

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2019

COUNCIL BILL NO. CBXX-XXXX
COMMITTEE OF REFERENCE:
Government & Finance

A BILL

**For an ordinance adding a new Division 3.75 of Article IV, Minimum Wage
Protections for Workers Associated with City Contracts.**

WHEREAS, the health and welfare of all Denver residents is benefited and advanced when city workers and workers performing services pursuant to city contracts are paid a wage which enables them to live above the federal poverty line;

WHEREAS, the City seeks to confront the issue of wage equity and cost of living affordability in the community to the extent currently permitted pursuant to Colorado law;

WHEREAS, the City has historically demonstrated leadership on pay-equity issues;

WHEREAS, the City contracts with private sector employers to provide various services to the City and also by contract authorizes covered services to occur on city property;

WHEREAS, the Denver Revised Municipal Code requires payment of certain wages with respect to designated city contracts, however no minimum wage for numerous types of covered services has previously been established;

WHEREAS, City Council finds that a new division should be added to require that parties contracting with the city pay covered workers no less than a designated city minimum wage;

WHEREAS, Colorado law prohibits municipalities from establishing jurisdiction-wide laws with respect to minimum wage;

WHEREAS, the City seeks to impact wage rates in its capacity as a contracting party for procurement of services and as a property owner;

WHEREAS, in addition to requiring payment of the city minimum wage in all future covered contracts, the City shall seek to review, prioritize and renegotiate existing contracts with a remaining term in excess of one year to prospectively pay covered workers at least the city minimum wage more quickly;

WHEREAS, the City shall formulate and implement a plan to address existing contracts within one year of the effective date of this bill to ensure prompt and equitable treatment for as many

34 potentially-covered workers as possible; and

35 **WHEREAS**, the city's renegotiation efforts for existing contracts shall prioritize contracts based
36 on amount, duration and the number of workers positively impacted by a requirement to pay the city
37 minimum wage.

38 **NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF**
39 **DENVER:**

40 **Section 1.** A new Section 20-82, Division 3.75 of Article IV of the Denver Revised Municipal
41 Code shall be added and read as follows:

42 Sec. 20-82. – Payment of city minimum wage.

43 (a) *Required.* Subject to the terms of this division, every person or entity that provides any of
44 the following services: concession services; catering services; maintenance services; ramp and
45 cargo services; hospitality services; miscellaneous services; or security services as defined in this
46 division ("Covered Services") to the city, or on city property for more than 30 consecutive days in a
47 calendar year, or pursuant to a negotiated contractual requirement, shall pay all covered workers
48 not less than a "City Minimum Wage" as calculated pursuant to subsection (c) for covered work.

49 (b) *Contract specifications.* Every covered contract with a maximum contract amount in excess of
50 fifty thousand dollars (\$50,000.00) shall contain a provision requiring that all covered workers
51 shall be paid not less than the city minimum wage calculated pursuant to subsection (c) for all
52 covered work. The city minimum wage shall be paid pursuant to a covered contract from and
53 after the date it satisfies the criteria described in this division. For any city contract that is not a
54 covered contract, but upon renewal, amendment, or otherwise qualifies as a covered contract at
55 a later date, the city minimum wage requirement shall be mandatory from and after the date that
56 a city contract qualifies as a covered contract pursuant to this division. Increases in the city
57 minimum wage subsequent to the date of a covered contract for a term not to exceed one (1)
58 year shall not be mandatory on either the contractor or any other person or entity. Except as
59 provided in this division, in no event shall any increase in the city minimum wage result in any
60 increased liability on the part of the city, and the possibility and risk of any such increase is
61 assumed by all contractors entering into any covered contract with the city. Notwithstanding the
62 foregoing, the city may negotiate, in particular covered contracts, to reimburse a contractor for
63 increased city minimum wage rates. Decreases in the city minimum wage subsequent to the
64 date of a covered contract shall not be permitted.

