



RMU Program Asset Management Concession Services Agreement 201842226

Parties and Addresses:

City and County of Denver:

City and County of Denver, Department of Aviation
Denver International Airport
Airport Office Building, 9th Floor
8500 Peña Boulevard
Denver, CO 80249-6340

Concessionaire:

Provenzano Resources, LLC
1881 16th Street, Suite 500
Denver, CO 80202

Table of Contents

| | |
|---|----|
| ARTICLE I. SUMMARY OF CONTRACT PROVISIONS..... | 2 |
| SECTION 1.01 SUMMARY OF CONTRACT PROVISIONS..... | 2 |
| SECTION 1.02 MODIFICATIONS TO SUMMARY OF CONTRACT PROVISIONS | 4 |
| ARTICLE II. DEFINITIONS..... | 4 |
| SECTION 2.01 DEFINITIONS | 4 |
| SECTION 2.02 CONTRACT CONSTRUCTION | 12 |
| ARTICLE III. PREMISES..... | 14 |
| SECTION 3.01 PRIVILEGES GRANTED | 14 |
| SECTION 3.02 SCOPE OF AGREEMENT | 14 |
| SECTION 3.03 EXPRESS RESTRICTIONS..... | 15 |
| SECTION 3.04 RESERVATION OF RIGHTS | 16 |
| SECTION 3.05 RELOCATION | 16 |
| SECTION 3.06 INGRESS AND EGRESS | 17 |
| SECTION 3.07 PREMISES ACCEPTANCE AS IS | 17 |
| SECTION 3.08 NO WARRANTY FOR ECONOMIC VIABILITY | 17 |
| ARTICLE IV. TERM..... | 17 |
| SECTION 4.01 TERM | 17 |
| SECTION 4.02 DUTIES UPON EXPIRATION..... | 18 |
| SECTION 4.03 CRITICAL DATES..... | 18 |
| SECTION 4.04 HOLDOVER..... | 18 |
| ARTICLE V. RENTALS, FEES, OTHER CHARGES, REPORTING, AND ACCOUNTING RECORDS | 19 |
| SECTION 5.01 GROSS RECEIPTS | 19 |
| SECTION 5.02 SUPPORT SPACE COMPENSATION..... | 19 |
| SECTION 5.03 PRIVILEGE FEE | 20 |
| SECTION 5.04 OTHER FEES AND CHARGES | 21 |
| SECTION 5.05 FAILURE TO MAKE TIMELY PAYMENTS..... | 22 |
| SECTION 5.06 CITY'S LIEN | 23 |
| SECTION 5.07 RECORD KEEPING, REPORTS, ANNUAL AUDIT, AND END OF YEAR ADJUSTMENT | 23 |
| SECTION 5.08 PLACE OF PAYMENT | 25 |
| SECTION 5.09 FORM OF PAYMENT | 25 |
| SECTION 5.10 CITY'S RIGHT TO PERFORM AUDITS, INSPECTIONS, ATTESTATION ENGAGEMENTS..... | 25 |

| | |
|--|----|
| ARTICLE VI. PERMITTED USES..... | 27 |
| SECTION 6.01 PERMITTED USES | 27 |
| SECTION 6.02 NON-EXCLUSIVE PRIVILEGES..... | 27 |
| SECTION 6.03 RESTRICTIONS | 28 |
| SECTION 6.04 PERMITS AND AGREEMENTS..... | 28 |
| ARTICLE VII. PERFORMANCE AND OPERATING STANDARDS..... | 28 |
| SECTION 7.01 CITY’S RIGHT TO MONITOR PERFORMANCE | 28 |
| SECTION 7.02 QUALITY OF GOODS AND SERVICES | 30 |
| SECTION 7.03 PRICING..... | 31 |
| SECTION 7.04 SUBLICENSE AGREEMENTS; OPERATORS’ OPERATING STANDARDS 32 | |
| SECTION 7.05 DELIVERY OF GOODS | 34 |
| SECTION 7.06 PERSONNEL..... | 35 |
| SECTION 7.07 BADGING AND SECURITY REQUIREMENTS..... | 36 |
| SECTION 7.08 EMPLOYEE PARKING | 37 |
| SECTION 7.09 POINT OF SALE TERMINALS [RESERVED] | 37 |
| SECTION 7.10 CASH HANDLING AND CREDIT CARD REQUIREMENTS..... | 37 |
| SECTION 7.11 ADVERTISED SALES OR PROMOTIONS | 37 |
| SECTION 7.12 COMPLAINTS | 38 |
| SECTION 7.13 CONCESSION PROMOTIONS PROGRAM | 38 |
| SECTION 7.14 OPERATING PROCEDURES AND STANDARDS..... | 38 |
| SECTION 7.15 CLEANING AND ROUTINE MAINTENANCE | 39 |
| SECTION 7.16 COMMON MAINTENANCE | 42 |
| SECTION 7.17 PAGING, AUDIO, VIDEO SYSTEMS, AND FREQUENCY PROTECTION 43 | |
| SECTION 7.18 SUBMITTALS | 43 |
| SECTION 7.19 PROHIBITED ACTS | 43 |
| ARTICLE VIII. FAILURE TO COMPLY WITH PERFORMANCE/OPERATING STANDARDS 45 | |
| ARTICLE IX. FEDERAL AID REQUIREMENTS | 46 |
| SECTION 9.01 NON DISCRIMINATION | 46 |
| SECTION 9.02 CITY’S ACDBE POLICY | 48 |
| SECTION 9.03 ACDBE NON-DISCRIMINATION | 48 |
| SECTION 9.04 ACDBE PARTICIPATION AND COMPLIANCE..... | 49 |
| SECTION 9.05 FAIR LABOR STANDARDS ACT..... | 51 |
| SECTION 9.06 OCCUPATIONAL SAFETY AND HEALTH ACT..... | 51 |
| ARTICLE X. CONSTRUCTION AND CAPITAL INVESTMENT | 51 |

| | | |
|----------------|--|----|
| SECTION 10.01 | CONSTRUCTION BY CONCESSIONAIRE | 51 |
| SECTION 10.02 | DESIGN AND CONSTRUCTION STANDARDS | 51 |
| SECTION 10.03 | INITIAL CAPITAL INVESTMENT | 52 |
| SECTION 10.04 | DEVELOPMENT SCHEDULE | 52 |
| SECTION 10.05 | SUBMITTAL AND APPROVAL OF PLANS | 53 |
| SECTION 10.06 | CONSTRUCTION..... | 53 |
| SECTION 10.07 | COMPLETION OF CONSTRUCTION | 54 |
| SECTION 10.08 | TITLE TO IMPROVEMENTS | 55 |
| SECTION 10.09 | SIGNAGE | 55 |
| ARTICLE XI. | DISCLAIMER OF LIENS | 55 |
| ARTICLE XII. | MAINTENANCE UTILITES AND REPAIRS | 56 |
| SECTION 12.01 | CONCESSIONAIRE’S MAINTENANCE OBLIGATIONS | 56 |
| SECTION 12.02 | CITY’S MAINTENANCE AND UTILITY OBLIGATIONS..... | 57 |
| SECTION 12.03 | CITY’S PERFORMANCE OF CONCESSIONAIRE’S OPERATING OBLIGATIONS 58 | |
| ARTICLE XIII. | TERMINATION RIGHTS | 58 |
| SECTION 13.01 | TERMINATION FOR CAUSE | 58 |
| SECTION 13.02 | TERMINATION FOR CONVENIENCE..... | 60 |
| 13.03 | TERMINATION BY CONCESSIONAIRE..... | 60 |
| ARTICLE XIV. | INDEMNIFICATION..... | 60 |
| ARTICLE XV. | INSURANCE | 61 |
| SECTION 15.01 | INSURANCE TERMS AND CONDITIONS | 61 |
| ARTICLE XVI. | SURETY FOR PERFORMANCE | 63 |
| SECTION 16.01 | FORM OF SURETY..... | 63 |
| SECTION 16.02 | APPLICATION OF SURETY..... | 64 |
| SECTION 16.03 | RELEASE OF SURETY..... | 64 |
| SECTION 16.04 | GUARANTY OF AGREEMENT [RESERVED]..... | 64 |
| ARTICLE XVII. | PROPERTY DAMAGE | 64 |
| SECTION 17.01 | COMPLETE DESTRUCTION | 64 |
| SECTION 17.02 | LIMITS OF CITY’S OBLIGATIONS DEFINED | 64 |
| SECTION 17.03 | ALTERNATE SPACE | 65 |
| SECTION 17.04 | WAIVER OF SUBROGATION | 65 |
| ARTICLE XVIII. | DAMAGING ACTIVITES..... | 65 |
| ARTICLE XIX. | COMPLIANCE WITH LAWS, REGULATIONS, ORDINANCES, AND RULES | 67 |
| SECTION 19.01 | GENERAL COMPLIANCE..... | 67 |

| | |
|---|----|
| SECTION 19.02 PAYMENT OF CITY MINIMUM WAGE | 67 |
| ARTICLE XX. AIRPORT SECURITY | 67 |
| ARTICLE XXI. AMERICANS WITH DISABILITIES ACT | 68 |
| ARTICLE XXII. FAA APPROVAL | 68 |
| ARTICLE XXIII. RIGHT OF FLIGHT | 68 |
| ARTICLE XXIV. FEDERAL RIGHT TO RECLAIM | 68 |
| ARTICLE XXV. PROPERTY RIGHTS RESERVED | 68 |
| ARTICLE XXVI. ASSIGNMENT AND SUBCONTRACT | 69 |
| ARTICLE XXVII. CORPORATE TENANCY | 69 |
| ARTICLE XXVIII. NON-EXCLUSIVE RIGHTS | 70 |
| ARTICLE XXIX. RIGHT TO DEVELOP AIRPORT | 70 |
| ARTICLE XXX. ADMINISTRATIVE HEARING | 70 |
| ARTICLE XXXI. ATTORNEY'S FEES AND COSTS | 70 |
| ARTICLE XXXII. RIGHT TO AMEND | 70 |
| ARTICLE XXXIII. NOTICES AND COMMUNICATIONS | 71 |
| ARTICLE XXXIV. BOND ORDINANCES | 71 |
| ARTICLE XXXV. FORCE MAJEURE | 72 |
| ARTICLE XXXVI. RELATIONSHIP OF THE PARTIES | 72 |
| ARTICLE XXXVII. CITY APPROVALS | 72 |
| ARTICLE XXXVIII. INVALIDITY OF CLAUSES | 73 |
| ARTICLE XXXIX. TIME IS OF THE ESSENCE | 73 |
| ARTICLE XL. TAXES | 73 |
| ARTICLE XLI. PATENTS AND TRADEMARKS | 73 |
| ARTICLE XLII. AGENT FOR SERVICE OF PROCESS | 73 |
| ARTICLE XLIII. COMPLIANCE WITH PUBLIC RECORDS LAW | 74 |
| ARTICLE XLIV. DATA SECURITY | 75 |
| ARTICLE XLV. USE, POSSESSION, OR SALE OF ALCOHOL OR DRUGS | 75 |
| ARTICLE XLVI. HAZARDOUS SUBSTANCES | 75 |
| ARTICLE XLVII. CITY'S SMOKING POLICY | 75 |
| ARTICLE XLVIII. WAIVERS | 75 |
| ARTICLE XLIX. COMPLETE CONTRACT | 76 |
| ARTICLE L. ORDER PRECEDENCE | 76 |
| ARTICLE LI. BROKER'S COMMISSION | 76 |
| ARTICLE LII. NO LIMIT ON CITY'S POWERS | 76 |
| ARTICLE LIII. SIGNATURES | 77 |

THESE DOCUMENTS FOLLOW THE SIGNATURE PAGES, IN THIS ORDER:

- CONCESSIONS HANDBOOK ACKNOWLEDGMENT
- TENANT WORK PERMIT HANDBOOK ACKNOWLEDGEMENT
- EXHIBIT A (PREMISES DESCRIPTION)
- EXHIBIT B (PERMITTED USES -- INTENTIONALLY LEFT BLANK)
- EXHIBIT C (MONTHLY & QUARTERLY CONCESSIONS REPORTS)
- EXHIBIT D (DEVELOPMENT SCHEDULE)
- EXHIBIT E (RESERVED)
- EXHIBIT F (INSURANCE CERTIFICATE & SURETY FORMS)
- EXHIBIT G (ACDBE COMMITMENT FORM)
- EXHIBIT H (CITY'S WORK – INTENTIONALLY LEFT BLANK)
- EXHIBIT I (FORM SCHEDULE OF ASSETS AND AMORTIZATION)
- APPENDIX A
[THERE IS NO APPENDIX B]
- APPENDIX C
- APPENDIX D
- APPENDIX E
- APPENDIX 1
- APPENDIX 2
- APPENDIX 3

**RMU Program Asset Management
Concession Services Agreement
201842226**

This RMU Program Asset Management Concession Services Agreement for the Denver International Airport (“DEN”)’s Concessions Program (“Agreement”) is entered into as of the date stated on City’s signature page, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, for and on behalf of its Department of Aviation (hereinafter “City”) Party of the First Part, and **PROVENZANO RESOURCES, LLC** a Colorado limited liability company (hereinafter referred to as “Concessionaire”), Party of the Second Part (collectively, “Parties”).

WITNESSETH:

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

WHEREAS, on or about December 7, 2010, City entered into an agreement for the development and management of DEN’s RMU Program (as amended on or about October 11, 2012, and expiring on September 30, 2018 (“Original Agreement”); and

WHEREAS, under the Original Agreement City developed a first-class mobile retail merchandising unit program consisting solely of interesting and varied specialty retail products in the existing locations as shown in Exhibit A attached hereto (the "Existing Program"); and

WHEREAS, City has embarked on a private public partnership to re-develop the Great Hall of the Jeppesen Terminal at DEN, and anticipates this re-development will cause sustained disruption to its current concession operations in the Great Hall; and

WHEREAS, due to the expiration of the Original Agreement, City has embarked on a competitive selection process to secure a new operator for its Existing program; and

WHEREAS, after evaluation and consideration of all responses submitted to City during the competitive selection process, City has selected Concessionaire to be the asset manager of the Existing Program; and

WHEREAS, due to these disruptions caused by the Great Hall redevelopment, City desires for Concessionaire to expand the Existing Program to include temporary additional locations within the Great Hall, including mobile food and beverage services; and

WHEREAS, Concessionaire has represented and warranted it is able, ready, and willing to perform all the duties and obligations contained herein; and

WHEREAS, the Parties acknowledge and agree, this Agreement supersedes and terminates any previous agreement between the Parties including the Original Agreement;

NOW THEREFORE, in consideration of the mutual covenants hereof, the Parties do hereby agree as follows:

ARTICLE I. SUMMARY OF CONTRACT PROVISIONS

SECTION 1.01 SUMMARY OF CONTRACT PROVISIONS

| City Address for Notices: | | ATTN: Chief Executive Officer City and County of Denver Department of Aviation Denver International Airport Airport Office Building, 9th Floor 8500 Peña Boulevard Denver, CO 80249-6340 | | |
|-------------------------------------|-----------------|--|---------------|---------------------------------|
| Concessionaire Address for Notices: | | Provenzano Resources LLC 1881 16 th Street Denver, CO 80202 | | |
| Guarantor Name and Notice Address: | | N/A | | |
| Location Number | Building | Sq. Ft. | Assets | Compensation Rate (MAPF) |
| 2000 | A | 120 | Kiosk | \$46,920.00 |
| 2001 | A | 120 | Kiosk | \$37,260.00 |
| 2002 | A | 120 | Kiosk | \$40,020.00 |
| 2003 | A | 34 | Cart | \$27,600.00 |
| 2004 | A | 34 | Cart | \$27,600.00 |
| 2005 | A | 34 | Cart | \$28,152.00 |
| 2006 | A | 34 | Cart | \$27,600.00 |
| 2007 | A | 120 | Kiosk | \$49,680.00 |
| 2008 | A | 150 | Kiosk | \$40,020.00 |
| 2009 | A | 150 | Kiosk | Percentage Fee |
| 2010 | A | 34 | Cart | \$22,080.00 |
| 2011 | A | 34 | Cart | \$22,080.00 |
| 2012 | A | 120 | Kiosk | \$40,020.00 |
| 3000 | B | 26 | Cart | \$22,080.00 |
| 3001 | B | 34 | Cart | \$34,500.00 |
| 3002 | B | 120 | Kiosk | \$24,840.00 |
| 3003 | B | 108 | Kiosk | \$24,840.00 |
| 3004 | B | 26 | Cart | \$28,152.00 |

| | | | | |
|-------------------|-----------------------------|---------------|-----------------|-------------------|
| 3005-6 | B | 300 | Kiosk | \$49,680.00 |
| 3007 | B | 34 | Cart | \$13,800.00 |
| 3008 | B | 34 | Cart | \$24,840.00 |
| 3009 | B | 34 | Cart | \$20,700.00 |
| 3010 | B | 34 | Cart | \$14,531.40 |
| 3011 | B | 34 | Cart | \$13,800.00 |
| 3012 | B | 34 | Cart | \$20,700.00 |
| 3013 | B | 34 | Cart | \$20,700.00 |
| 3014 | B | 34 | Cart | \$22,080.00 |
| 3015 | B | 34 | Cart | \$22,080.00 |
| 3016 | B | 100 | Kiosk | \$60,720.00 |
| 3017 | B | 100 | Kiosk | \$27,600.00 |
| 4000 | C | 26 | Cart | \$27,600.00 |
| 4001 | C | 120 | Kiosk | \$55,200.00 |
| 4002 | C | 120 | Kiosk | \$45,540.00 |
| 4003 | C | 120 | Kiosk | \$46,920.00 |
| 4004 | C | 26 | Cart | \$27,600.00 |
| 4005 | C | 34 | Cart | \$34,500.00 |
| 4006 | C | 120 | Kiosk | \$27,600.00 |
| 4007 | C | 34 | Cart | \$34,500.00 |
| 4008 | C | 34 | Cart | \$22,080.00 |
| 4009 | C | 34 | Cart | \$22,080.00 |
| Totals: | | 2,892 sq. ft. | 41 Units | |
| Support Space(s): | See Exhibit A pages 4 and 5 | | | |
| | Space | Type of Space | Sq. Ft. | Compensation Rate |
| | R16-1-6-E3-N22-1 | Office | 793 | \$59 per sq. ft. |
| | R19-1-1-W4-S9-1 | Storage | 1089.5 | \$12 per sq. ft. |
| Sub Total: | | | 1882.5 | |
| Premises Total: | | | 4,774.5 sq. ft. | |

| | | |
|--|---|--------------------------------|
| Effective Date: | May 1, 2019 | |
| Commencement Date: | May 1, 2019 | |
| Expiration Date: | April 30, 2026 | |
| Support Space Compensation, for the spaces shown on pages 4 and 5 of Exhibit A | \$59,861 (793 sq. ft. x \$59 per sq. ft.+ 1,089.5 sq. ft. x \$12 per sq. ft.) | |
| Privilege Fee: | Percentage Fee: 50% | |
| | MAPF: \$1,215,000 | |
| Required Minimum Investment | \$0 (12 Units x \$0 per RMU) | |
| Joint Marketing Fee Rate | 1% | |
| Surety: | \$ 607,500.00 | |
| ACDBE Goal | Percent | 30% |
| | Ownership Participation | Provenzano Resources, Inc. 30% |
| | Purchasing Participation | |
| MWBE Goal | Percent | TBD |

SECTION 1.02 MODIFICATIONS TO SUMMARY OF CONTRACT PROVISIONS

The Parties acknowledge and agree certain provisions stated in the Summary of Contract Provisions are, as of the Effective Date, unknown or estimates. The Parties further acknowledge and agree other provisions stated in the Summary of Contract Provisions are subject to change throughout the Term in accordance with the provisions of this Agreement. The Parties therefore agree to modify the Summary of Contract Provisions by letter executed by the CEO without formal amendment.

