
22. **“Development Agreement”** has the meaning given to it in Recital M.
23. **“DOF”** has the meaning given to it in Section 4.2.a.
24. **“D.R.M.C.** has the meaning given to it in Section 9.2.a.
25. **“Effective Date”** has the meaning given to it in Section 26.1.
26. **“Equestrian Center”** has the meaning given to it in Recital J.
27. **“Final Predevelopment Work”** shall comprise the portion of the Work including the Key Deliverables identified as such in Section 15.1.
28. **“Framework Agreement”** has the meaning given to it in Recital E.
29. **“Hotel”** has the meaning given to it in Recital J.
30. **“Hotel Parking”** has the meaning given to it in Recital J.

31. **“Initial Predevelopment Work”** shall comprise the portion of the Work including the Key Deliverables identified as such in Section 15.1.
32. **“Key Deliverables”** has the meaning given to it in Section 15.1.
33. **“Master Lease”** has the meaning given to it in Recital F.
34. **“Master Plan”** has the meaning given to it in Recital D.
35. **“Main Campus Plaza”** has the meaning given to it in Section 13.1.b.
36. **“Maximum Contract Amount”** has the meaning given to it in Section 17.1.2.a.
37. **“MSU”** has the meaning given to it in Section 9.2.k.
38. **“National Western Center”** has the meaning given to it in Recital A.
39. **“NWC Campus”** has the meaning given to it in Recital C.
40. **“NWCO”** has the meaning given to it in Section 4.2.a.
41. **“NWCO Representative”** has the meaning given to it in Section 4.2.a.
42. **“Parking Garage”** has the meaning given to it in Recital J.
43. **“Party”** and **“Parties”** have the meanings given to them in the Preamble hereto.
44. **“Predevelopment Agreement”** means the agreement that the Authority shall enter into with the Developer to provide a framework for the Authority and the Developer to cooperate in the conceptual, preliminary, and final planning for the Project and set forth the Authority’s and the Developer’s rights and obligations in connection therewith.
45. **“Predevelopment Period”** means the period of time following selection of the Developer team until execution of the Development Agreement.
46. **“Predevelopment Work”** means all of the work, services, and activities to be performed, furnished, or undertaken by Developer under the Predevelopment Agreement.
47. **“Preferred Program”** has the meaning given to it in Section 10.3.
48. **“Project”** has the meaning given to it in Recital J.
49. **“Project Financial Plan”** has the meaning given to it in Section 15.1.
50. **“Proposal”** means a binding proposal to be submitted by a Proposer in accordance with the RFP.
51. **“Proposer”** means a firm, joint-venture, partnership, or corporation formed for the purpose of responding to the RFP.
52. **“Proprietary Data”** has the meaning given to it in Section 26.11.
53. **“Reference Design”** means the preliminary technical blueprint and description of essential design elements for the Project set out in the Reference Documents.
54. **“Reference Documents”** means the project plans, designs, drawings, reports, information, and other project documents for the Project completed as of the Effective Date which are being provided by the Authority to assist Proposers in their due diligence, and to assist the Developer in the development of the Project.
55. **“RFP”** has the meaning given to it in Recital J.
56. **“SADL”** has the meaning given to it in Section 13.4.

57. “**Site**” has the meaning given to it in Recital I.
58. “**Stock Show Property**” has the meaning given to it in Recital B.
59. “**Term**” has the meaning given to it in Section 2.1.
60. “**Work**” has the meaning given to it in Section 7.1.b.
61. “**WSSA**” has the meaning given to it in Recital B.