65 (c) *Calculation of city minimum wage.*

- (1) City council hereby declares that it is in the best interest of the city to protect workers' bargaining power and establish a city minimum wage that shall be paid to the various covered workers identified in this division.
- (2) The city minimum wage, exclusive of fringe benefits, shall be calculated as follows:
- i. Beginning July 1, 2019: \$13 (thirteen dollars) per hour;
 - ii. Beginning July 1, 2020: \$14 (fourteen dollars) per hour; and
 - iii. Beginning July 1, 2021 \$15 (fifteen dollars) per hour.
- (3) Tips actually received by a particular worker may be applied to a contractor or other person or entity's obligation to pay the city minimum wage. However, no more than \$3.02 per hour in tip income ("Tip Credit") may be used to partially offset payment of the city minimum wage for a given day, and only then for persons who directly and customarily receive tips until June 30, 2022. Beginning on July 1, 2022, the tip credit shall be increased by an amount corresponding to the prior year's increase, if any, in CPI as hereinafter defined. In no event shall the tip credit increase to an amount that would allow payment of a wage less than that required by state or federal law.
- (4) In order to prevent inflation from eroding the value of the city's minimum wage rate, on July 1, 2022, the city minimum wage rate shall increase by an amount corresponding to the prior year's increase, if any, in the Consumer Price Index (Urban Wage Earners and Clerical Workers, Denver-Aurora-Lakewood) or its successor index as published by the U.S. Department of Labor or its successor agency ("CPI"). Annually thereafter, on the first of July, the city's minimum wage rate shall increase by an amount corresponding to the prior year's increase, if any, in CPI.
- (d) *Exclusions.* Absent a negotiated contractual requirement, this division shall not apply to: intergovernmental agreements; any participant in an employment program certified by the city; any contract for state or federally mandated services or for services subject to statutory rate-setting; loans made by the city; entities who are subject to a wage-commitment agreement; persons or entities not providing covered services to the city pursuant to a contractual relationship directly with the city whose provision of covered services on city property occurs for less than seven consecutive days in a calendar year and 30 total days in a calendar year; the purchase and sale by the city of real property or goods; persons providing volunteer services that are uncompensated except for reimbursement of expenses such as meals, parking or transportation; qualified small business contractors; except with respect to catering services, persons whose work pursuant to a covered contract is limited solely to the role of a supplier; or

city contracts which contemplate work to be performed such as a license or permit to use city-owned land that are neither a revenue or expenditure contract.

(e) *Third Party Complaints.* Subject to any rules and regulations that may be issued by the auditor, any person or third party, including an employee of a contractor, may submit a complaint of a violation of this division to the auditor. The burden of demonstrating to the auditor's satisfaction that a violation has occurred rests with the person or third party making the complaint and shall be demonstrated by a preponderance of the evidence. Any such complaint shall be made in writing to the auditor and shall include all information relied upon by such person. If a person making a complaint pursuant to this subsection is unable to reasonably file her or his complaint in writing, a complainant may request the auditor to assist him or her with documenting any allegations to satisfy the written complaint requirement. The auditor shall investigate credible complaints, shall notify any contractor alleged to have violated this division of any credible complaint, and shall provide a summary of findings regarding any such complaint to both the complainant and the contractor. Any determination by the auditor pursuant to this division is reviewable by the complained-of party, pursuant to subsection (g). Any complaint must be submitted to the auditor within one year of the date the contractor was alleged to have violated the requirements of this division, and shall include: the worker's name and/or the name of their duly authorized representative, if applicable; the worker's contact information; and a detailed statement of the contractor's alleged violation of the requirements of this division, including all supporting documentation demonstrating a violation. Contractor shall be subject to penalties and other consequences pursuant to this division for any actual violation(s) that occurred within one year of the date a credible complaint was first and timely submitted to the auditor pursuant to this division and within three years of the date an audit of a covered contract is initiated by the auditor.