ARTICLE II. DEFINITIONS

SECTION 2.01 DEFINITIONS

As referred to or used herein the following terms have the following meanings:

- A. **Advertisement:** Includes without limitation any sponsorship or displays of materials, signs, fixtures, or equipment for drawing attention to the goods and services offered by the Concessionaire or to a related event.
- B. **Agreement:** Shall mean this agreement between the parties as described in the preamble to this Agreement including all exhibits, appendices, schedules, attachments, and subsequent amendments thereto.
- C. **Annual Report:** An audit report prepared annually by an Independent Certified Public Accountant (“CPA”), in accordance with Generally Accepted Auditing Standards expressing an opinion from the Independent CPA on whether the Schedule of Gross Receipts, Privilege Fees, and all other fees and charges payable

under this Agreement have been completely and accurately all presented, calculated, reported, and paid according to the terms of this Agreement.

- D. **Approved Project:** Concessionaire's construction, furnishing, fixturing, and remodeling of any portion of the Premises as reviewed and approved by City in accordance with the Tenant Work Permit Handbook.
- E. **As Built:** Record documents of the construction, additions, and other modifications constructed by Concessionaire on the Premises including but not limited to Concessionaire's Contractor's as built models and drawings in the format as required by DEN's Design Standards Manual, reconciled project BIM models and drawings in the format as required by DEN's Design Standards Manual. The reconciled BIM models shall consist of spatially coordinated systems and equipment reflecting the final built condition.
- F. **Building Informational Modeling (BIM):** The building informational modeling system used by DEN, as further defined by the Tenant Work Permit Handbook.
- G. **Business Plan:** A formal statement of a set of business goals, the reasons why they are believed attainable, the plan for reaching those goals and details of necessary actions to achieve one or more marketing objectives.
- H. **Capital Investment:** Those dollars spent by Concessionaire in the actual construction, remodeling, furnishing, fixturing, and equipping of any portion of the Premises, including reasonable architectural and engineering fees relating thereto, regarding an Approved Project for such portion of the Premises. Capital Investment includes:
 - 1) **Premises Improvements:** All improvements and equipment that are structural in nature or are affixed to the Premises and cannot be removed without material damage to the Premises including, but not limited to, mechanical, electrical and plumbing work, floors, ceilings, demising walls, store fronts, lighting fixtures, and built-in shelving.
 - 2) **Trade Fixtures:** All furniture, fixtures, and major equipment installed by Concessionaire, for use in its performance of the Concession, removable from the Premises without causing material damage to the Premises.
- I. **Cart:** A RMU that is open on four sides and utilizes approximately twenty-four (24) to thirty-two (32) square feet of common areas space.
- J. **Chief Executive Officer (CEO):** The Chief Executive Officer of City's Department of Aviation, formerly the Manager of Aviation, and/or any successor in function and/or title, as amended by Executive Order 140, is the officer appointed by the Mayor to be in full charge and control of the Department including the management, operation, and control of Denver International Airport, the Denver municipal airport system and all other facilities relating to or otherwise used in connection with the foregoing.

- K. **City:** The City and County of Denver is a municipal corporation of the State of Colorado, acting for and on behalf of its Department of Aviation, and is the owner of the Denver International Airport and party of the first part to this Agreement.
- L. **City's Fiscal Year:** The twelve-month period beginning January 1st of a calendar year through December 31st of the calendar year.
- M. **City's Work:** The work to be done by or on behalf of City to prepare the Premises for Concessionaire.
- N. **Claim:** Any demand, action, cause of action, suit, proceeding, arbitration, claim, judgment or settlement, or compromise relating thereto which may give rise to a right to indemnification and defense under Article XIV of this Agreement.
- O. **Commencement Date:** The first date any new Concession Location under this Agreement opens for business.
- P. **Commons Areas:** Those areas of DEN not leased, licensed, or otherwise designated or made available by City for exclusive or preferential use by a specific party or parties. Concessionaire's obligation to and responsibility for Commons Areas shall begin to accrue upon delivery of the Concession Location(s) to Concessionaire.
- Q. **Common Maintenance Services:** Certain maintenance and repair performed by City on behalf of and for the benefit of all concessionaires as further described in Sections 7.16 & 12.03 hereunder.
- R. **Concession:** The privileges granted to Concessionaire by City to develop and operate the RMU Program at DEN, in accordance with the terms and conditions of this Agreement.
- S. **Concession Location(s):** The individual Kiosks, Carts, In-Line Spaces, and Automated Retail Machines within the Premises identified on the Summary of Contract provisions, Exhibit A, and/or Exhibit A-1.
- T. **Concessionaire:** The legal entity that is the party of the second part to this Agreement who is bound by this Agreement to develop and operate the Concession at DEN. Concessionaire shall include all sub-concessionaires and contract operators of Concessionaire who are actually operating within the Premises with City's written consent or pursuant to City pre-approved sublicenses with Concessionaire. In all provisions of this Agreement that require a person to comply with a specific provision requiring representation of Concessionaire, this person shall be an authorized official of Concessionaire.
- U. **Concessionaire's Operating Obligation(s):** The various maintenance, repair, and operating duties hereunder to be performed by Concessionaire, at its own cost and expense, in the operation of the Concession. The performance of the obligation by the Concessionaire, or payment to a third party for the performance of these obligations, are not Compensation payments or other considerations for the privilege to occupy real property, but are acknowledgements by the Concessionaire of its obligation to maintain, repair, and otherwise keep the Premises and operate the concession in a First Class manner.

- V. **Concession Handbook:** The compilation of DEN's standards, procedures, requirements, directives, delegations of authority, directions and instructions governing the operations of concessionaires and actions of their employees, representatives, agents, contractors, and vendors, which is incorporated herein by reference. City reserves the right to amend the Concession's Handbook during the Term. Any amendment of the Concession's Handbook will be binding on Concessionaire without amendment to this Agreement, provided any amendment of the Concession's Handbook does not conflict with other terms and conditions of this Agreement, in such case this Agreement shall control.
- W. **Concession Services:** Concessionaire's Operating Obligations and other maintenance and repair requirements performed by City on behalf of and for the benefit of Concessionaire as listed in the Summary of Contract Provisions and as further described in Section 12.03 hereunder.
- X. **Concession Services Fee:** Amounts paid to City by Concessionaire as payment for Concessions Services as further described in Section 5.04 hereunder.
- Y. **Contract Year:** (a) With respect to the first Contract Year during the Term, the period commencing on the Commencement Date and continuing through the end of City's Fiscal Year in which the Commencement Date occurs, and (b) with respect to each Contract Year thereafter during the Term, each twelve-month period commencing on the first day of City's Fiscal Year and ending on the last day of City's Fiscal Year, provided that if the Term expires or is terminated on a day other than the last day of a Contract Year, the last Contract Year will then end as of the date of such expiration or termination.
- Z. **Concessionaire's Response:** Concessionaire's response to City's request for an economic pro forma and development schedule and any subsequent information submitted by Concessionaire during the evaluation process as modified and accepted by City.
- AA. **Contract:** See Agreement.
- BB. **Covenant:** Any agreement, undertaking, commitment, guarantee, warrant, pledge, and/or promise made under this Agreement.
- CC. **Critical Dates:** The Effective Date, Commencement Date, Package Completion Date, and Expiration Date shall be the dates stated in the Summary of Contract Provisions.
- DD. **Damage(s):** Any compensation for loss or injury, excluding consequential, special, and punitive damages, and/or any loss, liability, claim, damage, cost and expense, including costs of investigation and defense and reasonable attorneys' fees, whether the action is for money damages, or for equitable or declaratory relief.
- EE. **DEN:** The Denver Municipal Airport System of Denver, Colorado as defined in the Denver Revised Municipal Code, and specifically the Denver International Airport, including the passenger transportation facilities at the Denver International Airport, existing or under construction as of the Effective Date of this Agreement, known individually as the Jeppesen Terminal and its appurtenant Concourses A, B, and C,

including all user movement areas, areas leased exclusively or preferentially to any third party or parties, common areas and baggage claim areas there in, and interconnecting hallways, concourses, and bridges.

- FF. **DEN's Rules and Regulations:** The Denver Municipal Airport System's Rules and Regulations adopted January 11, 1994 for an effective date of March 9, 1994 and modified from time to time by the Chief Executive Officer, or his/her successor in function or title, pursuant to the authority granted in the Denver Revised Municipal Code.
- GG. **Denver-Aurora Statistical Area:** The Denver-Aurora, CO Metropolitan Statistical Area, as defined by the U.S. Office of Management and Budget.
- HH. **Development Schedule:** The Development Schedule approved by City in accordance with Section 10.04, as reflected in **Exhibit D** attached hereto, that sets forth for the following: (i) the anticipated date(s) of design submittals and reviews for each Concession Location; (ii) the anticipated Shell Space Turnover Date(s) for each Concession Location; (iii) the anticipated date of Substantial Completion of each Approved Project; (iv) the anticipated Required Opening Date(s) for each Concession Location; (v) the expected Package Completion Date for the entire Premises.
- II. **Effective Date:** The date of full execution of this Agreement by City, as set forth on City's signature page.
- JJ. **Emergency:** A serious, unexpected situation requiring immediate action including, but not limited to, any emergency declared by the CEO.
- KK. **Encumbrance:** Any burden or impediment on property and or assets
- LL. **Expiration Date:** The seventh (7th) anniversary of the Commencement Date.
- MM. **Federal Aviation Administration (FAA):** The Federal Aviation Administration established by the federal government under the Federal Aviation Act of 1958, as amended, or such other governmental agency which may be successor in function thereto or be vested with the same or similar authority.
- NN. **First Class:** A manner of operation of the Concessions, a standard of quality of materials and construction, a standard of quality of goods and services, and sustainability practices above or comparable to those of upscale shopping centers in the Denver-Aurora Statistical Area and similar high-quality airport and non-airport service establishments.
- OO. **General Manager:** An active, qualified, competent, and experienced employee(s) of Concessionaire that oversees and manages the performance of the Concession and represents and acts on behalf of Concessionaire.
- PP. **Goods and Services:** The wholesome food, food products, non-alcoholic beverages, alcoholic beverages, merchandise, or consumer services Concessionaire is authorized to sell under this Agreement

- QQ. **Gross Revenue:** The total amount of monies paid to or generated by Concessionaire based on the privileges granted herein, as further described in Section 5.01.
- RR. **Independent CPA:** A Certified Public Accountant Agreement in Colorado acceptable to City who is independent and without the appearance of impropriety within the meaning of the American Institute of Certified Public Accounts' Code of Professional Conduct Rule 1.200.001 – 1298.010.16.
- SS. **In-Line Space:** An unoccupied area City may identify from time-to-time within DEN enclosed by a floor, walls, and a ceiling, deemed by City to have revenue generating potential through the sale of retail or seasonal merchandise, temporarily offered to the RMU Program and listed on Exhibit A-1.
- TT. **Joint Marketing Fund:** The central marketing and promotional fund, which in City's sole discretion, will serve the Promotions Program for overall service, retail, and food and beverage concessions at DEN.
- UU. **Law:** Any order, writ, injunction, decree, judgment, law, ordinance, decision, ruling, statute, code, rule, or regulation of any Governmental Authority.
- VV. **Loss:** Any expense, cost, or damage to person or property.
- WW. **Minimum Annual Privilege Fee:** The minimum amount payable by Concessionaire to City each Contract Year as a portion of the Privilege Fee as further described in Section 5.03. The Minimum Annual Privilege Fee shall be paid in equal portions monthly throughout each Contract Year in the Term. The Minimum Annual Privilege Fee is hereinafter referred to as the MAPF.
- XX. **Notice to Proceed:** As it applies to any portion of the Premises, the written notice from City to Concessionaire allowing Concessionaire to commence an Approved Project for such portion of the Premises, and for initial construction, the written notice that establishes the Shell Space Turnover Date and Required Completion Date for such portion of the Premises. Additionally, for all initial construction of each Concession Location, the Notice to Proceed will also reflect the Required Opening Date approved by City in the Development Schedule.
- YY. **Open For Business:** The date Concessionaire has met the requirements stated in the Tenant Work Permit Handbook to open for business, to include, but not limited to, the following: (i) delivered documentation satisfactory to City of Substantial Completion of the Concession Location; (ii) obtained written permission from the CEO to remove the construction wall surrounding the Concession Location; and (iii) commenced generating Gross Receipts from the Concession Location.
- ZZ. **Operator:** A person or business entity with whom Concessionaire has entered into a City-approved sublicense agreement to offer and display retail merchandise to the public in support of Concessionaire's obligations hereunder.
- AAA. **Package Completion Date:** The earlier to occur of (a) the Opening For Business of all Concession Locations following completion of all Approved Projects, or (b) the latest of the dates established under this Agreement for completion of all Approved Projects for all Concession Locations.

- BBB. **Percentage Fee:** The fee paid by Concessionaire to City, as a portion of the Privilege Fee, calculated in accordance with Section 5.03. The Percentage Fee shall be paid in equal portions monthly throughout each Contract Year in the Term.
- CCC. **Personnel:** A sufficient number of properly trained representatives, agents, and employees of Concessionaire to service customers in a timely and efficient manner and to meet Concessionaire's obligations under this Agreement.
- DDD. **Pilot Project:** A project authorized by City to test a concept or process, the utilization of conventional or innovative technology or product, as well as the feasibility and viability of a business model for successful deployment at DEN.
- EEE. **Premises:** The specific area(s) of DEN that Concessionaire is authorized to sublicense Concession Locations to Operators.
- FFF. **Premises Improvements:** See Section 2.01.H.1, *supra*.
- GGG. **POS Terminal(s):** Electronic point-of-sale terminal(s) consistent with the requirements of Section 7.09.
- HHH. **Price Benchmark Establishment(s):** City's approved business(s) within the Denver-Aurora Statistical Area used to determine compliance with the Value Pricing comparable in concept, size, ambiance, service style and quality to the Concession Location, and in full compliance with Section 7.03 (B).
- III. **Privilege Fee:** The monthly fee payable by Concessionaire to City as consideration for the privilege of operating a concession(s) at DEN comprised of the MAPF and Percentage Fee.
- JJJ. **Promotions Program:** Activities by City, as described in Section 7.13, to promote the concession program at DEN.
- KKK. **Required Completion Date:** The date set forth in a Notice to Proceed by which Concessionaire must achieve Substantial Completion of an Approved Project, except as such date may be extended in accordance with the provisions herein.
- LLL. **Required Opening Date:** The date set forth in the Development Schedule by which Concessionaire must open each Concession Location for business as defined in the Tenant Work Permit Handbook, except as such date may be extended in accordance with the provisions herein.
- MMM. **RMU:** A mobile retail merchandising unit that is designed and manufactured in accordance with DEN's Tenant Development Guidelines, and as authorized by City for the sole purpose of displaying and offering merchandize to the public.
- NNN. **RMU Program:** A program consisting of a collection of Carts and Kiosks, whereby, Concessionaire provides first class mobile retail merchandising units of specialty retail products.
- OOO. **Surety** An irrevocable letter of credit or bond as first approved in writing by City, in a form compliant with Section 16.01, drawn on behalf of City.

- PPP. **Shell Space Turnover Date:** The date provided in a Notice to Proceed which makes a portion of the Premises available to Concessionaire to commence the Approved Project in such portion of the Premises.
- QQQ. **Store Hours:** The hours of operation for the Concession, not less than sixteen (16) hours each day, seven (7) days per week, or as they may be adjusted pursuant to Section 7.04.
- RRR. **Substantial Completion:** The stage in the process of any construction or other work when such work is sufficiently complete, as reasonably determined by City, so that (i) in the case of City's Work, Concessionaire is able to take possession of the Premises for the purpose of performing the Approved Project, or (ii) in the case of Approved Project work, Concessionaire has received a Certificate of Occupancy and/or a Temporary Certificate of Occupancy from City and County of Denver Building Department and is able to occupy the Premises for the purpose of opening for business. In no event shall Substantial Completion of any work occur prior to the issuance by City of the Notice to Proceed. It is the intent of the Parties that the application of the term Substantial Completion in the context of this Agreement shall coincide with the application of that term in Colorado Revised Statutes Section 39-1-103(17) (a) (II) (A) and (B), so that the date on which Substantial Completion occurs under this Agreement shall be the same date relative to the imposition and levy of possessory interest taxes.
- SSS. **Summary of Contract Provisions:** The statement of key provisions of this Agreement located in Article I of this Agreement.
- TTT. **Support Space(s):** The non-selling locations, individually or collectively, within the Premises intended for the support of Concessionaire's operation of the Concession including, but not limited to, offices, commissary, and storage spaces.
- UUU. **Support Space Compensation:** The annual amount payable by Concessionaire to City for the use and occupancy of the Support Spaces, as further described in Section 5.02.
- VVV. **Support Space Compensation Rate:** The fair market compensation rate per square foot for the Support Spaces, as further described in Section 5.02.
- WWW. **Tenant Work Permit Handbook:** The compilation of City's obligations prior to the Shell Space Turnover Date, standards, procedures, requirements, directions, and instructions governing Concessionaire's construction activities at DEN, which is incorporated herein by reference. City reserves the right to amend the Tenant Work Permit Handbook during the Term. Any such amendment to the Handbook will be binding on Concessionaire without need for amendment of this Agreement, provided any amendment of the Tenant Work Permit Handbook does not conflict with the other terms and conditions of this Agreement, in such case this Agreement shall control.
- XXX. **Term:** The period of time beginning on the Commencement Date and ending on the Expiration Date.
- YYY. **Trade Fixtures:** See G.2.

ZZZ. **TSA:** The U.S. Department of Homeland Security's, Transportation Security Administration, or any successor thereto.

AAAA. **Unamortized Investment:** For new Concession Locations incorporated after the Effective Date, the unamortized amount shall be reflected in a chart like **Exhibit I** for that portion of the Premises Improvements or Trade Fixtures at the time such amount is referred to herein, of Concessionaire's Capital Investment or portion thereof, using straight line amortization, calculated on a daily basis, over the period beginning on the latter of (i) the Package Completion Date or (ii) the completion of an Approved Project to which such Capital Investment refers and ending on the earlier of the Expiration Date, termination date, or relocation date.

BBBB. **Value Pricing:** Comparable price(s) to similar or equivalent goods and services sold in comparable off-DEN locations within the Denver-Aurora Statistical Area, as described in Section 7.03.

SECTION 2.02 CONTRACT CONSTRUCTION

A. Exhibits and Appendixes.

The following Exhibits and Appendixes are attached hereto and are hereby incorporated and made a part of this Agreement:

1. Exhibit A, Asset Description
- ~~2. Exhibit B, Permitted Uses~~
3. Exhibit C, Monthly & Quarterly Concession Reports
4. Exhibit D, Development Schedule
- ~~5. Exhibit E, Form of Guaranty of Agreement~~
6. Exhibit F, Insurance Certificate & Surety Forms
7. Exhibit G, ACDBE Commitment Form
- ~~8. Exhibit H, City's Work~~
9. Exhibit I, Schedule of Assets and Amortization
10. Appendix A, Compliance with Nondiscrimination Requirements
11. Appendix C, Standard Federal Assurances And Nondiscrimination In Construction, Maintenance, Operation Of Facilities
12. Appendix D, Standard Federal Assurances And Nondiscrimination In Construction, Use, Or Access To Facilities
13. Appendix E, Title VI List Of Pertinent Nondiscrimination Authorities

14. Appendix 1, Disadvantaged Business Enterprises- Required Statements
15. Appendix 2, ACDBE Nondiscrimination And Assurance Requirements
16. Appendix 3, ACDBE/DBE Policy And Objective Statements

The Parties acknowledge and agree that certain content required to complete the above Exhibits and Appendixes are, as of the Effective Date, unknown. The Parties further acknowledge and agree that other provisions stated in the above Exhibits and Appendixes are subject to change throughout the Term in accordance with the provisions of this Agreement. The Parties therefore agree to modify, as necessary, these Exhibits and Appendixes by letter executed by the CEO without formal amendment.

B. Concessionaire's Response.

Concessionaire and City acknowledge that Concessionaire's Response was valuable consideration in the award of this Agreement to Concessionaire and is an authoritative reference for understanding the intention of the Parties. Concessionaire's Response is incorporated herein by reference.