(f) *Retaliation strictly prohibited.* No contractor shall interfere with, restrain, deny, assist another person or entity, or attempt to deny the exercise of any right protected under this division. Any attempted or actual retaliation shall be regulated as follows:

1) No contractor or any other person shall take any adverse action against any person because the person has exercised in good faith rights described in this division. Such rights include, but are not limited to, the right to make inquiries about rights protected under this division; the right to inform contractor, a union, or similar organization, and/or the person's legal counsel or any other person about an alleged violation of this division; the right to file a written complaint with the auditor; the right to cooperate with the auditor in any investigations pursuant to this division; the right to testify in a proceeding related to an investigation pursuant to this division; the right to

133 refuse to participate in an activity that would result in a violation of city, state, or federal law; and
134 the right to oppose any policy, practice, or act that is unlawful pursuant to this division.

135 2) No contractor or any other person shall communicate to a person exercising rights
136 protected under this division, directly or indirectly, the willingness to inform a government employee
137 that the person is not lawfully in the United States, or to report, or to make an implied or express
138 assertion of a willingness to report, suspected citizenship or immigration status of an employee or
139 a family member of the employee to a federal, state, or local agency because the employee has
140 exercised a right pursuant to this division.

141 3) It shall be a rebuttable presumption of retaliation if a contractor or any other entity or
142 person takes an adverse action against a person within 90 days of the person's exercise of rights
143 protected in this division. However, in the case of seasonal work that ended before the close of a
144 90-day period, the presumption also applies if the contractor or other person or entity fails to rehire
145 a former employee at the next opportunity for work in the same position. The contractor may rebut
146 this presumption with clear and convincing evidence that the adverse action was taken for a lawful
147 purpose.

148 4) Proof of retaliation shall be sufficient upon a showing that a contractor or any other
149 person or entity has taken an adverse action against a person and the person's exercise of rights
150 protected in this division was a motivating factor in the adverse action, unless the contractor can
151 prove that the action would have been taken in the absence of such protected activity.

152 (g) *Review.* Any determination of the auditor related to the payment of the city minimum wage,
153 and a contractor's strict adherence to the requirements of this division including, but not limited
154 to, determinations of covered worker status, determinations of underpayment or misreporting,
155 and the imposition of penalties pursuant to this division shall be reviewable as follows:

- 156 1) Any contractor who disputes any determination made by or on behalf of the city
157 pursuant to the authority of the auditor, which determination adversely affects such
158 contractor, may petition the auditor for a hearing concerning such determination no
159 later than thirty (30) days after having been notified of any such determination.
160 Compliance with the provisions of this subsection shall be a jurisdictional prerequisite
161 to any action brought under the provisions of this division, and failure of compliance
162 shall forever bar any such action.
- 163 2) The auditor shall designate as a hearing officer a person retained by the city for that
164 purpose.
- 165 3) The petition for a hearing shall be in writing, and the facts and figures submitted shall
166 be submitted under oath or affirmation either in writing or orally at a hearing scheduled

by the hearing officer. The hearing, if any, shall take place in the city, and notice thereof and the proceedings shall otherwise be in accordance with rules and regulations issued by the auditor. The petitioner shall bear the burden of proof, and the standard of proof shall conform with that in civil, nonjury cases in state district court.

4) Following a hearing, the hearing officer shall make a final determination. Such final determination shall be considered a final order and may be reviewed under Rule 106(a)(4) of the state rules of civil procedure by the petitioner or by the city. A request for reconsideration of the determination may be made if filed in writing with the hearing officer within fifteen (15) days of the date of a final determination, in which case the hearing officer shall review the record of the proceedings, and the determination shall be considered a final order upon the date the hearing officer rules on the request for reconsideration.

5) The district court of the second judicial district of the State of Colorado shall have original jurisdiction in proceedings to review all questions of law and fact determined by the hearing officer by order or writ under Rule 106(a)(4) of the state rules of civil procedure.

(h) *Recordkeeping requirements and inspection.* All contractors pursuant to a covered contract shall retain sufficient payroll records pertaining to all covered workers for a period of at least three years. Contractors shall allow the auditor access to such records following a complaint determined credible by the auditor, or in connection with an audit of a covered contract, at a reasonable time during normal business hours to ensure compliance with the requirements of this division. Should a contractor not maintain or retain adequate records documenting the manner and amount of wages paid, or not allow the auditor reasonable access to such records, there shall be a presumption, rebuttable by clear and convincing evidence, that the contractor violated this division for the periods and for each employee for whom adequate records were not retained or access to such records was not timely provided.

Section 2. A new Section 20-83, Division 3.75 of Article IV of the Denver Revised Municipal Code shall be added and read as follows:

Sec. 20-83. – Enforcement and penalties.

(a) *Enforcement.*

(1) Following notification of a complaint determined credible by the auditor or in connection with an audit of a covered contract, a contractor shall furnish to the auditor, upon the auditor's request, a true and correct electronically-certified copy of the payroll records of all covered

workers employed pursuant to the applicable covered contract, by the contractor and also by any person or entity performing covered work pursuant to the covered contract. Such payroll records shall include information documenting the number of hours worked by each covered worker employed pursuant to the contract for covered work, the hourly wage of such covered workers for covered work, any deductions made from covered worker wages, and the net amount of wages received by each covered worker for all covered work.

- (2) Payroll records produced pursuant to subsection (a)(1) shall be accompanied by a sworn statement of the contractor that the document is a true and correct copy of the payroll records of all covered workers performing covered work pursuant to the covered contract, that payments were made to all covered workers as set forth in the payroll records, that no deductions were made other than those described in such records, and that all covered workers employed pursuant to the covered contract, either by the contractor or another person or entity, have been paid at least the city minimum wage for all covered work or describe in detail all instances in which the foregoing requirements were not fully satisfied.
- (3) Contractors shall post in a place which is prominent and easily accessible to covered workers the city minimum wage to be paid to covered workers for covered work, and that complaints by third parties, including employees of contractors or other entities, of violations may be submitted to the auditor. Contractors shall display the posting in English and also in any primary language spoken by at least ten percent of the employees at the work-place or job site. If display of a poster is not feasible, including situations when an employee does not have a regular workplace or job site, contractors may provide the information on an individual basis, in an employee's primary language, in physical or electronic form that is reasonably conspicuous and accessible.
- (4) If any covered worker employed by a contractor or any other person or entity pursuant to a covered contract has been or is being paid a rate of wages less than the city minimum wage for covered work, the city may, at its option, by written notice to the contractor, withhold further payment to the contractor, suspend the contractor's right to proceed with work, suspend access to city property, suspend such part of the work or access as to which there has been a failure to pay the city minimum wage rate for covered work, or terminate the contract. In the event of suspension or contract termination, the contractor shall be liable to the city for any and all costs related to such contract termination or suspension, including, but not limited to all costs incurred by the city to complete work or provide services contemplated by the contract.
- (5) For all covered contracts, following notification of a complaint determined credible by the

auditor or in connection with an audit of city contracts, a contractor shall provide to the auditor a list of all persons and entities who have performed covered work as well as any known person or entity who will be performing any covered work pursuant to a covered contract within ten (10) days of the auditor's written request.

(6) Nothing in this division shall restrict the auditor's authority to investigate city contracting practices. In connection with any audit of a covered contract, the auditor may require a contractor to provide, upon written request, documents described in this division that must be provided to the auditor upon notification of a credible complaint related to a covered contract. Further, any third-party submission of a credible complaint shall not require the auditor to initiate a full audit of any particular party or contract. The auditor's role in investigating and issuing findings related to a credible complaint pursuant to 20-82(e) shall be in accord with the terms of this division.