C. Interpretations.

As used herein mean as follows:

1. Day(s) shall mean calendar day(s).
2. Month(s) shall mean calendar month(s).
3. The use of any gender shall include all genders.
4. The use of any number(s) shall be construed as the singular or the plural, all as the context may require.
5. Section Heading(s) are for the convenience and reference of the Parties, and do not define or limit the scope of any section or provision.
6. The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either Party.
7. If any provision in this Agreement is capable of two (2) constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.
8. This Agreement and all its terms and conditions shall be construed, interpreted, and applied in accordance with, governed by, and enforced under the laws of the State of Colorado, as well as the Charter and Ordinances of the City and County of Denver, including as they may be amended.
9. The Parties agree that venue for any action arising from this Agreement shall be in the District Court for the City and County of Denver.

ARTICLE III. PREMISES

SECTION 3.01 PRIVILEGES GRANTED

City hereby grants to Concessionaire, as of the Effective Date under this Agreement, a non-exclusive, revocable Agreement, to place RMU's on locations on the Premises, as identified in **Exhibit A**. Additionally, City grants Concessionaire the privilege of recruiting, qualifying, and subject to City prior approval, ability to enter into sublicense agreements with Operators as provided in Section 7.08, hereunder. Additionally, City may from time-to time authorize Concessionaire to sub-license In Line Spaces and or Pilot Projects to Operators on a seasonal or temporary basis, as identified on Exhibit A-1, as updated from time to time. City hereby incorporates any existing authorizations for locations identified on Exhibit A-1, attached hereto, into this agreement as of the Effective Date.

The purpose of this Agreement is to facilitate the Concessionaire's access to and use of the Concession Locations, as described in **Exhibits A and A-1** attached hereto, to facilitate management of DEN's RMU program. The Parties agree this Agreement grants Concessionaire a personal privilege to do a series of acts within DEN without conveying any estate or interest in real property to Concessionaire.

The total estimated areas of the Premises, Concession Locations, and Support Spaces are listed in the Summary of Contract Provisions. No later than thirty (30) days after the Substantial Completion of any Approve Project, Concessionaire shall certify in writing the actual as-built areas of any new Concession Locations. The Parties agree to modify the Summary of Contract Provisions, **Exhibit A, and Exhibit A-1** to incorporate such as-built areas, temporary In Line Spaces, and Pilot Projects, to be confirmed by letter executed by the CEO, without need for formal amendment to this Agreement.

SECTION 3.02 SCOPE OF AGREEMENT

- A. Except as provided in this Agreement, Concessionaire must furnish all professional services and other labor, all supplies and materials, printing and vehicles, all equipment, apparatus, machinery, signs, furnishings, trade fixtures, and personal property to be installed by Concessionaire upon its Concession Locations, and any other resources required to manage the RMU Program and provide the services required herein.
- B. Concessionaire is hereby obligated to use commercially reasonable efforts to place RMUs within DEN in authorized locations that are designated on Exhibit A. City has initially approved forty-one Concession Locations on DEN's Concourses and will approve up to twelve new temporary Concession Locations, locations to be determined, in DEN's Great Hall for Concessionaire to manage. City and Concessionaire will confer regarding the commercial viability of any temporary Great Hall locations; however, the decision whether to proceed with such temporary locations will be solely as reasonably determined by the City. In City's sole and absolute discretion, City may, add, delete, and/or substitute the Concession Locations on Exhibits A or A-1.
- C. Concessionaire must make commercially reasonable efforts to place its approved RMUs within DEN in authorized locations, whether initially designated on or added to **Exhibit A**, to ensure RMUs remain fully operational. Unless otherwise removed or relocated pursuant to the terms of this Agreement, Concessionaire shall have a non-exclusive Agreement to use and manage each location on **Exhibit A**.

- D. Concessionaire covenants to identify, qualify, negotiate business terms with, and subject to City's prior written approval, enter into sublicense agreements with persons or business entities for the sale of specialty retail merchandise to the public. However, Concessionaire shall remain primarily liable for compensation due hereunder and all covenants and obligations of this Agreement. No approval or other acknowledgement of a sublicense agreement by City shall serve to release or novate Concessionaire from the obligations of this Agreement. City reserves the absolute right to disapprove sublicenses for uses that differ in any material respect from the use expressly permitted herein, or concern over any proposed person's or business entity's character or reputation, or any other commercially reasonable basis.
- E. Concessionaire is responsible for all aspects of day-to-day management of the RMU Program, including but not limited to, annual forecasting, budgeting, sales reporting, business development and marketing, developing, designing, manufacturing or purchasing and maintaining approved mobile Kiosks and Carts, and placing these Concession Locations at varying approved locations within DEN. Concessionaire is also responsible for receiving, storing, managing and delivering inventory to Operators, customer service training for Operator employees, visual merchandising, canvassing, outreach, ACDBE goals, pricing management, compliance with all applicable rules and regulations applicable at DEN.
- F. Upon proposal by Concessionaire, and with City's prior written approval, Concessionaire maybe permitted to undertake operation of In-Line Spaces, Automated Retail Machines, and/or Pilot Projects from time to time. All such operations shall be listed on **Exhibit A-1**, along with the minimum compensation, utilities, expiration date and permitted uses mutually agreed to by the Parties as well as any limitations, conditions or restrictions the City deems necessary to use and manage these Concession Location(s).
- G. The Parties acknowledge and agree, any changes to compensation resulting from changes in Concession Locations designated on **Exhibit A** and/or changes to approvals related to **Exhibit A-1**, shall be reflected on an updated **Summary of Contract Provisions, Exhibit A**, and/or **Exhibit A-1**, as needed, and be confirmed by letter executed by the CEO, without need for formal amendment to this Agreement.

SECTION 3.03 EXPRESS RESTRICTIONS

- A. Concessionaire shall not use any part of DEN for any unlawful purpose whatsoever and shall not commit or permit any nuisance for or upon DEN by any of Concessionaire's employees, assigns, contractors, or agents.
- B. Concessionaire, excluding Operators, may not directly sell any items of merchandise or offer any services to the public. Concessionaire shall not engage in any activity not specifically provided for under the terms of this Agreement. Concessionaire shall prohibit the sale of any merchandise or services not specifically provided for under the terms of this Agreement or otherwise authorized by City.
- C. Except for Automated Retail Machines authorized by the City, no unmanned displays, advertising or sponsorships are permitted in any Concession Locations.
- D. Concessionaire agrees it will not engage in any transaction, activity, or conduct which would result in a conflict of interest under this Agreement. A conflict of interest shall

include, but is not limited to, being an investor or partner or having a business interest or personal stake in any business operation within DEN's RMU Program, and/or transactions, activities, or conduct affecting Concessionaire's judgment, actions or work by placing the Concessionaire's own interests, or the interest of any party with whom the Concessionaire has a contractual arrangement, in conflict with those of the City. Concessionaire represents it has disclosed all current or potential conflicts of interest. City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement for cause in the event such a conflict exists after it has given the Concessionaire written notice which describes the conflict. Concessionaire shall have ten (10) days after the notice is received to eliminate or cure the conflict of interest in a manner that is acceptable to City.

SECTION 3.04 RESERVATION OF RIGHTS

- A. City reserves the right to approve the form of and consent to any sublicense agreement prior to its execution. Once executed, sublicense agreements may not be modified or terminated without the City's consent.
- B. City reserves the right to pre-approve merchandising displays and signage, consent to merchandise changes and pricing increase requests once first approved by Concessionaire, and audit merchandising and pricing from time to time for compliance by Operators with City's Value Pricing Policy. City reserves the right to, from time to time in its sole discretion, require Concessionaire to cause its Operators to offer for sale, other items City reasonably determines are necessary to serve the traveling public.
- C. City reserves the right to approve the design of and subsequent changes and alterations to RMUs, including repairs costing more than two thousand dollars (\$2,000), to approve Concessionaire's annual Business Plan, to approve Concessionaire's key personnel.
- D. Any provision to the contrary notwithstanding, the City reserves the right to require Concessionaire to terminate an Operator's sublicense agreement without cause whenever, in the City's sole discretion, such termination shall be determined to be in the best interest of the City and/or for the operational necessity of DEN, its security or an emergency. Upon receipt of a written request from the CEO, within three (3) days or immediately in the case of such emergencies, Concessionaire shall give effect to such termination by giving the affected Operator written notice specifying the date upon which such termination becomes effective.

SECTION 3.05 RELOCATION

City in its sole discretion may relocate or remove (if relocation is not practicable as provided below) locations listed on **Exhibits A** or **Exhibit A-1**. In such an event, City will give Concessionaire written notice as soon as practicable and Concessionaire agrees to relocate or remove Trade Fixtures and/or any RMUs associated with said Concession Location within ten (10) business days. City agrees to substitute, designate, and authorize a comparable location, as determined by City, and adjust the compensation due hereunder. The Parties agree to update the Summary of Contract Provisions, Exhibit A, and/or Exhibit A-1, as needed, to be confirmed by letter executed by the CEO, without need for formal amendment to this Agreement.

However, in the event such relocation is not practicable and removal is necessary, Concessionaire shall receive a compensation credit for any direct unrecoverable expenses of removing its RMUs. Concessionaire shall bear all other cost of removal and relocation of Trade Fixtures and any RMUs under this provision, expressly waiving all claims for damages of any kind, including, but not limited to consequential damages and loss of profits because of the interruption of Concessionaire's business.

SECTION 3.06 INGRESS AND EGRESS

Concessionaire will have the right of ingress to and egress from DEN and the Premises for Concessionaire's officers, authorized officials, employees, agents, and invitees, including customers, suppliers of materials, furnishers of services, equipment, vehicles, machinery, and other property. Right of ingress and egress will be subject to FAA Regulations, as amended, applicable laws, and DEN's Rules and Regulations. Moreover, without exception, nothing in this Agreement shall be construed to prevent City from charging the operators of vehicles or carrying passengers and property a fee for the privilege of entering upon DEN, using DEN's roadways, soliciting passengers upon DEN, or otherwise operating vehicles at DEN. City reserves the right to make such charges provided they do not discriminate unreasonably against the operators of vehicles used for carrying officers, employees, passengers, or property of Concessionaire.

SECTION 3.07 PREMISES ACCEPTANCE AS IS

Concessionaire understands, acknowledges, and accepts the Premises in its present condition, "**As Is**" with all faults and with absolutely no warranties as to condition or suitability for use being given by City. City shall have no obligation, liability, responsibility to construct additional improvements or to modify existing conditions, nor to provide services of any type, character, or nature (including any obligation to maintain, repair, or replace utilities or telephone/data service) on or to the Premises during the Term other than as explicitly stated in this Agreement.

SECTION 3.08 NO WARRANTY FOR ECONOMIC VIABILITY

City makes no warranty, promises, or representations as to the economic viability of the Premises, Concessionaire's business concept, or any other matter pertinent to the potential or likelihood for success or failure of Concessionaire's business operations. Concessionaire understands, acknowledges, and accepts that airline gate usage and other aspects of DEN operations are subject to change during the Term without notice and that City makes no warranty regarding the location of airline gate usage. Except as is specifically set forth herein, City shall not, by the existence of this Agreement, be constrained in connection with its operation of DEN.

ARTICLE IV. TERM

SECTION 4.01 TERM

This Agreement shall be effective and binding upon the Parties as of the Effective Date. The Term of this Agreement shall begin on the Commencement Date and continue through the Expiration Date, as stated in the Summary of Contract Provisions, unless sooner terminated as herein provided.

SECTION 4.02 DUTIES UPON EXPIRATION

By the Expiration Date, or upon the earlier termination as herein provided, Concessionaire must have fully performed all its obligations under this Agreement, as applicable, including:

- A. Delivery to City of all keys to any doors and to any Premises Improvements for Concession Locations; and
- B. Surrender of all Concession Locations as first occupied, ordinary wear and tear excepted, and in broom clean condition; and
- C. Surrender or removal of all Concession Locations, except, upon agreement between Parties; and
- D. Removal of all Trade Fixtures; and
- E. Performance of any other obligations required pursuant to this Agreement.

Concessionaire agrees to cooperate with the City's reasonable termination procedures.

SECTION 4.03 CRITICAL DATES

The Parties agree to meet, no later than thirty (30) days after the Package Completion Date, and determine and finalize the actual Critical Dates for construction under this Agreement, and any obligations resulting from the actual Critical Dates. Thereafter, the Parties agree to update the Summary of Contract Provisions to incorporate the actual Critical Dates, to be confirmed by letter executed by the CEO and acknowledged by Concessionaire, without need for formal amendment to this Agreement.

SECTION 4.04 HOLDOVER

Any exercise of the privileges granted herein by Concessionaire, with permission of the City, after the Expiration Date shall be on a month-to-month basis with all provisions of this Agreement, including compensation, fees, charges, insurance policies, Surety, and Guarantees remaining in place until such time City gives notice to Concessionaire to surrender the Premises. Notice to surrender will be provided in writing not less than thirty (30) days prior to the anticipated surrender date.

Any exercise of the privileges granted herein by Concessionaire after expiration of the Term or any extension thereof, or after termination of this Agreement without the written approval of City constitutes a trespass, in accordance with D.R.M.C. § 38-115. No occupancy of any portion of the Premises by Concessionaire after the expiration or other termination of this Agreement, without City's written approval, extends the Term of such portion of the Premises. Nothing herein shall be construed to give Concessionaire the right to hold over. In the event of such trespass, Concessionaire shall indemnify City against all damages arising out of the Concessionaire's trespass, including but not limited to, any costs incurred by City to evict Concessionaire, regain possession of the Premises or any portion(s) thereof, and all insurance policies, Surety, and Guarantees required to be obtained and maintained by Concessionaire as set forth in this Agreement shall continue in full force and effect.

ARTICLE V. RENTALS, FEES, OTHER CHARGES, REPORTING, AND ACCOUNTING RECORDS

SECTION 5.01 GROSS RECEIPTS

Gross Receipts shall mean all sales generated by Concessionaire from doing business under this Agreement including, but not limited to, all sales payable by any Operator to Concessionaire or from any other person or entity from doing business at any Concession Location. Gross Receipts includes:

- A. All transactions, regardless of place or time of actual payment, whether in the form of cash, credit or otherwise, regardless of collections and without reservation or deduction for uncollected amounts and regardless of whether any party other than Concessionaire is:
 - 1. providing or operating equipment or services involved in the transaction; or
 - 2. billing or receiving revenue from such transaction; or
 - 3. receiving any income resulting from transactions originating in, at, or from Concession Locations or within DEN, including but not limited to:
 - i. promotional or advertising income received by or paid to Concessionaire in exchange for displays, promotions, sponsorships, advertising; or
 - 4. other business transacted at Concession Locations;
- B. Insurance proceeds received due to loss of gross earnings under business interruption coverage.

Gross Receipts excludes reimbursement of certain direct and actual costs, which by way of example, may include storage/inventory management fees, utilities fees, trash fees, signage fees, and visual merchandise consultant fees, paid to Concessionaire by an Operator pursuant to the Operator's sublicense. Additionally, Gross Receipts shall exclude taxes, fines, fees, and charges paid to Concessionaire by its Operators, provided, however, that any such payment in excess of the amounts required shall be included in Gross Receipts. Concessionaire shall not exclude any reduction for bad debts, loss from theft, or any deduction or other exclusions except as described herein.

SECTION 5.02 SUPPORT SPACE COMPENSATION

As consideration for privilege to Support Space as granted herein, Concessionaire covenants to pay to City the fair market rental for all Support Spaces. City will establish the Support Space Compensation. Support Space Compensation will be paid in monthly installments, in advance and without demand, beginning on the Commencement Date and on the first day of each month thereafter throughout the Term.

The Support Space Compensation to be paid monthly equals the sum of:

1. The total area of Support Spaces occupied by Concessionaire multiplied by one-twelfth (1/12) of the Support Space Compensation Rate.

For any period of less than one month during the Term, the Support Space Compensation will be calculated on a pro rata basis in the same proportion that the number of days in the payment period bears to the total number of days in the month for which the Support Space Rent is payable. The initial Support Space Compensation Rate is set forth in the Summary of Contract Provisions.

SECTION 5.03 PRIVILEGE FEE

As consideration for the privileges granted herein to operate the Concession Locations at DEN, beginning on the Commencement Date and continuing through the Term, Concessionaire covenants to pay to City for each month, or portion thereof, a Privilege Fee equal to the sum of the MAPF and the Percentage Fee, if any.

A. **MAPF**. MAPF shall equal:

1. Beginning on the Commencement Date and continuing through the Contract Year in which the Commencement Date occurs, the initial MAPF amount in the Summary of Contract Provisions is pro-rated to include only the months from the Commencement Date to the end of that Contract Year.
2. Beginning with the Contract Year following the Contract Year in which the Commencement Date occurs and each Contract Year thereafter, the MAPF will equal eighty-five percent (85%) of the Privilege Fee paid in the prior Contract Year, but never less than the initial MAPF set forth in the Summary of Contract Provisions. The MAPF applicable to the last Contract Year of this Contract will be pro-rated if such Contract Year is less than twelve (12) months.

B. **Percentage Fee**. In addition to the MAPF, Concessionaire covenants to pay a Percentage Fee in an amount equal to Gross Receipts for the year multiplied by the Percentage Fee Rate stated in the Summary of Contract Provisions, but only to the extent that such amount exceeds the MAPF for the Contract Year. If the Percentage Fee calculated in accordance with this Section 5.03 is an amount less than the MAPF, no Percentage Fee shall be payable.

C. **Payment of Privilege Fee**. On or before the Commencement Date, and the first day of each month thereafter, Concessionaire shall pay to City, in advance and without set off, deduction, prior notice, or demand, one-twelfth (1/12th) of the MAPF. For any payment period of less than one month, the MAPF payment shall be paid on a pro rata basis in the same proportion that the number of days in the payment period bears to the total number of days in the month for which the MAPF is payable.

Within twenty (20) days after the end of each month during the Term, Concessionaire shall pay to City the Percentage Fee in the amount, if any, by which Gross Receipts for the month multiplied by the Percentage Fee Rate exceeds the sum of MAPF, as shown on the Monthly Concession Report required in Section 5.07.

SECTION 5.04 OTHER FEES AND CHARGES

- A. **Concessions Services Fee.** Beginning on the Commencement Date, Concessionaire agrees to pay within twenty (20) days after the last day of each month during the Term, as payment for the performance by City on Concessionaire's behalf of the Concessions Services, a Concessions Services Fee in an amount equal to the Concessions Services Fee Rate as stated in the Summary of Contract Provisions.
1. Subject to the terms and conditions set forth in the next paragraph, City and Concessionaire agree that City may modify, upon written notice to Concessionaire, the Concessions Services Fee; provided that such modification may not occur until the end of the first full Contract Year after the Package Completion Date and the end of every third (3rd) Contract Year thereafter.
 2. Notwithstanding the foregoing, if at any time City elects, in its sole discretion, to modify the Concessions Services, the Concession Services Fee may be adjusted accordingly in an amount determined as reasonable by City in its sole judgment. City will provide no less than thirty (30) days' written notice of the effective date of any modification to the Concessions Services Fee to Concessionaire. The Parties agree to modify the Summary of Contract Provisions to reflect any such change in the Concessions Services Fee. Any modification will be confirmed by letter executed by the CEO, without need for formal amendment to this Agreement.
- B. **Joint Marketing Fee.** Beginning on the Commencement Date, Concessionaire agrees to pay within twenty (20) days after the last day of each month during the Term, as payment for the performance by City of marketing services through the Joint Marketing Fund, a Joint Marketing Fee in an amount equal to the Joint Marketing Fee Rate as stated in the Summary of Contract Provisions multiplied by Gross Receipts during the month.
- C. **Commons Area Maintenance.** When any Concessions Location within the Premises is located in a food court, Concessionaire agrees to pay within twenty (10) days after the last day of each month during the Term, as payment for City's performance of maintenance of the food court areas, a Commons Area Maintenance Fee, representing its share of the annual Commons Area Maintenance costs in twelfths (1/12) applicable to the Premises, as stated in the Summary of Contract Provisions, multiplied by the total Common Area Maintenance costs reflected in DEN's Rules and Regulations or applicable DEN policy. The Parties agree Concessionaire's share may increase or decrease during the Term. The Parties agree to update the Summary of Contract Provisions to incorporate any increase or decrease, to be confirmed by letter executed by the CEO and acknowledged by Concessionaire, without need for formal amendment to this Agreement.
- D. **Utilities.** City will provide certain utility connections to the Premises as stated in the Tenant Work Permit Handbook. Concessionaire may connect into or extend, at its cost, such utilities in accordance with Tenant Work Permit Handbook. Beginning on the Commencement Date and/or Shell Space Turnover Date, whichever is applicable, Concessionaire covenants to pay for all utilities necessary in the operation of the

Premises. All charges, including, but not limited to, deposits, installation costs, connection charges, usage, service charges, and applicable taxes for utility services metered directly to the Premises or pro-rated by usage shall be paid by Concessionaire, regardless of whether the utility services are furnished by City or other utility service entities.