(b) *Penalties.* Any contractor subject to the requirements of this division shall as a penalty pay to the city an amount as set forth below for each covered worker for each day they are paid less than the city minimum wage for the performance of covered work.

(1) The amount of the penalty shall be determined by the auditor based on consideration of both of the following:

a. Whether the failure of the contractor to pay the correct wage rate was a good faith mistake and, if so, the error was corrected within thirty (30) days of the date it was brought to the attention of the contractor.

b. Whether the contractor has a prior record of failing to meet the requirements of this division.

(2) The contractor's penalty shall be fifty dollars (\$50.00) for each day, or portion thereof, for each covered worker paid less than the city minimum wage rate for covered work, unless the failure of the contractor to ensure payment of the city minimum wage rate was a good faith mistake and, if so, the error was corrected within thirty (30) days of the date it was brought to the attention of the contractor.

(3) The contractor's penalty shall be two thousand five hundred dollars (\$2,500.00) for a violation, plus seventy-five dollars (\$75.00) for each day, or portion thereof, for each covered worker paid less than the city minimum wage rate for covered work, if the contractor has been assessed a penalty, but not more than two (2) other penalties, within the previous three (3) years for failure to comply with the terms of this division, unless all such penalties were subsequently withdrawn or overturned during the previous three (3) years pursuant to this division.

(4) The contractor's penalty shall be five thousand dollars (\$5,000.00) for a violation, plus one hundred dollars (\$100.00) for each day, or portion thereof, for each covered worker paid less than the city minimum wage rate for covered work, if the contractor has been assessed three (3) or more other penalties within the previous three (3) years for failure to comply with the terms of this division, unless any such penalties were subsequently withdrawn or overturned resulting in two (2) or fewer penalties during the previous three (3) years pursuant to this division.

(5) The contractor's penalty shall be one thousand dollars (\$1,000.00) for each violation if a contractor fails to furnish the auditor a complete and certified payroll for which any covered worker employed by the contractor or other person or entity has performed any covered work pursuant to a covered contract, unless the failure of the contractor to furnish the auditor a complete and certified payroll was a good faith mistake and, if so, the error was corrected within thirty (30) days of the date the auditor notifies the contractor of such failure. This penalty shall be imposed in conjunction with penalties imposed under subsections (b)(2)-(4), and shall apply whether or not the covered work was performed by contractor employees or another person or entity.

(6) The contractor's penalty shall be one thousand dollars (\$1,000.00) for each incident of false reporting in connection with a certified payroll not corrected within fifteen (15) days of the date the auditor notifies the contractor of such report. A certified payroll shall be determined to be a false report when information related to hours worked or wages paid reported on a certified payroll is not identical to supportive documentation, including payments issued to workers, timecards maintained by contractor or other persons or entities, invoices for work performed issued to other persons or entities or the city, and tax documents. This penalty shall be imposed in conjunction with penalties imposed under subsections (b)(2)-(5).

(7) The contractor's penalty shall be one thousand dollars (\$1,000.00) for each violation should a contractor be found by the auditor to have violated any obligation of contractor described in this division and not otherwise described in subsections (b)(2)-(6).

(8) A contractor who is found by the auditor pursuant to this division to have failed to ensure payment of the city minimum wage to a covered worker for covered work shall, within thirty (30) days of notice of a violation from the auditor, or if applicable, thirty (30) days from any final order pursuant to Section 20-82 (g), attempt in good faith to locate and pay any such covered worker all wages required pursuant to this division. Failure by any contractor to attempt in good faith to locate and ensure payment of any underpaid covered worker in compliance with the terms of this

subsection shall for any underpayment to a covered worker greater than fifty dollars (\$50.00) result in a penalty of five thousand dollars (\$5,000.00) for each such violation. If a contractor is able to adequately document its good faith efforts to locate and timely pay a covered worker pursuant to this subsection it shall not be subject to further penalty if it is unable to reasonably locate or pay a covered worker all city minimum wages owed. Any finding or penalty for failure to timely pay a covered worker, or attempt in good faith to locate and timely pay a covered worker amounts owed pursuant to this subsection shall be subject to review pursuant to Section 20-82(g).