- E. **Other Fees and Charges.** Concessionaire covenants to pay in a timely manner other damages to City, charges and fees as City assesses, in accordance with its procedures and requirements, and that Concessionaire incurs in the normal course of business, including but not limited to telephone, badging, fingerprinting, and Common Maintenance Services Fees, plus any applicable taxes.

SECTION 5.05 FAILURE TO MAKE TIMELY PAYMENTS

Immediately upon Concessionaire's receipt of monies from sales, services, or doing business under this Agreement, the percentages of said monies belonging to City per this Agreement shall immediately vest in and become the property of City. Concessionaire understands, accepts, and agrees to be responsible as a trustee for said monies until the same are delivered to City. Concessionaire also covenants to pay all compensation, damages, charges, and fees under this Agreement independent of any obligation of City. No breach of this Agreement by City shall relieve Concessionaire of its obligation and duty to pay all such obligations when due.

Without waiving any other right or action available to City, in the event Concessionaire is delinquent in the payment of rents, fees, or charges hereunder or rightly due and owing by an audit of Concessionaire's books and records as provided in Section 5.10, and in the event Concessionaire is delinquent in paying to City any such rents, fees, or charges for a period of five (5) business days after the payment is due, City reserves the right to charge Concessionaire interest thereon, from the date such rents, fees, or charges became due to the date of payment, of 18% per annum, to the maximum extent permitted by law.

In the event of a dispute as to the amount to be paid, City shall accept the sum tendered without prejudice and, if a deficiency is determined to exist, interest shall apply only to the deficiency.

The right of City to require payment of interest and the obligation of the Concessionaire to pay same shall be in addition to and not in lieu of the right of City to enforce other provisions herein, including termination of this Agreement, and to pursue other remedies provided by law.

The failure of City to act in the event of a delinquent payment or series of payments shall in no way waive the right of City to take action at a subsequent time. City expects all rents, fees and charges to be paid on time and Concessionaire agrees to pay on time. Further, any endorsements or statements on a check or letter accompanying such payment for compensation or other charges shall not be deemed an accord and satisfaction or otherwise recognized for any purpose whatsoever.

Notwithstanding other provisions of this Agreement, and without limiting the other provisions of this Agreement concerning, among other things, events deemed to constitute material breach of Concessionaire, City may terminate this Agreement upon written notice to Concessionaire, in accordance with section 13.01, if (i) there are recurring instances in which

Concessionaire's payments required hereunder are not timely or are insufficient to cover sums actually due and payable; or (ii) Concessionaire fails to maintain adequate records and accounts reflecting its business operations at DEN and calculation of Gross Receipts under this Agreement; or (iii) Concessionaire fails or refuses to submit the formal supporting paperwork as required herein.

SECTION 5.06 CITY'S LIEN

City shall have a lien and security interest upon all Trade Fixtures and Personal Property of the Concessionaire now owned or hereafter acquired by Concessionaire which came in or was placed upon the Premises, to the extent permitted by law, to secure the payment of all sums of money that may be due to City from Concessionaire under this Agreement.

This lien shall supersede any other lien including any lien created regarding Concessionaire's financing. Concessionaire is prohibited from pledging any Trade Fixtures and/or Personal Property without the prior written consent of City.

SECTION 5.07 RECORD KEEPING, REPORTS, ANNUAL AUDIT, AND END OF YEAR ADJUSTMENT

A. **Generally Accepted Accounting Principles**. Concessionaire covenants to prepare and maintain, in accordance with Generally Accepted Accounting Principles, complete and accurate books and records that include all financial transactions in the performance of this Agreement. Concessionaire's system of accounts shall allow each Concession Location to be distinguished from all other Concession Locations. Concessionaire shall maintain source documents sufficient to support its books, records, and reports. All monies related to this Agreement shall be deposited to and paid from a business bank account(s), the records for which shall be subject to review and audit in accordance with the provisions hereof.

B. Financial Reports.

1. **Daily Gross Receipts**. Upon request of City, Concessionaire agrees to report Gross Receipts for periods of less than one month in a format and frequency as requested by City.
2. **Monthly Concession Report**. No later than ten (10) days after the end of each month after the Commencement Date, Concessionaire shall deliver to City a Certified Monthly Concession Report, in a form as set forth in **Exhibit C** attached hereto, stating Gross Receipts (with any and all sales of liquor separately identified) for said month for each Concession Location, sales for said month by each Concessions Location with subtotals by type of Concession, calculation of Percentage Fee payable for said month, sales per square foot and per enplaned passenger with subtotals by type of Concession, and receipts per square and per enplaned passenger with subtotals by type of concession when information available.
3. **Quarterly Income Statements**. No later than thirty (30) days after the end of each calendar quarter after the Commencement Date, excluding the fourth (4th) quarter, Concessionaire shall deliver to City a Quarterly Income Statement signed by Concessionaire's chief financial officer or other duly authorized

official of Concessionaire for each Concession Location, as well as for the total Premises, in a form as set forth in **Exhibit C** attached hereto. The Quarterly Income Statement must include current monthly sales compared to historical sales from the prior year with subtotals by Terminal and/or Concourse Location; current receipt numbers compared to historical receipt numbers from the prior year with subtotals by Terminal and/or Concourse; year-to-date rolling monthly sales and receipt numbers compared to rolling historical sales and receipt numbers with subtotals by Terminal and/or Concourse; ACDBE sales compared to sales from the prior year; percentage of sales generated by ACDBE operators; and fees paid to Concessionaire's ACDBE firm(s) for the year-to-date.

- C. **Annual Audit.** No later than February 28 after the end of each year of operation after the Commencement Date, Concessionaire shall, at its sole cost and expense, provide an Annual Report to City prepared by an Independent CPA. There may be no limitation on the scope of the engagement that would preclude the Independent CPA from expressing an unqualified opinion as to the correctness and completeness of the reported Gross Receipts. The engagement will include a Schedule of Gross Receipts and Privilege Fees for each month of the Concessionaire's operations in the Contract Year, prepared in accordance with the comprehensive basis of accounting defined herein and reported in a format acceptable to City. The engagement will be conducted in accordance with Generally Accepted Auditing Standards and shall include an opinion from the Independent CPA on whether the Schedule of Gross Receipts, Privilege Fees and all other fees or charges payable under this Agreement have been completely and accurately presented, calculated, reported, and paid according to the terms of this Agreement. City reserves the right to reject Concessionaire's choice of Independent CPA, where in City's view the Independent CPA does not have the appropriate standing, reputation, or independence from the Concessionaire.
- D. **Findings.** City reserves the right to challenge any findings or conclusions of the Annual Report if it believes an error may have occurred. In such event, City may conduct its own audit under the provisions in Section 5.10, or may require production of the supporting documentation used to reach the finding or conclusion in question. The resolution by City of any dispute will be final. Delivery of an Annual Report containing a qualified opinion, or an adverse opinion, or a disclaimer of opinion as defined in the Statements on Auditing Standards, as may from time to time be amended or superseded, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, or any successor board or agency thereto, will be deemed a material breach of this Agreement and, in addition to all other remedies available to City, City may, in its sole discretion, terminate this Agreement.
- E. **End of Year Adjustment.** If Concessionaire has paid to City an amount greater than Concessionaire is required to pay as Privilege Fee for a Contract Year under the terms hereof, Concessionaire shall be entitled to a credit against Concessionaire's MAPF for the overpayment. If Concessionaire has paid less than the amount required to be paid as Privilege Fee for such Contract Year, then Concessionaire shall pay the difference to City in the next payment of the MAPF.
- F. **Form, Frequency, and Method of Reporting.** Acceptance of monthly reports and payments by City does not constitute agreement by City with the amounts reported and

paid. City reserves the right to change the form and frequency of reports and statements, including, but not limited to, the Monthly Concession Report, and to require the submission by Concessionaire of other statistics and information pertaining to the Gross Receipts hereunder. Concessionaire agrees to change the form of the required reports and statements as requested by City and to provide any additional statistics and information City may request.

- G. City shall have the right at any time to require that reports be delivered electronically using technology and procedures designated by City. If City instructs Concessionaire to deliver any reports and statements required hereunder by computer, e-mail, internet website, or transmission, City shall not be obligated to furnish Concessionaire with the equipment or systems necessary to do so.

SECTION 5.08 PLACE OF PAYMENT

Concessionaire shall deliver payments required by this Agreement through the Automated Clearing House (“ACH”) or Electronic Fund Transfer (“EFT”) systems. Instructions for payments are in the Concessions Handbook or at <https://www.denvergov.org/payments/dia/vendors>.

City may change the designated place of payment upon ten (10) days’ written notice to Concessionaire. Concessionaire assumes all risk of loss of payments.

SECTION 5.09 FORM OF PAYMENT

All payments due under this Agreement shall be paid in lawful money of the United States of America. City may accept payment without prejudice to its right to recover the balance of said amount due and to pursue any other remedies in this Agreement or otherwise.

All payments of Support Space Compensation MAPF, Percentage Fee, and all other damages, fees, and/or charges shall be made by Automated Clearing House or Electronic Fund Transfer or other method as designated in writing by City. Concessionaire shall provide City with necessary information and authorizations as needed to facilitate such payments.

SECTION 5.10 CITY’S RIGHT TO PERFORM AUDITS, INSPECTIONS, ATTESTATION ENGAGEMENTS

Notwithstanding Concessionaire’s requirement to submit the Annual Report set forth herein, City, or its representative, will have the right through the expiration of the fifth (5th) year after the expiration or termination of this Agreement, through its representatives, to review all books, records, and contracts of Concessionaire and where applicable, all individuals or other business entities who are party to this Agreement, requested by City’s representatives to substantiate the accuracy of reported Gross Receipts and Concessionaire’s compliance with other provisions of this Agreement. This includes, but is not limited to, financial statements, general ledgers, sales journals, daily or periodic summary reports, inventory and purchasing records, cash register or computer terminal tapes or reports, bank deposit slips, bank statements, cancelled checks, tax reports/returns filed with state or federal entities, discount or rebate/allowance contracts, records of refunds or voids, and joint venture or partnership contracts. Such right of examination shall include cooperation by Concessionaire personnel (including, but not limited to, cooperation in sending confirmations to Concessionaire’s suppliers or others, assisting City in obtaining from governmental entities

official copies of tax reports/returns, and disclosing all bank or other accounts into which Gross Receipts are deposited) as reasonably considered necessary by City, or its representative, to complete the engagement. There may be no limitation in the scope of the engagement that would hinder City in testing the accuracy and completeness of the reported Gross Receipts. All such books, records, and contracts shall be kept for a minimum period of five (5) years after the close of each Contract Year. Concessionaire waives any claim of confidentiality that it may have in connection to its books, records, and contracts for the sole purpose of allowing City to use said documents during an engagement. If City requests and Concessionaire fails to furnish any records in a timely manner, City reserves the right to, in addition to all other remedies available hereunder, at law, or in equity, have an independent forensic accounting firm attempt to reconstruct the missing records. Concessionaire covenants to reimburse City for the reasonable cost associated with reconstructing any missing records, including but not limited to, the cost of the independent forensic accounting firm, attorney's fees, and litigation expenses incurred.

Engagements will be conducted at DEN. However, if agreed to by City, the engagement can be conducted at another location, in which event Concessionaire shall reimburse City for transportation, food, and lodging costs associated with the engagement, accrued in accordance with City's policy relating to travel expenses. Concessionaire shall allow City's representatives to photocopy any records the representatives determine to be necessary to conduct and support the engagement. Concessionaire shall provide City's representatives with retrievals of computer-based record or transactions the representatives determine to be necessary to conduct the engagement. Concessionaire shall not charge City for reasonable use of Concessionaire's photocopy machine while conducting the engagement, nor for any cost of retrieving, downloading to storage media and/or printing any records or transactions stored in magnetic, optical microform or other media. Concessionaire shall provide all records and retrievals requested within seven (7) days of the request. Parties recognize that City will incur additional costs if records requested are not provided in a timely manner and that the amount of those costs is difficult to determine with certainty. Consequently, Parties agree City may collect liquidated damages, as set forth in Article VIII, for the records requested and not received. Such damages may be assessed beginning on the eighth (8th) day following the date the request was made. Accrual of such damages will continue until specific performance is accomplished, which includes, but is not limited to, reconstruction of documents that cannot be produced. Payment of liquidated damages will be due within fifteen (15) days from the date of invoice.

If, because of any engagement, it is established that Concessionaire owes additional rents, fees, or charges to City, Concessionaire will pay the reasonable costs of the engagement and such additional rents, fees, and charges, and City may assess interest in accordance with Section 5.05. If it is established that Concessionaire underreported Gross Receipts or underpaid fees related to Gross Receipts by three percent (3%) or less for the period under consideration, the entire expense of the engagement will be billed to Concessionaire. Any additional payments due shall be paid plus interest, no later than Concessionaire's next payment of the MAPF, to City. City reserves the right to terminate this Agreement for cause, if Concessionaire fails to pay the amount owed, per the engagement's findings, by Concessionaire's next payment. If it is established that Concessionaire underreported Gross Receipts or underpaid fees related to Gross Receipts by more than three percent (3%) for the period under consideration, in addition to the remedies described above, City shall be entitled to terminate this Agreement for cause upon thirty (30) days written notice, regardless of whether the deficiency is paid. If Concessionaire willfully or fraudulently underreported

Gross Receipts or underpaid fees related to Gross Receipts, in addition to the rights described above, City shall be entitled to terminate this Agreement for cause upon thirty (30) days written notice, regardless of whether the deficiency is paid.

Concessionaire will include a provision providing City the same rights to initiate and perform audits, inspections, or attestation engagements in any sub concessionaire agreement that it enters and cause its sub concessionaires to include the statements in further sub concessionaire agreements.

ARTICLE VI. PERMITTED USES

SECTION 6.01 PERMITTED USES

- A. **Uses.** Concessionaire shall use the Premises only for the purposes of operating the Concession, as further described in this Article VI, and for such other uses as City may agree to in writing. Concessionaire shall use the Support Spaces only for office and administrative purposes related to the operation of the Concession and the storage and preparation of goods necessary for the operation of Concessions. No portion of the Premises shall be used to warehouse, stock or store any goods, wares, or merchandise not intended to be offered for sale at or from the Premises.
- B. **Permitted Goods, Services and Prices.** No later than thirty (30) days prior to the opening of a Concession Location, Concessionaire must submit to City, for its written approval, a Price List. Such Price List must include the prices to be charged to the public for the goods and services.
- C. Once approved by City, the Price List for each Concession Location shall remain in effect through the remainder of the Term. Concessionaire shall not add, delete, or sell any goods or services not included on the Price List, nor change the price of any good or service, without first receiving written approval from City. City's approval shall not be unreasonably withheld or delayed. Written approval shall serve to modify the Price List without need for amendment of this Agreement.
- D. City may, at its discretion, require Concessionaire to add goods or services that are in public demand to the Price List for any Concession Location. Within ten (10) days of a written request by City, Concessionaire shall provide a current Price List.

SECTION 6.02 NON-EXCLUSIVE PRIVILEGES

The privileges granted herein for the performance of the Concession shall be non-exclusive. City may, at any time, award space (existing or newly created) to other parties who may have privileges or may sell goods or services like those non-exclusively granted herein. City may, in its sole discretion, grant exclusive privileges to other concessionaires to sell goods or services that Concessionaire is not authorized to sell.

In the event of a dispute between Concessionaire and any other party operating at DEN as to the privileges of the parties under their respective Concessions, City shall determine the privileges of each party and Concessionaire agrees to be bound by City's decision.

SECTION 6.03 RESTRICTIONS

Nothing in this Article will be construed as authorizing Concessionaire to conduct any business separate and apart from this Agreement or in areas of DEN other than its Premises. All privileges not specifically granted to Concessionaire for its use of and operations at DEN pursuant to this Agreement are hereby reserved for and to City.

SECTION 6.04 PERMITS AND AGREEMENTS

Concessionaire will obtain and maintain throughout the Term all permits, certificates, Agreements, or other authorizations required regarding the operation of the Concession. Copies of all required permits, certificates, Agreements, or other authorizations will be appropriately displayed within the Premises and forwarded to City upon issuance and each renewal.

ARTICLE VII. PERFORMANCE AND OPERATING STANDARDS

SECTION 7.01 CITY'S RIGHT TO MONITOR PERFORMANCE

- A. **Performance Audits.** It is City's intention Concessionaire's business be conducted in a manner so as to meet the needs of DEN patrons and employees and in a manner, that will reflect positively upon the Concessionaire and City. The Concessionaire shall equip, organize, and efficiently manage the Concession to provide First Class goods and services in a clean, attractive, sustainable, and pleasant atmosphere.
- B. City in its sole discretion shall have the right to raise reasonable objections to the condition of the Premises, the quality and quantity of goods and services, the character of the service, the hours of operation, the sustainability practices of Concessionaire, and/or the appearance and performance of service personnel, and to require any such conditions or practices objectionable to City to be remedied by Concessionaire. If requested by Concessionaire, City shall submit its objections in writing and provide Concessionaire an opportunity to reply to the objections. Such reply will be given consideration by City.
- C. City reserves the right to conduct periodic performance audits of the Premises to assure Concessionaire consistently performs all the operational, safety, sustainability, and compliance standards of this Agreement. Concessionaire acknowledges performance audits will be conducted by City, or its representative, and hereby covenants to cooperate with all performance audits.
 - 1. Performance audits may include minimum objective standards in any or all of the areas of (i) quality and quantity of goods and services; (ii) customer service; and (iii) cleanliness and maintenance. If Concessionaire fails to meet minimum standards in any of these areas, City may, at its discretion, collect liquidated damages as set forth in Article VIII.
 - 2. To assure consistent adherence to performance standards throughout the Term, City will use a rolling twelve (12) month cycle in the recording of incidents of failure to meet standards.

3. Repeated violations and deficiencies in performance by Concessionaire may be cause, at City's sole discretion, to terminate this Agreement.

D. **Business and Marketing Plans.** Concessionaire shall, on or before October 1st of each Contract Year of the Term, present a business plan to City, for review and approval. Concessionaire's business plan must contain, at a minimum, the following:

1. Review of prior year's performance including achievement of sales projections, financial results and other goals and objectives; and
2. Updates to Concessionaire's Operators' Handbook, if any; and
3. Establishment of new operational goals and objectives for the forthcoming Contract Year, including identification of sales opportunities; and
4. Identification of employee and labor initiatives to ensure compliance with obligations herein; and
5. Projections of sales, sales per square foot, sales per enplaned passenger and payments to City due under this Agreement for the forthcoming Contract Year; and
6. Any planned expenditures, investment or improvements to Concession Locations, if any;
7. Any anticipated changes or improvements in management of the RMU Program such as marketing efforts, promotional activities, training or service; and

Additionally, Concessionaire shall be required to provide quarterly updates to budget, sub-licensing, marketing and professional goals and guidelines. In addition, the City shall also be entitled to receive, upon request, detailed monthly profit and loss statements.

E. **Remediation Plan.** The Parties agree that the financial Pro Forma, performance standards, and other specific considerations in Concessionaire's Response are material parts of the bargain between the Parties. Concessionaire acknowledges that City relied upon Concessionaire's Response in entering into this Agreement. In the event City determines, based on the performance criteria specified in this Section 7.01, and the annual Business Plan submitted by Concession, a Concession Location performed unsatisfactorily during the prior Contract Year, City will provide written notice to Concessionaire. Within thirty (30) days of receipt of such written notice, Concessionaire shall prepare and submit to City, for its approval, a Remediation Plan, as described below, to improve the performance of the Concession Location.

1. The Remediation Plan shall include, but not be limited to, proposed remedial activities such as staff training, staffing changes, merchandise and service modifications, facility refurbishment and repair, and/or replacement of concept or brand. Upon approval by City, Concessionaire covenants and agrees to implement the approved Remediation Plan and further agrees to submit to City monthly reports on the progress of such implementation. If the approved Remediation Plan includes the replacement of a concept or brand, then City

and Concessionaire will enter into good faith negotiations concerning a concept or brand replacement. If the concept or brand replacement is mutually agreed to, the reimbursement for Unamortized Investment and the Capital Investment required for the concept or brand substitution will be a component of the good faith negotiations.

2. In the event City determines, after six (6) months of implementation of a Remediation Plan, the subject Concession Location is still performing in an unsatisfactory manner, City reserves the right to require Concessionaire to replace the underperforming concept or brand, if not already replaced by the Remediation Plan, at Concessionaire's expense. Within ninety (90) days of receipt of written notice from City requiring a replacement, Concessionaire shall submit to City a proposal for a brand or concept replacement plan. Such replacement plan shall include, but not be limited to, a detailed description of the brand or concept, capital expense required to re-brand, sales projections, and the specific timetable to replace the brand or concept. City, in its sole discretion, reserves the right to approve or deny the proposed replacement plan and require Concessionaire to submit another replacement plan.

SECTION 7.02 QUALITY OF GOODS AND SERVICES

Concessionaire shall ensure that all customers are provided First Class goods and services, and Concessionaire shall keep in stock and have ready for sale at all times of operation, a sufficient supply and variety of goods and services offered for sale at each Concession Location, consistent with the Price List, to meet the demand of customers at DEN.

If City identifies any deficiencies with respect to the operations, including, without limitation, quality, variety, and quantity of goods or services offered, Concessionaire shall be notified in writing by City and shall correct, or cause to be corrected, such problem or problems within seven (7) days, unless City authorizes in writing a longer period. If Concessionaire fails to correct within seven (7) days after written notice is given by City, City may collect liquidated damages as described in VIII.

Concessionaire shall develop and implement creative merchandising techniques to optimize customer satisfaction and Gross Receipts including, without limitation, retail merchandise displays; promotional displays; attractive and durable packaging; and menu boards. Prices for all goods and services shall be displayed and visible to all customers. All retail merchandise and other items sold or kept for sale shall be of high quality and wholesome, and must conform fully with all applicable food and drug laws, ordinances and regulations, as well as DEN's Rules and Regulations and Operating Directives. Concessionaire has printed signage and price lists shall include the appropriate use of descriptive terminology that accurately and truthfully describes the goods and services being offered. City reserves the right to approve all menus and product displays. Concessionaire hereby affirms that City, in its sole discretion, has the absolute right to require that Concessionaire discontinue the sale of any goods and services City deems unsatisfactory, distasteful, or inappropriate for any reason and to require Concessionaire to modify menus, signage, and product displays for any reason. If Concessionaire fails to comply with any such City request within one (1) day after written notice from City, City may collect liquidated damages as described in Article VIII.

All franchise standards applicable to a Concession Location shall be met or exceeded. Copies of the franchise standards and performance audit forms shall be sent to City prior to the first day of business at such Concession Location. Concessionaire shall submit to City copies of all inspections conducted by the franchisor or mystery shopper service hired by the franchisor within ten (10) days of receipt by Concessionaire. Further, every Contract Year during the Term, Concessionaire shall certify all franchise standards applicable to each Concession Location are met or exceeded.

If City approves and accepts Concessionaire's proposal to include a local, regional, or national brand, branded item, or branded concept that Concessionaire is authorized to use at DEN, such brand, term, or concept shall be listed or described in the approved sub-license and referred to in this Agreement as "Concessionaire's Brand(s)." Concessionaire acknowledges and agrees that the use of brands is of critical importance in meeting City's purpose for the RMU program at DEN. Therefore, Concessionaire's Brand(s) is a material part of the consideration for this Agreement and may not be unilaterally discontinued or changed by Concessionaire. Any proposed new brand, term, concept, or change in use shall be submitted to City for written approval prior to implementing such new brand concept or change of use.

SECTION 7.03 PRICING

- A. **Value Pricing.** Concessionaire acknowledges City's objective to provide DEN patrons and employees high quality goods and services at reasonable prices. Accordingly, Concessionaire covenants that all goods and services sold by its Operators shall meet the Value Pricing as follows:
1. For merchandise with a pre-printed price affixed by the manufacturer or distributor, the selling price at DEN shall not exceed the pre-printed price;
 2. For nationally and locally branded Concession Locations that are also represented off-DEN in the Denver-Aurora Statistical Area, the selling price for goods and services at DEN shall not exceed the selling price for the same goods and services at the closest off-DEN establishment of the same brand name by more than ten percent (10%); and
 3. For all non-branded, proprietary, or branded Concession Locations not represented off-DEN in the Denver-Aurora Statistical Area, the selling price for goods and services at DEN shall not exceed the average selling price for similar or equivalent goods (of like size and quality) and services at three Price Benchmark Establishments, as described below, by more than ten percent (10%).
- B. **Price Surveys.** No later than thirty (30) days prior to the opening of a Concession Location and prior to the beginning of each Contract Year, Concessionaire shall, at its own expense, prepare a goods and services price survey that demonstrates, to the satisfaction of City, Concessionaire's compliance with the Value Pricing.
- C. **Price Conformance.** At any time during the Term, City may survey or cause to be surveyed, prices being charged for goods or services offered by Concessionaire's Operators. City shall have the right to monitor and test all goods and services prices

by some shopping service or City personnel. If City concludes, based on the results of the survey, any prices being charged by Concessionaire do not comply with the Value Pricing; City will require Concessionaire to adjust prices to the amounts permitted herein.

Concessionaire will or cause its Operator to, within three (3) days of written notice from City, adjust any prices that City determines, in its sole discretion, to be inconsistent with the Value Pricing. Failure to rectify any pricing discrepancies within the three (3) days shall constitute a material breach by Concessionaire of this Agreement and, in addition to the collection of liquidated damages, as set forth in Article VIII, and all other remedies available to City, City may, in its sole discretion, terminate this Agreement.

SECTION 7.04 SUBLICENSE AGREEMENTS; OPERATORS' OPERATING STANDARDS

- A. Unless approved in writing by City, all Concession Locations are required to be sublicensed. The term of each sublicense shall be month-to-month not to exceed three hundred sixty-five (365) days and/or the Term of this Agreement, whichever is shorter. Sublicense agreements for use of In-line Spaces shall be on a non-exclusive, may be month-to-month, and generally will have a term of less than three hundred sixty-five (365) days to permit an Operator to sell approved seasonal or retail goods from the space.
- B. Operators shall be credit-worthy entrepreneurial retailers with a proven record, experience in serving similar customers, and non-affiliates of this Agreement. Operators shall be selected according to criteria described in Agreement, Concessionaire's Business Plan, and the City's prior written approval.
- C. Prior to entering into any sublicense agreement or any amendment thereto, Concessionaire will submit to the City, the name and qualifications of a proposed Operator and a description of the business terms i.e., term, rates, merchandising, pricing, locations, use, visual presentations. Sublicense agreements may not be executed, modified or terminated without City's approval.
- D. Upon City's written approval of the Operator and the business terms, a final sublicense agreement shall be sent to City for the CEO's written consent, provided the Operator and its brand, concept and merchandise are consistent with DEN's needs, this Agreement and Concessionaire's Business Plan. Sublicense agreements shall be executed on standard forms approved by the City, and may not be executed, modified or terminated without City's prior written approval as required herein.
- E. Operators may only display, market, and sell those items specified in their sublicense agreements.
- F. Concessionaire shall include the relevant provisions of this Agreement in every sublicense agreement and at a minimum, ensure its Operators comply with the operating standards described below:
 - 1. Operators are required to prepare merchandise lists indicating the merchandise to be offered for sale and prices to be charged for each item. Merchandise lists and pricing shall be subject to City approval. Operators shall display and sell merchandise only in accordance with approved merchandise and pricing lists.

Operators shall not in any manner misrepresent to customers the quality, grade, point of origin, or the size, weight or portion of merchandise sold, or utilize false or deceptive merchandising terms or advertising. City may request additional merchandise and pricing lists at any time for its approval.

2. Pricing is to be clearly visible and legible to customers prior to their making a purchase and Operators shall charge only prices consistent with City's Value Pricing policy for their merchandise.
3. Processing of customer purchases returns and exchanges shall be prompt and Operators shall prominently display a uniform return and exchange policy or refund policy within the Concession Location including a provision that all returns made within thirty (30) days with a valid receipt, must be replaced, exchanged or refunded at the customer's option.
4. Operators must provide an Owner/Operator, a general manager or an employee with access to one or both with authority to make all decisions necessary in the day-to-day operations of the Concession Location including, without limitation, decisions regarding customer complaints or concerns, merchandise quality, price, and employee conduct.
5. Operators are required to employ sufficient personnel to meet needs or demands of patrons during all required hours of operation including, but not limited to, general maintenance of the Concession Location. Operators shall recruit, properly train, supervise, direct and deploy the number of qualified, trained and courteous employees necessary to provide First Class customer service. All employees shall be informative and helpful to the public.
6. All employees shall be attired appropriately and professionally in clean identifiable dress. All employees always must properly display the official Airport identification badge and Concessionaire's identification name tag. Operators' identification name tags shall clearly display the name of the Operator.
7. No eating or drinking is permitted at a Concession Location. The cash wrap stand is to be utilized as a place of doing business, i.e., for such items as a cash register, telephone and credit card machine. No personal belongings, trashcans, merchandise, bags, etc. are permitted to be displayed on the cash wrap stand, on the chair or footstool or on the floor. No tables (whether skirted or not) shall be used as part of a Concession Location. The Concession Location canopy and all other Concession Location surfaces must be kept clean and neat in appearance always. Concession Location lighting, including the extended lighting armatures must be kept in good repair. There shall be no holiday or seasonal decorations placed on any Concession Location without the Concessionaire's and City's prior written approval.
8. Operators' employees and agents shall not engage in "high pressure" sales tactics (such as "hawking" or "haggling") or unfair or deceptive trade practices in the operation of the concession. Operators are strictly prohibited from engaging in all activities outside Concession Locations for the recruitment or solicitation of business.

9. Operators shall not conduct a public or private auction, fire sale, going out of business, bankruptcy or similar types of sales in or from any Concession Locations, unless otherwise approved by Concessionaire and City. Concession Locations shall be used only in a dignified and ethical manner, consistent with the general high standards of specialty retail operations at DEN.
10. Operators are required to operate continuously and keep Concession Locations open for business to the public for the Store Hours, seven days a week, unless otherwise agreed to by City in writing. Late openings and early closings without the prior written approval of Concessionaire may be considered violations subject to certain remedies set forth in the sublicense agreement. Operators are required to use their best efforts to respond all emergency and/or flight diversion situations requiring their Concession Location to open or remain open before or beyond these minimum hours.
11. Operators shall be required to (i) establish and maintain a cost accounting system of bookkeeping, in accordance with Generally Accepted Accounting Principles, to keep true and complete records and accounts of all Gross Receipts and business transacted at Concession Locations; (ii) preserve such record for at least three (3) years after the expiration of their sublicense agreement; (ii) acknowledge City and any authorized representatives shall have access to any books, documents, papers and records of the Operators, which are directly pertinent to their sublicense agreements, regardless of any claim of confidentiality to such records, and must be made available upon written request for the purpose of examination, excerpts, and transcriptions.

City hereby explicitly consents to all existing Sublicenses for all existing Concession Locations listed on Exhibit A and A-1 upon the Effective Date. Notwithstanding the foregoing, for new Concession Locations in the Jeppesen Terminal, City authorizes Concessionaire to operate such Concession Locations.

SECTION 7.05 DELIVERY OF GOODS

- A. Concessionaire shall make all deliveries of money, coin, supplies, goods, products, and food and beverage items in such manner as specified by DEN's Rules and Regulations and at such times and locations as City may reasonably approve or require. Emergency deliveries may be made at other times subject to prior arrangements with City.
- B. **Central Receiving and Distribution.** City may implement a Central Receiving and Distribution Center (hereinafter referred to as "CRDC") and may contract, at its discretion, with a third party to operate the CRDC and provide distribution and delivery services to DEN (hereinafter referred to as "Logistics Manager"). When established, Concessionaire agrees to use, at its own cost and expense, the CRDC and have all deliveries made to the CRDC, except where delivery to a third party is prohibited by law or as otherwise approved in writing by City. Concessionaire agrees to pay Concessionaire's share of the costs of the operation of the CRDC and said distribution and delivery services, as determined by City.

Concessionaire acknowledges that City will not be responsible for, and will have no liability related to the operation of (or the failure to operate), the CRDC or related

distribution and delivery services. Concessionaire waives any and all claims against City for operation (or failure to operate) of the CRDV including, but not limited to, lost profits, consequential damages or any other losses or damages whatsoever.

Concessionaire acknowledges the Logistics Manager may establish rules and procedures regarding the operations of the CRDC and the distribution and delivery services to DEN Concourses including, but not limited to, operating hours of CRDC, scheduling and acceptance of Concessionaire's deliveries to the CRDC, scheduling and place of deliveries to DEN Concourses, and transportation of goods and related equipment such as pallets, storage bins, and racks among the Airside Concourses, Terminals, and CRDC. CRDC rules and procedures will be stated in the Concessions Handbook and may be modified from time to time in accordance with this Agreement. Concessionaire agrees to conform to said CRDC rules and procedures.

- C. **Transporting Goods.** The Logistics Manager will make deliveries to Concession Locations and Concessionaire's Support Spaces as stated in the Concessions Handbook. Concessionaire shall transport inventory among Concession Locations and Storage Spaces in the same building at such times and by such routes stated in the Concessions Handbook. Concessionaire shall make every effort to avoid using the Common Areas for large quantity deliveries during peak periods. Concessionaire shall be responsible for the return of all pallets, storage containers, and other equipment belonging to its suppliers to locations designated for return by the Logistics Manager. Concessionaire shall use City approved sealed, leak-proof, and equipped carts or conveyances, with pneumatic wheels suitable for operating on carpet or other flooring without damage thereto, for transporting good.

SECTION 7.06 PERSONNEL

- A. **Staffing.** Concessionaire shall hire, train, supervise, and deploy enough Personnel to meet Concessionaire's obligations herein.
1. Concessionaire shall closely monitor Personnel to ensure First Class service to customers in compliance with this Agreement. The satisfactory performance of the obligation hereunder shall be determined in the sole discretion of City. Concessionaire shall take all proper steps to discipline Personnel who participate in acts of misconduct on or about the Premises.
- B. **General Manager.** Concessionaire shall appoint a General Manager to oversee and manage the performance of the RMU Program, and represent and act on behalf of Concessionaire. The General Manager shall have full authority to make day-to-day business decisions on behalf of Concessionaire with respect to the RMU Program including, but not limited to, authority to control the conduct and demeanor of Concessionaire's Personnel. The General Manager shall represent the Concessionaire in dealings with City and shall coordinate all concession activities with City. The General Manager shall be assigned to an office at or near DEN and shall be available during City's regular business hours. The General Manager shall designate a qualified, competent, and experienced subordinate to be in charge and available during his/her absence during Concessionaire's regular operating hours.
- C. **Customer Service Training.** If City establishes a customer service-training program for the employees of all concessionaires at DEN, City, after first giving reasonable

notice to Concessionaire, will require all of Concessionaire's and its Operator's employees to complete the training program.

1. Concessionaire's employees as of the date of implementation of City's customer service training program must complete the training within six (6) months of the date of notice from City.
2. Concessionaire's employees hired after the date of implementation of City's customer service training program must complete the training within one (1) month of beginning employment.

If established, City customer service training program will be limited to no more than two (2) full working days per employee per year, will be conducted at DEN, and will be evidenced by a Certificate of Completion issued to each employee upon successful completion. City's customer service training program will be offered at no cost to Concessionaire and its Operators; however, Concessionaire and its Operators will be responsible for employees' wages, benefits, and other employment costs incurred during and because of the training.

- D. **Additional Personnel Requirements**. In addition to the Personnel requirements set forth herein, Concessionaire shall ensure that all Personnel engaged in the operation of the RMU Program shall conform to the applicable rules and procedures stated in the Concessions Handbook and other of DEN's Rules and Regulations and Operating Directives.
- E. **City's Right to Object**. City shall have the right to object to the demeanor, conduct, and appearance of any Personnel of Concessionaire. Immediately upon notice of objection by City, Concessionaire shall take all steps necessary to remedy the cause of the objection. If requested by Concessionaire, City shall present its objections in writing and provide Concessionaire the opportunity to reply to the objections and such reply will be given consideration by City.

SECTION 7.07 BADGING AND SECURITY REQUIREMENTS

All of Concessionaire's and its Operators' Personnel who work at DEN must apply for and be issued a proper security identification badge prior to beginning work at DEN. Concessionaire shall be responsible for ensuring Personnel, vendor, and Contractor compliance with all security rules, regulations, and procedures including, but not limited to, those issued by the FAA, TSA, and City. The rules, regulations, and procedures of the FAA, TSA, and City regarding security matters may be modified during the Term and Concessionaire covenants to comply with all modifications. Concessionaire shall pay all costs associated with obtaining the required security identification badges and security clearances for its Personnel, including, but not limited to, the costs of training and badging as established by City.

City will collect liquidated damages, as set forth in Article VIII, from Concessionaire for each security identification badge that is lost, stolen, unaccounted for, or not returned to City at the time of security identification badge expiration, employee termination, termination of this Agreement, or upon written request by City. Payment of liquidated damages will be due within fifteen (15) days from the date of invoice.

If any of Concessionaire's Personnel is terminated or leaves Concessionaire's employment, City must be notified immediately, and the security identification badge must be returned to City promptly.

Concessionaire's Personnel who are issued security identification badges shall only utilize such badges and access privileges regarding the operation of Concessionaire's business as outlined herein. Concessionaire's Personnel shall be informed of this requirement in writing from Concessionaire. Concessionaire's Personnel shall also be informed in writing from Concessionaire of the penalties for violating this requirement, which includes, but is not limited to, termination of a person's employment.

Concessionaire shall submit its written operating and security procedures for its operations hereunder to City for review at least thirty (30) days prior to the Package Completion Date, or if Concessionaire opens any Concessions Location for business earlier than the Package Completion Date, at least seven (7) days prior to opening. Concessionaire shall revise such operating and security procedures as necessary to obtain City's approval.

SECTION 7.08 EMPLOYEE PARKING

Nothing in this Agreement shall be deemed to require City to provide parking to Concessionaire's Personnel. City may provide parking accommodations to Concessionaire's Personnel in common with employees of other concessionaires and users of DEN, subject to the payment of reasonable charges therefor as may be established from time to time by City. In such event, Concessionaire's Personnel shall be required to park within the designated areas.

SECTION 7.09 POINT OF SALE TERMINALS [RESERVED]

SECTION 7.10 CASH HANDLING AND CREDIT CARD REQUIREMENTS

Concessionaire shall always observe cash-handling and record-handling procedures in accordance with sound accounting and financial control practices and as necessary to provide timely and accurate reports to City. City may at any time during the Term request a copy of these procedures. City shall have the right to monitor and test all of Concessionaire's procedures and controls and require Concessionaire to make changes to its procedures.

Concessionaire shall comply with the most recent Payment Card Industry Data Security Standard requirements. Concessionaire's Independent CPA must yearly certify Concessionaire's operations are compliant with Payment Card Industry Data Security Standards. City reserves the right to receive reports required by the Payment Card Industry Security Standards Council.