Section 3. A new Section 20-84, Division 3.75 of Article IV of the Denver Revised Municipal Code shall be added and read as follows:

Sec. 20-84. – Miscellaneous.

(a) *Covered workers; intent.* The intent of this division is to ensure the payment of a city minimum wage to an expanded number of workers providing services to the city, or on city property pursuant to a covered contract, or pursuant to a negotiated contractual requirement. Unless specifically negotiated, it is not the city's intent to impose wage requirements for city contracts, or work pursuant to an otherwise covered contract (excepting catering services), that involves only the purchase of goods and non-professional services considered to be ancillary to the purchase of goods. For the purposes of this division, and except as described below, unless a city contract contains a negotiated contractual requirement specifying otherwise, a broker, entity or person that only supplies goods and/or transportation services incident to delivering goods to city property (including the use of common carriers) is considered a supplier and is not performing covered work pursuant to this division. Notwithstanding the foregoing, the provision of catering services is not the mere provision of goods pursuant to this division and may qualify as a covered service. It is also not the intent of this division to reduce any differing wage requirements established by federal or state law or that arise from or in connection with federal or state funding utilized or disbursed by the city, and such greater wage requirements and restrictions shall be controlling in the event of a conflict between a federal or state wage requirement and the requirements of this division. To the extent a federal or state law or agreement involving state or federal funding prevents or restricts application of this division for a particular contract, the terms of this division shall be limited to the extent it may be applied and enforced consistent with such restrictions. For purposes of clarity, the term city contract shall apply to use and lease agreements, services contracts, and other forms of agreement not excluded by the terms of this division.

(b) *Covered Contracts.* Except as described in Section 20-84(f), this division shall not apply to contracts executed by the city on or before the effective date of this ordinance, contracts for

which procurement was initiated prior to the effective date of this ordinance, but which were executed after the effective date of this ordinance, and any renewals of the foregoing contracts, unless such contracts contain a negotiated contractual requirement or explicitly require a contractor to comply with future changes in law.

(c) *Application of division to Prevailing Wage and Living Wage.* Nothing in this division shall be deemed to lessen any obligations of contractors to comply with the Denver Revised Municipal Code concerning payment of prevailing wage and living wage to covered workers. Should a prevailing wage or living wage requirement for covered work be greater than the city minimum wage requirement, the greater wage rate shall be paid. If the city minimum wage requires payment of a higher wage rate than an applicable prevailing wage or living wage requirement for covered work, the city minimum wage shall be paid to any covered worker for all covered work.

(d) *Responsibility of contractor.* For a particular covered contract a contractor may engage subcontractors, individuals and other entities: to fulfill some or all of contractor's contractual obligations to the city; to perform covered services on city property pursuant to a covered contract; or in connection with an otherwise covered contract. Contractor shall be solely responsible for ensuring payment of the city minimum wage to any and all agents and/or others performing covered services on contractor's behalf or on city property pursuant to a covered contract for purposes of compliance with this division. Contractor shall also be solely responsible for ensuring payment of the city minimum wage if required to do so by a negotiated contractual requirement for purposes of compliance with this division. Contractors may seek indemnification or recovery from third parties for penalties a contractor incurs for failure to comply with the requirements of this division. However, any such rights shall in no way excuse a contractor from taking whatever steps are necessary to ensure compliance with this division by all persons providing services or engaging in covered work pursuant to a covered contract, nor serve as a basis for contractor to avoid payment of any monetary penalties or occurrence of other consequences for violations of this division.