SECTION 7.11 ADVERTISED SALES OR PROMOTIONS

Concessionaire may not advertise in DEN, except with City's advertising contractor who sells advertising at DEN. Permission will not be granted to Concessionaire for any other advertising at DEN. Concessionaire shall not use nor permit Premises to be used as a medium for third party paid advertising, including sponsorships or any advertising material, sign, fixture, or equipment, whether paid for in-kind, by cash, or by credit.

SECTION 7.12 COMPLAINTS

Concessionaire must respond to all customer complaints, written or oral, referred to Concessionaire by City within 48 hours of notice. A written copy of Concessionaire's Response shall be delivered to City within the 48-hour period.

SECTION 7.13 CONCESSION PROMOTIONS PROGRAM

In addition to other rents, fees, and charges due City under this Agreement, Concessionaire agrees to pay to City, within ten (10) days of the first day of each month during the Term, a Joint Marketing Fee for DEN's Concession Promotions Program. City shall provide or cause to be provided a Joint Marketing Fund to underlying DEN's Concession Promotions Program. Concessionaire shall pay, or cause to be paid, the Joint Marketing Fee, as reflected in the Summary of Contract Provisions, for the Joint Marketing Fund for every month during the Term. City shall not be obligated to expend more for promotions and advertising than is collected from Concessionaires. Any promotional services and personnel so provided shall be under the exclusive control and supervision of City. City reserves the right at any time to terminate the Joint Marketing Fund and thereafter, continue to provide marketing and promotional services until the balances remaining in the fund are exhausted.

SECTION 7.14 OPERATING PROCEDURES AND STANDARDS

- A. **City Requirements.** The management of the RMU Program, sublicensing by Concessionaire, and use of the Premises by its Operators shall be conditioned upon and subject to DEN's Rules and Regulations, and Operational Directives as are now or may hereafter be prescribed by City through the lawful exercise of its powers. Concessionaire covenants to ensure Concession Locations are operated in accordance with the Concessions Handbook.
- B. **Health and Safety Standards.** Concessionaire shall its Operators comply with all health and sanitary regulations adopted by City, State of Colorado, and any other governmental authority with jurisdiction. Concessionaire shall give access for inspection purposes to any duly authorized representatives of all such governing bodies. Concessionaire shall provide City with copies of all inspection reports by other health and sanitary governing bodies within 48 hours of receipt. This paragraph does not require Concessionaire to waive any applicable attorney-client or attorney work product privileges.
- C. **Sustainability.** City is committed to incorporating sustainable practices into all aspects of DEN operations. Concessionaire shall ensure its Operators operate Concession Locations in a manner consistent with DEN's Sustainability Policy, and participate in the sustainability programs outlined in the Concessions Handbook at its own cost and expense.
- D. **Additional Compliance.** Concessionaire shall comply with all applicable governmental laws, ordinances, regulations, codes, and permits in the conduct of its operations under this Agreement including, but not limited to, TSA regulations regarding products or procedures, including as such governmental laws, ordinances, regulations, codes, and permits may be amended..

- E. **Concessionaire's Standards.** Concessionaire shall submit to City a copy of its standards, plans, and manuals for customer service and operation, at least thirty (30) days prior to Commencement Date, and as updated during the Term. Concessionaire shall ensure continuous adherence to Concessionaire's own standards, in addition to other standards as set forth herein.

SECTION 7.15 CLEANING AND ROUTINE MAINTENANCE

- A. **General Obligations.** Concessionaire shall ensure all Concession Locations are maintained and operated in a First Class manner and that the Premises is kept in a safe, clean, orderly and inviting condition at all times in a manner satisfactory to City. To comply with these requirements, Concessionaire must regularly review or cause to be reviewed the Premises and its operations at DEN.
- B. **Preventive and Routine Cleaning and Maintenance Program.** Concessionaire shall be responsible for preventive and routine cleaning and maintenance of all assets within the Premises, whether built by Concessionaire or City, from the commencement date through the expiration of the Term. No less than thirty (30) days prior to the opening of any portion of the Premises, Concessionaire shall establish a preventive and routine cleaning and maintenance program for the Premises including, but not limited to, the list of items below. The provisions of the program shall be subject to the initial written approval of and periodic review by City. Upon request by City, Concessionaire shall provide City a written schedule of Concessionaire's cleaning and maintenance program.
1. **Janitorial Service.** Concessionaire, at its own cost and expense, shall provide all janitorial services for the Premises in accordance with the Concessions Handbook. Concessionaire shall ensure that the Premises and the Common Areas adjacent to the Premises are kept clean and free from all rubbish and refuse.
 2. **Pest Control.** Concessionaire, at its own cost and expense, is responsible for pest control within the Premises. Concessionaire will contract with a professional pest control service to provide pest control services on a regular basis and at any other times as needed. Concessionaire will coordinate its pest control service with third parties as directed by City. Upon request, Concessionaire must furnish City a copy of its pest control contract, monthly service schedule, and monthly service reports. Concessionaire agrees to coordinate with City and other concessionaires to provide the most effective pest control services for DEN.
 - i. City, in its sole discretion, may elect to provide or contract for pest control services on Concessionaire's behalf. If City elects to provide or contract for pest control services on Concessionaire's behalf, Concessionaire covenants to pay its share of the cost of such services, in an amount determined by City. In such cases, Concessionaire must cooperate with City's chosen pest control Contractor.
 3. **Plumbing.** Concessionaire, at its own cost and expense, shall provide routine plumbing services for the Premises in accordance with the Concessions

Handbook. Concessionaire shall ensure that activities within the Premises do not damage or harm the central water, plumbing, and sewer infrastructure at DEN. Concessionaire shall properly maintain all water hook-ups within the Premises. Concessionaire must furnish City a copy of its plumbing contract, monthly service schedule, and monthly service reports, as directed by City. Concessionaire agrees to coordinate with City and other concessionaires to provide the most effective plumbing services for DEN. Concessionaire shall coordinate and comply with the cleaning and routine maintenance recommendations of City.

- i. City, in its sole discretion, may elect to provide or contract for plumbing services on Concessionaire's behalf. If City elects to provide or contract for plumbing services on Concessionaire's behalf, Concessionaire covenants to pay its share of the cost of such services, in an amount determined by City. In such cases, Concessionaire must cooperate with City's chosen plumbing Contractor.
4. Electricity. Concessionaire, at its own cost and expense, shall install and maintain an electric meter and a gas meter for each Concessions Location in accordance with the Concessions Handbook. Concessionaire, at its own cost and expense, shall install and maintain all power circuits and connections required for equipment and mechanical systems used within the Premises. Concessionaire shall ensure that activities within the Premises do not damage or harm the central Electricity or Natural Gas infrastructure at DEN. Concessionaire shall coordinate and comply with the cleaning and routine maintenance recommendations of City.
5. HVAC. Concessionaire, at its own cost and expense, shall install and maintain any ductwork and other HVAC connections for the Premises in accordance with the Concessions Handbook. Concessionaire agrees to maintain the ductwork and other connections within the Premises. Concessionaire shall ensure that activities within the Premises do not damage or harm the central HVAC infrastructure at DEN. Concessionaire shall coordinate and comply with the cleaning and routine maintenance recommendations of City.
6. Grease Removal Systems. If Concessionaire installs grease removal systems, in addition to those provided and maintained by City and used only by Concessionaire, Concessionaire shall, at its own expense, regularly, but not less than four (4) times per year, check and clean its grease removal systems, whether located within the Premises or elsewhere in DEN. Concessionaire agrees to maintain all installed grease removal systems within the Premises. Concessionaire shall ensure that activities within the Premises do not damage or harm the central grease removal infrastructure at DEN. Concessionaire shall coordinate and comply with the cleaning and routine maintenance recommendations of City.
7. Trash, Waste, and Refuse. Concessionaire, at its own cost and expense, shall comply with any DEN-wide waste diversion programs, including but not limited to recycling, composting, or any future programs for removal and disposal of all trash, waste and other refuse caused as a result of performance of this

Agreement. Concessionaire shall use designated locations, containers, and transport routes for trash, waste, and refuse removal and disposal as set forth in the Concessions Handbook. Concessionaire shall ensure that storage, transportation, and disposal of all trash, wastes, and other refuse does not damage or harm any structures or infrastructure at DEN.

8. **Lighting**. Concessionaire, at its own costs and expense, shall install and maintain all lighting fixtures and wiring for general illumination of the Premises in accordance with the Concessions Handbook. Concessionaire agrees to maintain the lighting fixtures wiring used for general illumination within the Premises. Concessionaire shall ensure that activities within the Premises do not damage or harm the central Electricity infrastructure at DEN. Concessionaire shall coordinate and comply with the cleaning and routine maintenance recommendations of City.

C. **Routine Refurbishment**. On or about the commencement of each Contract Year, representatives of City and Concessionaire shall tour the Premises and jointly agree upon what, if any, routine refurbishment is required to maintain the Premises in First Class condition. Concessionaire shall promptly undertake such refurbishment at its sole cost and expense. If Concessionaire and City cannot jointly agree upon the type and extent of routine refurbishment, City may determine, in its sole discretion, the routine refurbishment required for that Contract Year. For purposes of this Section 7.15 only, "routine refurbishment" shall mean the routine repainting or redecoration of public areas within the Premises including, but not limited to, the replacement or repair of worn carpet, tile, furniture, furnishings, fixtures, or finishes.

D. **Maintenance Personnel and Program**. Concessionaire covenants to employ or contract with sufficient personnel to provide necessary equipment to keep the Premises and all furniture, furnishings, fixtures, and equipment clean, neat, safe, sanitary, and in good working order and condition at all times pursuant to the maintenance requirements of this Agreement.

E. **City Sole Judge of Maintenance**. City shall be the sole and absolute judge of the quality of Concessionaire's maintenance of the Premises. City or its representative may at any time, without notice, enter the Premises to determine if maintenance satisfactory to City is being performed. Performance by Concessionaire of maintenance pursuant to a written maintenance plan previously approved by City shall be conclusive evidence of satisfactory maintenance unless City determines that there is a present danger or safety hazard within the Premises. If City determines that maintenance is not satisfactory, City shall notify Concessionaire in writing. Concessionaire will perform the required maintenance, to City's satisfaction, within fifteen (15) days after receipt of written notice or City or its representative shall have the right to enter upon the Premises and perform the maintenance. However, where unsatisfactory maintenance threatens the safety, health, or welfare of the traveling public and/or DEN's facilities, Concessionaire shall immediately perform the maintenance. Where City or its representative performs maintenance, Concessionaire agrees to reimburse City for the cost thereof, plus an administrative fee of fifteen percent (15%) of the maintenance costs without prior quote.

- F. **Emergency Repairs.** In the event of an emergency repair is required, Concessionaire shall notify City of the repair situation as soon as possible. Following such notice, City may inspect the repair work and require alterations if the repair is not satisfactory to City. In the event of an after-hours emergency repair, Concessionaire agrees City shall have the right to enter any affected portion of the Premises and perform the emergency repair. Concessionaire covenants to pay to City the costs associated with any after-hours emergency repair. All emergency repairs requiring shutdown of any DEN system or utility require prior written approval of City. If any emergency repair affects other tenants at DEN, City may, at in its sole discretion, fix the problem immediately and invoice Concessionaire. Concessionaire covenants to pay to City any proportional costs of emergency repairs completed by City, which Concessionaire may have contributed to the cause of the incident.

SECTION 7.16 COMMON MAINTENANCE

City shall be responsible for common maintenance of the following central systems located throughout DEN, except for assets, connections, or systems located within the Premises. Concessionaire waives all claims against City for performance of common maintenance at DEN.

- A. **Electricity Systems.** City will furnish normal and reasonable quantities of electricity and gas to the Premises. Concessionaire covenants to pay to City Concessionaire's share of the costs of such cleaning, maintenance, and repair, in an amount determined by City. City will clean, maintain, and repair, for the benefit of Concessionaire, central Electricity and Natural Gas systems at DEN.
- B. **Grease Traps and Interceptors.** If Concessionaire uses Grease Traps and Interceptors, City will clean, maintain, and repair, for the benefit of Concessionaire, all grease traps, and grease interceptors located along common sewer lines. Concessionaire covenants to pay to City Concessionaire's share of the costs of such cleaning, maintenance, and repair, in an amount determined by City.
- C. **HVAC Systems.** City will furnish normal and reasonable quantities of central air from the central HVAC system at DEN to the Premises and all necessary power and electricity for such central air circulation. City will maintain under normal conditions a temperature adequate for comfortable occupancy according to the season. City will clean, maintain, and repair, for the benefit of Concessionaire, central HVAC infrastructure and systems at DEN Concessionaire covenants to pay to City Concessionaire's share of the costs of such cleaning, maintenance, and repair, in an amount determined by City.
- D. **Life Safety Systems.** City will maintain and repair, for the benefit of Concessionaire, Life Safety systems at DEN. Concessionaire covenants to pay to City Concessionaire's share of the costs of such maintenance and repair, in an amount determined by City.
- E. **Sanitary Sewer System.** City will furnish water from the central water source to the Premises in reasonable quantities; provided that Concessionaire must comply with all water conservation programs in effect or as adopted. City will clean, maintain, and repair, for the benefit of Concessionaire, central water, plumbing, and sewer infrastructure and systems at DEN. Concessionaire covenants to pay to City

Concessionaire's share of the costs of such cleaning, maintenance, and repair, in an amount determined by City.

- F. **Trash, Waste and Refuse**. City reserves the right, if deemed to be in its best interests, to provide trash, waste and other refuse removal, disposal and recycling services. Concessionaire covenants and agrees to participate in any DEN-wide trash, waste, and other refuse removal, disposal, or recycling program for any type of trash, waste, and refuse at its own cost. In the event City elects to provide these services on behalf of Concessionaire, Concessionaire covenants pay its share of the cost of such trash, waste and other refuse removal, disposal and recycling services, in an amount determined by City.
- G. **Exterior Windows and Structures**. City will clean, maintain, and repair, for the benefit of Concessionaire, exterior windows and all structural parts of DEN. City's maintenance shall include exterior glass, walls, and roof, but specifically excludes Premises Improvements and Trade Fixtures. Concessionaire covenants to pay to City Concessionaire's share of the costs of such cleaning, maintenance, and repair, in an amount determined by City.

SECTION 7.17 PAGING, AUDIO, VIDEO SYSTEMS, AND FREQUENCY PROTECTION

If Concessionaire installs, in accordance with the Tenant Work Permit Handbook and with City's approval, any type of radio transceiver or other wireless communications equipment, Concessionaire will provide frequency protection within the aviation air/ground VHF frequency band and the UHF frequency band in accordance with restrictions promulgated by the FAA for the vicinity of FAA Transmitter or Receiver facilities. Frequency protection will also be provided for all other frequency bands operating near Concessionaire's equipment. If frequency interference occurs because of Concessionaire's installation, City reserves the right to shut down Concessionaire's installation until appropriate remedies to the frequency interference are made by Concessionaire. Remedies may include relocation of Concessionaire's equipment to another site. The cost to remedy the frequency interference will be solely at Concessionaire's expense. Concessionaire acknowledges and accepts that any paging or audio systems installed by Concessionaire maybe used by City to announce any notification or emergency at DEN. City shall not be liable to Concessionaire for any use of the paging or audio systems installed by Concessionaire.

SECTION 7.18 SUBMITTALS

City shall have the right at any time to require that reports, plans, and any other submittals required under this Article VII be delivered electronically using technology and procedures designated by City. If City instructs Concessionaire to deliver any submittals required hereunder by computer, e-mail, internet website, or transmission, City shall not be obligated to furnish Concessionaire with the equipment or systems necessary to do so.

SECTION 7.19 PROHIBITED ACTS

Unless approved in writing in advance by City, in its sole discretion, Concessionaire shall not install or permit to be installed coin-operated or other medium vending machines on the Premises. City reserves the exclusive right to install and maintain, through independent

contractors, vending machines at DEN.

Concessionaire will not place excessive loads on the walls, ceilings, and floor or pavement areas of DEN and will repair any area damaged by excessive loading to the satisfaction of City.

Unless approved in writing in advance by City, in its sole discretion, Concessionaire will not permit the active display or operation on the Premises of any display that flies, flashes, or emits a noise or odor.

Unless approved in writing in advance by City, in its sole discretion, Concessionaire will not keep or display any merchandise on or within, or otherwise obstruct, any part of DEN outside of the Premises. Concessionaire shall keep all service corridors, hallways, stairways, doorways, or loading docks leading to and from the Premises free and clear of all obstructions.

Concessionaire will not interfere or permit interference with the use, operation, or maintenance of DEN including, but not limited to, the effectiveness or accessibility of the drainage, sewerage, water, communications, fire protection, utility, electrical, or other systems installed or located from time to time at DEN. Concessionaire will not do or permit to be done anything that may interfere with free access and passage on the Premises or the public areas adjacent thereto, or hinder police, firefighters, or other emergency personnel in the discharge of their duties. Further, Concessionaire shall not do or permit to be done anything that might interfere with the effectiveness or accessibility of elevators or escalators in or adjacent to the Premises, including lines, pipes, wires, conduits, and equipment connected with or appurtenant thereto.

Concessionaire shall not place any additional lock of any kind upon any window or interior or exterior door in the Premises, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefor is maintained on the portion of the Premises were furnished to or otherwise procured by Concessionaire. If any keys furnished to Concessionaire by City are lost, Concessionaire shall pay City, on demand, the cost for replacement thereof.

Concessionaire will not engage in any activity prohibited by DEN's Rules and Regulations and Operating Directives as may be modified during the Term. In the event Concessionaire fails to adhere to DEN's Rules and Regulations and Operating Directives or fails to prevent any other of the prohibited acts set forth in this Section, City may collect liquidated damages as set forth in Article VIII until such prohibited act is ended. Payment of liquidated damages will be due within fifteen (15) days from the date of invoice. Moreover, if the prohibited act is not corrected as directed by City, City or its representative shall have the right to enter upon the Premises and take corrective action, and Concessionaire agrees to promptly reimburse City for any related costs, and an administrative fee equal to fifteen percent (15%) of the corrective action costs.

ARTICLE VIII. FAILURE TO COMPLY WITH PERFORMANCE/OPERATING STANDARDS

- A. **Violations.** Except for circumstances explicitly stated in Section 13.01 below, Concessionaire acknowledges City's objective to provide the public and air travelers with the level and quality of service as described herein. Accordingly, City has established a series of liquidated damages, as set forth in the table below, that it may assess, in its sole discretion, as liquidated damages for various violations of the provisions of this Agreement, the Concessionaire Handbook, the Tenant Work Permit Handbook, and/or DEN's Rules and Regulations. Concessionaire and City agree that the damages set forth herein are reasonable estimates of the significant but difficult to predict harm, and Concessionaire further agrees to pay to City such liquidated damages in accordance with the rates or in the amounts specified herein upon each occurrence of the specified violation or written demand by City. City will, in its sole discretion, determine the classification of each violation as per day or per occurrence. Concessionaire further acknowledges that the liquidated damages are not exclusive remedies and City may pursue other additional remedies as allowed for in this Agreement and/or at law, in City's sole discretion. City's waiver of any payment provided for in this Section shall not be construed as a waiver of the violation or Concessionaire's obligation to remedy the violation.
- B. **Multiple Violations.** Except for violations of requirements regarding construction, health and safety, delivery and vendor access infractions, liquidated damages for which shall accrue and be assessed immediately and without notice upon violation, all other liquidated damages shall accrue immediately and be assessed as follows:
1. For the first and second violation of a requirement during any twelve (12) month rolling year, City will provide notice to Concessionaire to correct the violation within thirty (30) days or other the time specified in the notice. After the time specified by City for cure, liquidated damages shall be assessed until Concessionaire corrects the violation. In the event, the violation is not corrected within thirty (30) days of the time specified by City for cure, then such violation will be treated as a breach of this Agreement entitling City the right to seek any other remedies available under this Agreement including, but not limited to, termination.
 2. For the third and subsequent violations of the same requirement during any twelve (12) month rolling year commencing upon the first notice of violation, the liquidated damage shall be immediately assessed with no grace period.
 3. Further, after two (2) violations of the same requirement within any twelve (12) month rolling year, City reserves the right, in its sole discretion, to deem the repeated violations a material breach of this Agreement and to seek any other remedies available to it under this Agreement including, but not limited to, termination of this Agreement.
- C. **Payment.** Payment of liquidated damages will be due within fifteen (15) days from the date of invoice.

| Liquidated Damages | |
|--|--|
| Types of Infractions | Amounts |
| 1. Operational Deficiencies 2. Pricing Policy Infraction 3. Late Pricing Survey 4. Late Reporting 5. Similar Infractions | \$100 per day until corrected to City's satisfaction. |
| 1. Late Requested Records | \$350 per day until provided to City's satisfaction. |
| 1. Security Infractions 2. Health Code Violations 3. Similar Infractions | \$500 per occurrence. |
| 1. Late Construction | \$1000 per day until Concession Location actually open for business. |

The Parties acknowledge and agree although Concessionaire remains responsible for violations committed by its Operators, such violations shall not count against Concessionaire's rolling twelve (12) month count. If any or all of the provisions of this Article VIII are found to be unenforceable, any affected violation shall then be immediately covered by Article XIII, and City shall have a right to all of the remedies provided in Article XIII.

ARTICLE IX. FEDERAL AID REQUIREMENTS

SECTION 9.01 NON-DISCRIMINATION

Concessionaire covenants to comply with pertinent statutes, Executive Orders, and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability, be precluded from participating in any activity conducted with or benefiting from Federal assistance. This provision binds Concessionaire and sub tier contractors from the bid solicitation period through the completion of the Agreement. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

Concessionaire covenants it will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are attached hereto as Appendix E and herein incorporated by reference and made a part of this Agreement.

Concessionaire covenants, regarding the work performed under this Agreement, it will not discriminate on the grounds of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Concessionaire covenants it will not participate directly or indirectly in the discrimination prohibited by any Federal Acts and or Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

In all solicitations, either by competitive bidding, or negotiation made by Concessionaire for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Concessionaire of the Contractor's obligations under this Agreement and the Federal Acts and Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

Concessionaire covenants it will provide all information and reports required by the Federal Acts, Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by City or the FAA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of Concessionaire is in the exclusive possession of another who fails or refuses to furnish the information, Concessionaire will so certify to City or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.

In the event of Concessionaire's noncompliance with the non-discrimination provisions of this Agreement, City will impose such sanctions as it or the FAA may determine to be appropriate including, but not limited to:

- a. Withholding payments to Concessionaire under this Agreement until the Concessionaire complies; and/or
- b. Cancelling, terminating, or suspending this Agreement, in whole or in part, and re-enter the Premises as if this Agreement had never been made or issued.

This provision will not be effective until the procedures of 49 CFR Part 21 are followed and completed, including exercise or expiration of appeal rights.

Concessionaire covenants it will include the provisions of this section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Federal Acts, Regulations and directives issued pursuant thereto. Concessionaire covenants it will act with respect to any subcontract or procurement as City or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Concessionaire becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Concessionaire may request City to enter any litigation to protect the interests of City. In addition, Concessionaire may request the United States to enter the litigation to protect the interests of the United States.

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

SECTION 9.02 CITY'S ACDBE POLICY

As a condition of eligibility for financial assistance from the FAA, City through its Division of Small Business Opportunity ("DSBO") developed and implemented an ACDBE Policy and Program for DEN. The ACDBE Program was developed and implemented in accordance with DOT's Final Rule 49 CFR Part 23.

City's Director of DSBO has been delegated as the ACDBE Liaison Officer for DEN. In that capacity, the Director of DSBO is responsible for compliance with all aspects of the ACDBE program. The Director of DSBO has established ACDBE goals for DEN and may also establish ACDBE concession specific goals as a percentage of annual gross receipts for this Agreement. The applicable concession specific ACDBE goal, if any, is stated in the Summary of Contract Provisions of this Agreement. The stated goal was included in a competitive solicitation process in which Concessionaire was recommended to operate in the Premises. During that process, Concessionaire submitted its required **Exhibit G** to meet the ACDBE goal. DSBO found the required **Exhibit G** to be responsive and thus, required **Exhibit G** is attached to this Agreement. During the Term of this Agreement, Concessionaire agrees that it shall in good faith make every effort to meet the stated ACDBE goal.

To carry out its ACDBE responsibilities as they are described in this Agreement and in the Required Form C, Concessionaire agrees to assign this responsibility to a high-level company official accountable directly to Concessionaire's chief executive officer. Concessionaire acknowledges if its actions or failure to act violates its ACDBE responsibilities under this Agreement or the ACDBE regulations of the DOT as they may be adopted or amended from time to time, such actions shall constitute a material breach by Concessionaire of this Agreement and, in addition to all other remedies available to City, City may, in its sole discretion, terminate this Agreement.

SECTION 9.03 ACDBE NON-DISCRIMINATION

- A. Concessionaire and any subcontractor of Concessionaire will not discriminate based on race, color, national origin, or sex in performance of this Agreement. Concessionaire will carry out applicable requirements of 49 CFR Part 23 and 26 in the award and administration of agreements. Failure by Concessionaire to carry out these requirements is a material breach of this Agreement, in addition to all other remedies available to City, City may, in its sole discretion, terminate this Agreement.
- B. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 23 and 26. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management Contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23 and 26.

- C. Concessionaire agrees to include the statements in paragraphs (A) and (B) above in any subsequent concessions agreement or Contracts covered by 49 CFR Part 23 and 26 that it enters and cause those businesses to include the statements in further agreements.

SECTION 9.04 ACDBE PARTICIPATION AND COMPLIANCE

- A. **ACDBE Goal**. Concessionaire agrees that it will provide for a level of ACDBE participation in this Agreement equal to or greater than **thirty percent (30%)** of the total annual Gross Receipts, or clearly demonstrate in a manner acceptable to City its good faith efforts to do so. Concessionaire will Contract with those ACDBEs as identified in **Exhibit G** for each ACDBE presented with Concessionaire's Response and approved by City, or such other ACDBEs certified with City's DSBO as may be approved by City. Concessionaire is required to make good faith efforts to explore all available options to meet the goal to the maximum extent practicable through direct ownership arrangements with ACDBEs.

Concessionaire shall not take any action during the term of this Agreement that may have a materially negative impact upon the Concessionaire's ability to meet its stated ACDBE goal.

- B. **ACDBE Termination and Substitution**. Concessionaire will not terminate an ACDBE for convenience without City's prior written consent. If an ACDBE is terminated by Concessionaire with City's consent or, if an ACDBE fails to complete its work on this Agreement for any reason, Concessionaire must make good faith efforts, in accordance with the requirements of 49 CFR Part 23.25(e) (1) (iii) and (iv), to find another ACDBE to substitute for the original ACDBE to provide the same amount of ACDBE participation. Concessionaire shall forthwith submit to DSBO and to the CEO a modified ACDBE Good Faith Effort together with a written request for review and approval, setting forth the circumstances in sufficient detail and with appropriate documentation to explain the necessity for the change. In every case, Concessionaire shall substitute a DSBO certified ACDBE, and if it cannot, then Concessionaire shall be required to document that it made good faith efforts to do so.
- C. **Reporting Requirements**. No later than ten (10) days after the end of each calendar month during the Term, Concessionaire will submit to DSBO, in DSBO's online system or on DSBO's monthly ACDBE Utilization Report form, a report of Concessionaire's total Gross Receipts during the month and the total dollar value of Gross Receipts earned by each ACDBE under this Agreement or the total dollar value of goods and services purchased or leased from each ACDBE during the month, in each case calculated in accordance with the requirements of 49 CFR Part 23. If any reported ACDBE participation is from the purchase and/or lease of goods and services, Concessionaire must submit to DSBO, on DSBO's monthly ACDBE Utilization Report form, a report of the total dollar value of goods and services procured by the Concessionaire from ACDBE and non-ACDBE (non-minority/woman- owned) firms. Whenever a Joint Venture is used to meet ACDBE goals, Concessionaire shall submit to DSBO an annual financial statement for the preceding year indicating compensation, profit sharing, capital contributions of ACDBE partners, or any other financial information as requested by DSBO relevant to determining ACDBE compliance. Concessionaire shall also disclose annually the ACDBE partner's management

involvement and its role in decision making. The annual financial statement shall be on a form satisfactory to DSBO and delivered to DSBO no later than February 28th of the following year. Concessionaire further agrees to submit any other report(s) or information that City is required by law or regulation to obtain from Concessionaire, or which the CEO may request relating to Concessionaire's operations.

- D. **Monitoring**. DSBO will monitor the compliance and good faith efforts of Concessionaire in meeting the requirements of this Article. Concessionaire covenants to grant City and DSBO access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with this Article, including, but not limited to, records, records of expenditures, contracts between Concessionaire and the ACDBE participants, and other records pertaining to the ACDBE participation plan, which Concessionaire will maintain for a minimum of three (3) years following the termination of this Agreement. Concessionaire covenants to grant City and DSBO access to each Concession Location under this agreement for purposes of DSBO monitoring. The extent of ACDBE participation will be reviewed prior to the exercise of any renewal, extension or material amendment of this Agreement to consider whether an adjustment in the ACDBE requirement is warranted. Without limiting the requirements of this Agreement, City reserves the right to review and approve all sub-leases or subcontracts utilized by Concessionaire for the achievement of these goals.
- E. **Prompt Payment**. Concessionaire agrees to pay each subcontractor under this Agreement for satisfactory performance of its contract no later than ten (10) calendar days from the receipt of each invoice and acceptance of work or services. Concessionaire agrees further to release retainage payments to each subcontractor within ten (10) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of City. This clause applies to both MWBE/SBE and non-MWBE/SBE subcontractors.
- F. **Other Requirements**. Concessionaire agrees to comply with Federal, State, and Local Disadvantage Business Programs including as set forth in **Exhibit G**. Concessionaire's failure to comply with Federal, State, and Local Disadvantage Business Programs shall constitute a material breach by Concessionaire of this Agreement and, in addition all other remedies available to City, City may, in its sole discretion, terminate this Agreement.
- G. **Non-Compliance**. In the event of Concessionaire's non-compliance with the ACDBE Program or failure to meet the ACDBE goal set forth in Section 9.03(A), or to demonstrate a good faith effort to do so, City may, in addition to pursuing any other available legal remedy, terminate, suspend or cancel this Agreement in whole or in part; and/or suspend or debar Concessionaire from eligibility to contract with City in the future or to receive bid packages or request for proposal packages or other solicitations, unless Concessionaire demonstrates, within a reasonable time as determined by City, its compliance with the terms of the ACDBE Program or this Article or its good faith efforts to comply.

SECTION 9.05 FAIR LABOR STANDARDS ACT

This Agreement incorporates by reference the provisions of 29 C.F.R. Part 201, the Federal Fair Labor Standards Act (“FLSA”), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. Concessionaire agrees to incorporate by reference the provisions of FLSA in all contracts and subcontracts resulting from this Agreement. Concessionaire has full responsibility to monitor compliance to the referenced regulation. Concessionaire must address any claims or disputes arising from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

SECTION 9.06 OCCUPATIONAL SAFETY AND HEALTH ACT

This Agreement incorporates by reference the requirements of 29 C.F.R. Part 1910 with the same force and effect as if given in full text. Concessionaire must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Concessionaire retains full responsibility to monitor its compliance and any subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 C.F.R. Part 1910). Concessionaire must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

ARTICLE X. CONSTRUCTION AND CAPITAL INVESTMENT

SECTION 10.01 CONSTRUCTION BY CONCESSIONAIRE

Concessionaire shall not make any improvements or modifications, do any construction work on Concession Locations, or alter, modify, or make additions, improvements, replacements or repairs, except emergency repairs, to any structure now existing or built without prior written approval of City. Concessionaire shall not install any fixtures, other than Trade Fixtures, without the prior written approval of City. In the event any construction, improvement, alteration, modification, addition, repair, excluding emergency repairs, or replacement is made without City approval, or done in a manner other than as approved, City may, at its discretion, (i) terminate this Agreement in accordance with the provisions herein; or (ii) require Concessionaire to remove the same; or (iii) require Concessionaire to change the same to the satisfaction of City. In case of any failure on the part of Concessionaire to comply, City may, in addition to any other remedies available to it at law or in equity, effect the removal or change referenced above in this Section and Concessionaire shall pay the cost thereof to City plus fifteen percent (15%) of the costs for administration.

SECTION 10.02 DESIGN AND CONSTRUCTION STANDARDS

In its design and construction work at DEN, Concessionaire will fully comply with the standards and development guidelines identified in the Tenant Work Permit Handbook. City reserves the right to amend Tenant Work Permit Handbook during the Term. Concessionaire covenants to comply with Tenant Work Permit Handbook in effect as of the date of any construction it undertakes.

SECTION 10.03 INITIAL CAPITAL INVESTMENT

As a valuable consideration for City entering into this Agreement, but not as a payment of compensation or a form of consideration for the right to occupy space at DEN, but rather to relieve City from making expenditures for Concession Locations managed by Concessionaire and occupied by its Operators for the Term of this Agreement, Concessionaire's Capital Investment expended in the initial construction, furnishing, and equipping of the Concession Locations shall not be less than the Minimum Capital Investment set forth in the Summary of Contract Provisions. If the actual Capital Investment, as certified by the Concessionaire, is less than the Minimum Capital Investment, Concessionaire agrees to pay to City, within thirty (30) days of such determination, the difference between the actual Capital Investment and the Minimum Capital Investment. However, if the actual Capital Investment, as certified by Concessionaire, is less than the Minimum Capital Investment and Concessionaire delivers to City the initial construction, furnishings and equipment of Concession Locations, as reflected in the Approved Project, City agrees to waive its right to the difference between the actual Capital Investment and Minimum Capital Investment. Any amounts paid to City because of this provision shall not be deemed a Capital Investment for any purpose under this Agreement nor shall it be deemed payment of any compensation or other fees due under this Agreement.

SECTION 10.04 DEVELOPMENT SCHEDULE

No later than seven (7) days after the Effective Date, or at such later date as City may designate, Concessionaire must submit to City, for its approval, a proposed Development Schedule that sets forth for the following for each new Concession Location within the Great Hall:

1. The anticipated date(s) of design submittals and reviews for each new Concession Location.
2. The anticipated Shell Space Turnover Date(s) for each new Concession Location.
3. The anticipated date of Substantial Completion of each Approved Project.
4. The anticipated Required Opening Date(s) for each Concession Location.

Upon approval by City, the Development Schedule will be attached hereto as **Exhibit D**, Development Schedule, and will be confirmed by letter executed by the CEO, without need for formal amendment to this Agreement.

If for any reason City does not deliver possession of a Concession Location to Concessionaire on or after the approved Shell Space Turnover Date, City shall not be subject to any liability therefor. Such failure to deliver possession of a Concessions Location by the time provided in the Development Schedule will not give rise to any claim for damages by Concessionaire against City or against City's Contractor; nor shall such failure affect the validity of this Agreement or Concessionaire's obligations hereunder. Additionally, the Required Opening Date(s) and expected Package Completion Date, as stated in the Development Schedule, shall be adjusted as appropriate, in City's sole discretion.

SECTION 10.05 SUBMITTAL AND APPROVAL OF PLANS

- A. **Submittal of Plans.** Prior to Concessionaire's commencement of any construction activities on the Premises at any time during the Term, Concessionaire shall submit plans and specifications that conform to all the requirements of Tenant Work Permit Handbook to City for review and approval. No construction work shall commence until City has approved the plans and specifications and has issued a Notice to Proceed.

Concessionaire shall submit plans and specifications, in the form and number identified in Tenant Work Permit Handbook, for each of the Concession Locations and Support Spaces in accordance with the Development Schedule. City will review and respond to submittals of plans and specifications within ten (10) days or provide notice to Concessionaire that the review time has been extended. In the event of disapproval by City of any portion of any submittal of plans and specifications, Concessionaire shall promptly make modifications and revisions and re-submit for approval by City.

- B. **Disclaimer of Compliance with Laws or Codes.** The approval by City of any plans and specifications refers to the conformity of such plans and specifications to City standards. Approval of any plans and specifications by City does not constitute its representation or warranty as to their conformity with applicable laws, statutes, codes, or permits and responsibility therefore at all times remains with Concessionaire.
- C. **Approvals Extend to Architectural and Aesthetic Matters.** Required approval of City will extend to and include architectural and aesthetic matters. City reserves the right to reject any designs submitted by Concessionaire and to require Concessionaire, at Concessionaire's expense, to make modifications and revisions and to resubmit designs until designs are deemed acceptable and subsequently approved in writing by City.
- D. **Design and Permitting.** Concessionaire shall be responsible, at its sole cost and expense, for the costs of design and permitting of all improvements within the Premises, and shall not commence any work with respect to an Approved Project until all governmental permits and approvals with respect to the Approved Project have been obtained. At no cost or liability to City, City shall cooperate in all reasonable respects with Concessionaire's efforts to obtain such permits and approvals, which cooperation shall include, without limitation, the execution of such instruments as may be required by governmental authorities in order for Concessionaire to apply for and obtain such permits and approvals.

SECTION 10.06 CONSTRUCTION

Concessionaire shall, at its own cost and expense, commence construction of an Approved Project within ten (10) days of the later to occur of: (i) the Shell Space Turnover Date stated in the Notice to Proceed for such Approved Project; or (ii) receipt of Demolition Permit. Concessionaire agrees that all construction work to be performed, including all workmanship and materials, shall be of First Class quality and in accordance with the Approved Project and the Development Schedule. All construction shall be performed in accordance with the requirements of this Agreement, the Tenant Work Permit Handbook, and applicable laws,

regulations, ordinances, codes and permits including, but not limited to, worker's compensation requirements, City's prevailing wage ordinance, Denver Revised Municipal Code ("D.R.M.C."), §20-76, City's MBE/WBE participation requirements, D.R.M.C. Articles III and VII, and the Americans with Disabilities Act, 42 U.S.C. 12,000 *et seq.*, and its regulations. City and its designees shall have the right from time to time to inspect each Approved Project.

Concessionaire must complete an Approved Project and Open for Business no later than the Required Opening Date for initial construction, and the Required Completion Date for all other Approve Projects, as set forth in the Notice to Proceed for the Approved Project, subject to any extensions that may be approved by City. Concessionaire acknowledges that if it fails to Open for Business by the Required Opening Date or Required Completion Date, the delay may cause City to suffer substantial damages that are extremely difficult to ascertain or prove. Therefore, if Concessionaire fails to either complete the Approved Project or open the Concession Location for business by the Required Opening Date or Required Completion Date, the following will apply:

1. Concessionaire shall pay liquidated damages to City, as set forth in Article VIII, from the Required Completion Date until the date on which the Concession Location opens to the public for business; and
2. If the Concession Location is not open for business within thirty (30) days after the Required Completion Date, the failure is a material breach and City has the right to exercise all remedies herein, at law or in equity including but not limited to, the option to terminate this Agreement or to remove the applicable Concession Location from the Premises.

Notwithstanding the foregoing, the Parties agree that any delay in construction of any improvements due to *force majeure* or acts solely attributable to City shall extend the Required Opening Date and/or Required Completion Date for an Approved Project. Additionally, the initial Package Completion Date, as stated in the Development Schedule, shall be extended if affected by such event, in City's sole discretion. City shall have no liability to Concessionaire for compensation or damages for any such delay.

SECTION 10.07 COMPLETION OF CONSTRUCTION

For each Approved Project, Concessionaire shall conform to Project Closeout Activities set forth in Tenant Work Permit Handbook. Concessionaire further agrees that it shall deliver to City within one hundred (120) days of the Package Completion Date the following:

1. As Built record documents of the construction, additions and other modifications constructed by Concessionaire on the Premises. Any DEN maintained assets or systems shall be fully connected and include system and equipment loads on and all facility information. Concessionaire shall provide connections and service loads at the point of connection to all DEN systems. During the Term, Concessionaire shall keep said documents current, with all changes or modifications made by Concessionaire in or to the Premises or additions thereto. Documents shall be forwarded to DEN upon request within fourteen (14) calendar days.