(e) *Definitions.* For purposes of this division the following definitions shall apply:

"Catering Services" shall mean services involving any of the following: preparation, packaging and delivery of meals for in-flight service to flight passengers; food inspection; cleaning of dishes, utensils or glassware; or cleaning or operation of facilities used for the preparation, packaging, or storage of meals;

"City" shall mean the City and County of Denver;

"City Contract" shall mean a written contract between the city and a third party;

"City Property" shall mean any city owned or leased buildings and any city-owned land.

"Complaint" shall mean a third-party complaint submitted pursuant to Section 20-82(e);

371 "Concession Services" shall mean services involving any of the following: the commercial
372 provision of consumer goods or services to the public, including but not limited to: food and beverage
373 services; cashier services; wait services; retail sales; retail customer services; lounge operation;
374 kiosk operation; or concession cleaning services;

375 "Contractor" shall mean the entity or person that enters into a covered contract with the city;

376 "Covered Contract" shall mean any city contract with a maximum contract amount in excess
377 of fifty thousand dollars (\$50,000.00) by which: (1) a covered worker provides covered services to
378 the city; (2) which authorizes any covered services to occur on city property for more than 30
379 consecutive days in a calendar year; or (3) which contains a negotiated contractual requirement;

380 "Covered Work" shall mean covered services performed pursuant to a covered contract for
381 which the city minimum wage is required to be paid pursuant to this division;

382 "Covered Worker" shall mean a person performing covered work, and as further described in
383 Section 20-84(d), includes persons employed by contractors, subcontractors, individuals and other
384 entities fulfilling all or part of a contractor's contractual obligations to the City pursuant to a covered
385 contract, which perform covered services on city property pursuant to a covered contract, and
386 persons performing covered services in connection with a negotiated contractual requirement;

387 "Employ, Employed, or Employed By" means to suffer or permit to work;

388 "Employee" shall include, but not be limited to full-time employees, part-time employees,
389 temporary workers, independent contractors and any other person employed by contractor or
390 another person or entity to perform covered work;

391 "Goods" shall mean all things (including specially manufactured goods) which are movable
392 during the term of a covered contract that are for sale other than the money in which the price is to
393 be paid, investment securities, and things in action;

394 "Hospitality Services" shall mean services involving any of the following: hotel cleaning or
395 housekeeping; laundry; hotel desk clerk; or hotel porter;

396 "Intergovernmental Agreement" shall mean any contract between the city and another
397 governmental or quasi-governmental entity;

398 "Maintenance Services" shall mean services involving any of the following conducted on city
399 property: custodial; janitorial; window washing; aircraft cabin cleaning; solid waste removal; repairs;
400 weed control; pest control; or recycling;

401 "Miscellaneous Services" shall mean services involving any of the following: providing
402 customer services as a ticketing agent, bag drop attendant or skycap; parking lot operation services;
403 transporting or driving passengers via shuttle, wheelchair or cart; working as a cab starter; providing
404 towing services; handling passenger baggage; or rental car-related activities, including but not

405 limited to work performed by attendants, technicians, detailers/cleaners, and dispatchers;

406 “Negotiated Contractual Requirement” shall mean a mutually-negotiated term in a city
407 contract that specifically requires a contractor to impose the terms of this division on persons or
408 entities performing covered services not for the city or which otherwise would not constitute covered
409 work pursuant to this division.

410 “Procurement” shall mean a competitive selection process by which the city identifies a vendor
411 for provision of services to the city.

412 “Qualified Small Business Contractor” shall mean a contractor that is a bona fide small
413 business enterprise or non-profit entity that employs twenty-five (25) or fewer total full-time
414 equivalents at any point during the term of a covered contract, including all of its divisions,
415 subsidiaries, joint ventures, parent companies, and subsidiaries of parent companies and only
416 applies to contractors for covered contracts with a maximum contract amount less than five hundred
417 thousand dollars (\$500,000.00);

418 “Ramp and Cargo Services” shall mean services involving any of the following: guiding aircraft
419 in and out of the airport; coordinating aircraft loading and unloading positions; positioning and
420 operating passenger, baggage, and cargo loading and unloading devices; handling baggage and
421 cargo; screening cargo; aircraft maintenance; fueling and towing aircraft; cleaning ramp areas; or
422 servicing aircraft equipment, mechanics and lavatories;

423 “Security Services” shall mean services involving any of the following: general city property
424 security; security of personal property located on city property, including but not limited to passenger
425 aircraft; terminal security; or parking security;

426 “Supplier” shall mean a broker, entity or person not providing catering services that only
427 supplies goods and/or transportation services incident to delivering those goods to city property
428 (including the use of common carriers); and

429 “Tips” shall mean a verifiable sum presented directly and customarily by customers as a gift
430 or gratuity in recognition of some service performed for customers by the person receiving the tip.

431 “Use and Lease Agreement” shall mean a lease of real property by an air carrier that
432 authorizes commercial activity on city property.

433 “Wage-Commitment Agreement” shall mean a mutually-negotiated contract between the city
434 and a third party non-profit entity (“Counterparty”) whereby counterparty agrees to pay all persons
435 employed directly by counterparty at least the then-current city minimum wage within six months of
436 the respective deadlines specified in 20-82(c) for any and all types of work. To preserve an
437 exemption from the terms of this division, counterparty shall further require in all of counterparty’s
438 contractual agreements and relationships with other persons or entities entered into subsequent to

the effective date of this ordinance, that any person who provides covered services to counterparty or in connection with a contract with counterparty, be paid a wage equal to or greater than the then-current city minimum wage for all covered work as defined in this division.

(f) The city shall not extend the term of or amend a city contract that is not subject to the terms of this division due solely to the timing of contract formation as described in 20-84(b), if city code, executive order or city charter requires council approval of such extension or amendment unless such extension or amendment requires compliance by contractor with the terms of this division during any extended term or subsequent to amendment or city council makes an express finding that such city contract should be extended or amended without a requirement that the contractor subsequently comply with the terms of this division. In addition to the foregoing, when a use and lease agreement is not subject to the terms of this division: (1) solely due to the timing of contract formation as described in 20-84(b); and (2) contains a right allowing the city to extend the then-current term of the use and lease agreement at the city's discretion; then the city shall not exercise a discretionary option to extend the current term of such use and lease agreement unless contractor agrees to amend the use and lease agreement in a manner so that it is subject to this division during any and all extended term(s).

(g) The city may suspend or debar a contractor from participation in city contracting for a period as may be determined by the city, in its sole discretion, based upon grounds of violating this division, and pursuant to such suspension and debarment procedures as may be established by the city and as set forth in Denver Revised Municipal Code Section 20-77. In that event, the city shall regard as nonresponsive any bid, proposal or competitive selection process proposal received during such time period that includes the contractor.

(h) The provisions of this division are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection or portion of this division, or the application thereof to any contractor, person, entity or circumstance is preempted or otherwise prohibited by federal or state law or is held to be invalid, it shall not affect the validity of the remainder of this division, or the validity of its application to other persons or circumstances.

Section 4. This ordinance shall be effective March 16, 2019.

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469 COMMITTEE APPROVAL DATE: _____.
470 MAYOR-COUNCIL DATE: _____.
471 PASSED BY THE COUNCIL _____

472 _____ - PRESIDENT
473 APPROVED: _____ - MAYOR _____
474 ATTEST: _____ - CLERK AND RECORDER,
475 EX-OFFICIO CLERK OF THE
476 CITY AND COUNTY OF DENVER

477 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, ; _____,
478 PREPARED BY: Frank Romines, Assistant City Attorney DATE:

479 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
480 the City Attorney. We find no irregularity as to form and have no legal objection to the proposed
481 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to
482 §3.2.6 of the Charter.

483
484 Kristin M. Bronson, Denver City Attorney

485
486 BY: _____, Assistant City Attorney DATE: _____