2. A statement certified by Concessionaire's chief financial officer specifying the final Capital Investment and final Design related to each of the Approved Project(s) with the level of detail as requested by City.
3. A certification that construction has been completed in accordance with the approved plans and specifications and in compliance with all laws and other governmental rules, regulations and orders, including but not limited to DSBO approval and the Denver City Auditor's approval.
4. Certified proof demonstrating that no liens exist on the Premises, including but not limited to, a waiver of lien from all construction Contractors and signed releases from all subcontractors that indicate receipt of payment in full for all work performed or Trade Fixtures delivered.

SECTION 10.08 TITLE TO IMPROVEMENTS

All Premises Improvements made to the Premises by Concessionaire, and any additions and alterations thereto made by Concessionaire, including approved changes and renovations affixed to the realty, shall become the property of City upon their completion and acceptance by City.

SECTION 10.09 SIGNAGE

Subject to the terms and conditions of Section 10.05, Concessionaire shall have the right to install and maintain signs on the Premises, if the design, installation, and maintenance of all signs shall be subject to the terms of this Section and comply with the Tenant Work Permit Handbook. Concessionaire further acknowledges City's desire to maintain a high level of aesthetic quality in all concession facilities throughout DEN. Therefore, Concessionaire covenants and agrees that in the exercise of its privilege to install and maintain appropriate signs on the Premises, as provided herein, it will submit to City, for its review and approval, the size, design, content, construction or fabrication, and intended location of every sign it proposes to install on or within the Premises. Concessionaire shall not install signs of any type on or within the Premises without prior written approval of City, which approval shall not be unreasonably withheld or denied if the proposal complies with the Tenant Work Permit Handbook and other DEN's Rules and Regulations governing signage.

ARTICLE XI. DISCLAIMER OF LIENS

The interest of City in the Premises will not be subject to liens for any work, labor, materials or improvements made by or for Concessionaire to the Premises, if the same is made or done in accordance with an agreement between City and Concessionaire. It is specifically understood and agreed by Concessionaire that in no event will City or the interest of City in the Premises be liable for or subject to any mechanic's, laborer's or materialmen's liens for materials furnished, improvements, labor or work made by or for Concessionaire to the Premises. Concessionaire is specifically prohibited from pledging, liening, or otherwise encumbering any assets located at DEN or any interest in this Agreement without prior, written approval by City. Concessionaire is specifically prohibited from subjecting City's interest in the Premises to any mechanic's, materialmen's, or laborers' liens for improvements made by or for Concessionaire or for any materials, improvements or work for which Concessionaire is responsible for payment. Concessionaire will indemnify, defend, and hold City harmless for any expense or cost associated with any lien or claim of lien that

may be filed against the Premises or City, including attorney fees incurred by City. Concessionaire will provide notice of this disclaimer of liens to all Contractors or subcontractors providing any materials or making any improvements to the Premises.

In the event any construction, mechanic's, laborer's, materialmen's or other lien, or notice of lien is filed against any portion of the Premises for any work, labor or materials furnished to the Premises, whether or not the same is made or done in accordance with an agreement between City and Concessionaire, Concessionaire will cause any such lien to be discharged of record within thirty (30) days after notice of filing thereof by payment bond or otherwise or by posting with a reputable title company or other escrow agent acceptable to City, security satisfactory to City to secure payment of such lien, if requested by City, while Concessionaire contests to conclusion the claim giving rise to such lien.

ARTICLE XII. MAINTENANCE UTILITES AND REPAIRS

SECTION 12.01 CONCESSIONAIRE'S MAINTENANCE OBLIGATIONS

Except for such maintenance of the Premises as is to be provided by City hereunder, Concessionaire shall, at its own cost and expense, maintain the Premises and every part thereof, including Trade Fixtures personal property, in good appearance and repair, in a safe First Class condition, and in accordance with Sections 7.14 and 7.15. Concessionaire shall maintain, repair, replace, paint, or otherwise finish all Premises Improvements on the Premises, including, without limitation, walls, partitions, floors, ceilings, windows, doors, glass and all furnishings, fixtures, and equipment therein, whether installed by Concessionaire or by City. All of the maintenance, repairs, finishing and replacements shall be of quality equal to or better than the original in materials and workmanship. All work, including finishing colors, shall be subject to the prior written approval of City.

If it is determined the maintenance does not comply with this Agreement, City shall so notify Concessionaire in writing. If the maintenance required to be performed as provided in City's notice to Concessionaire is not commenced by Concessionaire within five (5) days after receipt of notice, or is thereafter not diligently executed to completion, City or its representative shall have the right to enter upon the Premises and perform the maintenance, and Concessionaire agrees to promptly reimburse City for the cost thereof, plus an administrative fee equal to fifteen percent (15%) of the maintenance costs.

Concessionaire covenants and agrees that nothing shall be done or kept in the Premises that might impair the value of City's property or that would constitute waste. Any hazardous or potentially hazardous condition on the Premises shall be corrected immediately upon receipt of a verbal or written notice from City. At the sole discretion of City, Concessionaire shall close the Premises or affected portion thereof until the hazardous or potentially hazardous condition is corrected.

Concessionaire covenants to comply with all present and future laws, orders, and regulations, including any rules, regulations and procedures promulgated by City regarding City provided maintenance within DEN in which the Concession Location is located. If any system for City provided maintenance is put in place that can allocate to Concessionaire its proportional share of the cost. Concessionaire must pay its proportional share of the actual costs for City provided maintenance.

SECTION 12.02 CITY'S MAINTENANCE AND UTILITY OBLIGATIONS

City shall provide structural maintenance of DEN and, except as provided below, maintain and repair the exterior windows and walls of the Premises in DEN. However, maintenance of all interior and exterior walls constructed or remodeled by Concessionaire shall be Concessionaire's responsibility. Further, City has established Common Maintenance Services at DEN, including but not limited to those services identifies in Section 7.16 and set forth in the Summary of Contract Provisions. Concessionaire consents to pay its proportionate share of the Common Maintenance Services provided by City.

City provides utility mains and lines throughout DEN. Concessionaire, at its sole cost, shall tie into the utility mains and lines at the locations as specified by City. Supplemental heated or cooled air, electrical or other utilities required by Concessionaire more than what is customarily available in DEN will be, if approved by City, at the expense of Concessionaire.

City may, at City's sole discretion, maintain the utilities within the Premises and in doing so shall be permitted to enter upon the Premises always to make any repairs, replacements and alterations when and as may, in the opinion of City, be deemed necessary. Furthermore, Concessionaire will permit City or its representatives' access to construct or install over, on, in, or under the Premises, new systems, pipes, lines, mains, wires, conduits, ducts and equipment; provided, however, that City shall exercise such right in a manner that minimizes interference with Concessionaire's operations. Moreover, during an emergency, City, or its agents, may enter the Premises forcibly, if necessary. No such reasonable entry by or on behalf of city shall constitute or cause a termination of this Agreement by Concessionaire.

City agrees that it will always maintain and keep utility mains and lines in good repair in DEN and all appurtenances, facilities and services now or hereafter connected therewith. Concessionaire understands, accepts, and agrees that City shall not be liable for Concessionaire's loss for failure to supply any utility services. City reserves the right to temporarily discontinue utility services when may be necessary because of accident, unavailability of employees, repairs, alterations, or improvements or whenever by reason of strikes, lockouts, riots, acts of God, or any other happenings beyond the control of City and causes City to be unable to furnish such utility services. City shall not be liable for damages to persons or property for any such discontinuance due to causes beyond the control of City, nor shall such discontinuance in any way be construed as cause for abatement of Compensation or operate to release Concessionaire from any of its obligations hereunder.

City owns and maintains DEN's cabling infrastructure supporting telephone and data transmission generated within, to and from the Premises (hereinafter referred to as "Data Network Distribution System"). Concessionaire may use City's Data Network Distribution System for voice and data connectivity. Concessionaire is required to pay City, or pay a competitive local exchange carrier, for dial tone or internet access for its telephone services and communication systems. City will provide annual maintenance and any needed repairs for the fiber optic cable within the Data Network Distribution System. Relocation of the fiber cable or additional strands of fiber cable will be at Concessionaire's expense. If Concessionaire installs Electronic Visual Information Display systems ("EVIDS"), Concessionaire will be required to use City's Data Network Distribution System. Installation and ongoing maintenance of EVIDS will be at Concessionaire's expense and, at Concessionaire's discretion, may be performed by City or an outside vendor approved by City, subject to a Tenant Work Permit.

SECTION 12.03 CITY'S PERFORMANCE OF CONCESSIONAIRE'S OPERATING OBLIGATIONS

City has determined, in consideration of DEN security, public safety, and operating efficiency, that it may be in City's best interest to perform Concessions Services, as set forth in the Summary of Contract Provisions. City reserves the right to establish a Concessions Services Fee based upon documented actual costs of providing Concessions Services.

City may, in its sole discretion, add to, delete from, or otherwise modify the Concessions Services during the Term. City will provide thirty (30) days written notice of the effective date of any modification to the Concessions Services to Concessionaire. Concessionaire agrees to cooperate with City in the implementation and performance of the Concessions Services.

Concessionaire agrees that City shall not be liable for Concessionaire's loss for failure to supply any Concessions or Common Maintenance Services. City reserves the right to temporarily discontinue any Concessions or Common Maintenance Services when may be necessary by reason of accident, unavailability of employees, repairs, alterations, or improvements or whenever by reason of strikes, lockouts, riots, acts of God, or any other happenings beyond the control of City and causes City to be unable to furnish such services. City shall not be liable for damages to persons or property for any such discontinuance due to causes beyond the control of City, nor shall such discontinuance in any way be construed as cause for abatement of Compensation or operate to release Concessionaire from any of its obligations hereunder, except as otherwise provided in Article XVII.

The Parties agree to modify the Summary of Contract Provisions to reflect modifications in the Concessions Services and Common Maintenance Services. Any such modification will be confirmed by letter executed by the CEO, without need for formal amendment to this Agreement.

ARTICLE XIII. TERMINATION RIGHTS

SECTION 13.01 TERMINATION FOR CAUSE

City may terminate this Agreement for cause due to the actions or inactions of the Concessionaire upon ten (10) business days written notice to Concessionaire. Cause for termination includes, but are not limited to all material breaches of this agreement and the following:

1. The failure to pay, in full, to City within five (5) days of when due any fees, costs, expenses damages, or other charges applicable hereunder except where such failure is cured within (10) days after written notice by City of Concessionaire's failure to pay.
2. Concessionaire's default under any other agreement with City at DEN.
3. The appointment of a Trustee, custodian, or receiver of all or a substantial portion of Concessionaire's assets.
4. The divestiture of Concessionaire's estate herein by operation of law, by dissolution, or by liquidation, not including a merger or sale of assets.

5. The insolvency of Concessionaire; or if Concessionaire will take the benefit of any present or future insolvency statute, will make a general assignment for the benefit of creditors, or will seek a reorganization or the readjustment of its indebtedness under any law or statute of the United States or of any state thereof including the filing by Concessionaire of a voluntary petition of bankruptcy or the institution of proceedings against Concessionaire for the adjudication of Concessionaire as bankrupt pursuant thereto.
6. Concessionaire's cancellation of its Surety without City's prior written consent and does not reestablish it promptly after written notice by City.
7. An assignment, sublicense, or transfer of Concessionaire's interest under this Agreement by reason of death, operation of law, assignment, sublicense, sale in bulk of any of its assets, or otherwise to any other person or business entity other than in compliance with the provisions of this Agreement.
8. If Concessionaire abandons, deserts, vacates, or ceases operations under this Agreement for five (5) consecutive business days, unless undergoing repairs or renovations first been approved by City.
9. Concessionaire's failure to maintain any type of insurance or level of insurance coverage required hereunder (and in the event Concessionaire has failed to remedy such failure within ten (10) days after notice thereof from City, City may effect such coverage and recover the cost thereof immediately from the Surety or from Concessionaire).
10. Any lien or attachment to be filed against the Premises, DEN, or other City property because of any act or omission of Concessionaire, and such lien or attachment is not discharged or contested by Concessionaire in good faith by proper legal proceedings within fifteen (15) days after receipt of notice thereof by Concessionaire.
11. Concessionaire use, permission to use, or failure to prevent use of any portion of DEN made available to Concessionaire for its use under this Agreement for any illegal purpose.
12. The conduct of any business or performance of any acts at DEN not specifically authorized in this Agreement or by any other agreement between City and Concessionaire, and Concessionaire's failure to discontinue that business or those acts within thirty (30) days of receipt by Concessionaire of City's written notice to cease said business or acts.

Nothing in this Section 13.01 shall be construed to grant a right to Concessionaire to cure a breach, which by its nature is not capable of being cured. City reserves the right, in its sole discretion, to treat each Concessions Location individually for the purpose of declaring a material breach and exercising remedies under this Agreement. The Parties acknowledge and agree although Concessionaire remains responsible for actions or inactions committed hereunder by its Operators, such actions or inactions shall not count against Concessionaire for the purpose of this Section 13.01.

SECTION 13.02 TERMINATION FOR CONVENIENCE

This Agreement may be terminated without cause by City, in whole or in part, whenever, in the City's sole and absolute discretion, such termination is in the best interest and convenience of City. Such termination shall be effected by giving not less than thirty (30) days' written notice specifying the date upon which such termination becomes effective and whether the City will take possession of some or all Concession Locations. Promptly after receipt of such notice of termination, the Licensee shall, stop work as specified in the notice, and issue termination notices to all Operators or if directed in writing by City, assign all rights, title, and interest in existing sublicense agreements to the City.

Upon termination for convenience by the City, Concessionaire shall be entitled to remove and keep the Kiosks and Carts, listed on Exhibit A, located in DEN's Concourse A, B, or C. Concessionaire shall not be entitled to any other compensation from City because of any termination for convenience compensated and City shall not be liable for any inconvenience to Concessionaire or for any interruption of Concessionaire's business, consequential damages, and/or loss profits because of a termination for convenience.

13.03 TERMINATION BY CONCESSIONAIRE

Concessionaire may terminate this Agreement for cause by giving not less than ninety (90) days prior written notice to City. In case of such termination, all rights, title, and interest of Concessionaire in both Concession Locations and sublicense agreements hereunder, shall automatically transfer to City. Within fifteen (15) days of the effective date stated in Concessionaire's notice of termination, City will pay to Concessionaire an amount equal to the Unamortized Investment in the Premises, consistent with **Exhibit I**. Concessionaire shall not be compensated and City shall not be liable for any inconvenience to Concessionaire or for any interruption of Concessionaire's business, consequential damages, and/or loss profits because of a Concessionaire's termination of this Agreement.

ARTICLE XIV. INDEMNIFICATION

To the fullest extent permitted by law, Concessionaire agrees to protect, reimburse, indemnify, and hold City, its agents, employees, and officers free and harmless from and against any and all liabilities, claims, expenses, losses, costs, fines, and damages (including but not limited to attorney's fees and court costs), and causes of action of every kind and character arising out of, resulting from, incident to, or in connection with Concessionaire's presence on or use or occupancy of Premises or DEN; Concessionaire's acts, omissions, negligence, activities, or operations; Concessionaire's performance, non-performance or purported performance of this Agreement; or any breach by Concessionaire of the terms of this Agreement, or any such acts, omissions, negligence, activities, or operations of Concessionaire's officers, authorized officials, employees, agents, subcontractors, invitees, or any other person directly or indirectly employed or utilized by Concessionaire, that results in any bodily injury (including death) or any damage to any property, including loss of use, incurred or sustained by any party hereto, any agent or employee of any party hereto, any other person whomsoever, or any governmental agency, regardless of whether or not it is caused in whole or in part by the negligence of a party indemnified hereunder provided that Concessionaire need not release, indemnify, or hold harmless City, its officers, officials, agents, and employees from damages resulting from the sole negligence of City's officers, officials, agents, and employees.

In addition to the duty to indemnify and hold harmless, Concessionaire will have the duty to defend City, its agents, employees, and officers from all liabilities, claims, expenses, losses, costs, fines, and damages (including but not limited to attorney's fees and court costs) and causes of action of every kind and character. The duty to defend under this Article is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of Concessionaire, City, and any indemnified party. The duty to defend arises immediately upon written presentation of a claim to Concessionaire.

Concessionaire recognizes the broad nature of these indemnification, hold harmless, and duty to defend clauses, and voluntarily makes this covenant and expressly acknowledges the receipt good and valuable consideration provided by City in support of this indemnification in accordance with the laws of the State of Colorado. This Article shall survive the termination of this Agreement. Compliance with insurance requirements under this Agreement shall not relieve Concessionaire of its liability or obligation to indemnify, hold harmless, and defend City as set forth in this Article.

ARTICLE XV. INSURANCE

SECTION 15.01 INSURANCE TERMS AND CONDITIONS

- A. **Required Insurance.** Concessionaire covenants and agrees to secure at its own expense and to keep in force always hereof, from the Effective Date, insurance against claims for injury to persons or damage to property that may arise from or in connection with the performance of obligations under this Agreement by Concessionaire, its agents, representatives, or employees. The types and amounts of insurance coverage Concessionaire must procure are specified in the Certificate of Insurance for Aviation, attached hereto as **Exhibit F**, and incorporated herein by reference. Insurance requirements set forth on **Exhibit F** do not limit in any way the indemnity covenants contained in this Agreement or the amount or scope of liability of Concessionaire under this Agreement. The amounts listed indicate only the minimum amounts of insurance coverage that City is willing to accept to help insure full performance of all terms and conditions of this Agreement. Concessionaire specifically agrees to comply with each condition, requirement, or specification set forth in **Exhibit F** during all periods when the required coverage is in effect. Insurance must be maintained without any lapse in coverage during the entire Term. Insurance canceled without City's consent or failure by Concessionaire to provide evidence of renewal within forty-eight (48) hours after written notice by City is a material breach of this Agreement and, in addition to all other remedies available to City, City may, in its sole discretion, terminate this Agreement. If at any time any of the insurance policies shall be or become unsatisfactory to City as to form or substance, or if any of the carriers issuing such policies shall be or become unsatisfactory to City, Concessionaire shall promptly obtain a new and satisfactory replacement policy and give City an updated certificate of insurance that complies with the new insurance requirements of City.
- B. **Liquor Liability.** If alcoholic beverages are served or sold at DEN by the Concessionaire, the Commercial General Liability insurance shall include Host Liquor Liability Coverage.
- C. **Business Interruption Insurance.** Concessionaire shall procure and maintain Business Interruption insurance in such amounts as will reimburse Concessionaire for

direct or indirect loss of earnings attributable to the perils commonly covered by the Concessionaire's property insurance described in Section 15.02 (A), which shall include losses arising from mechanical failures on or interruption of services to City premises.

- D. **Cyber Liability Insurance.** Concessionaire shall procure and maintain Cyber Liability coverage in such amounts that will cover claims involving privacy violations, information theft, damage to, or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion, and network security.
- E. **Commercial Crime Insurance.** Concessionaire shall procure and maintain Commercial Crime insurance covering, but not limited to, loss arising from employee theft, employee dishonesty, forgery or alteration, robbery, burglary, embezzlement, disappearance, destruction; money orders and counterfeit currency; depositors' forgery; computer fraud, on-premises and in-transit.
- F. **Mutual Waiver of Subrogation.** Concessionaire and City waive any right of action that they and/or their insurance carriers might have against each other (including their respective employees, officers, commissioners, or agents) or against other tenants of DEN for any Loss, to the extent that such Loss is covered by any property insurance policy or policies maintained or required to be maintained pursuant to this Agreement and to the extent that such proceeds (which proceeds are free and clear of any interest of third parties) are received by the party claiming the Loss. Concessionaire also waives any right of action it and/or its insurance carrier might have against City (including its respective employees, officers, commissioners, or agents) for any Loss, whether or not such Loss is insured. If any of Concessionaire's applicable insurance policies do not allow the insured to waive the insurer's rights of subrogation prior to a Loss, Concessionaire shall cause it to be endorsed with a waiver of subrogation that allows the waivers of subrogation required by this Section.
- G. **Certificates Required.** All certificates required by this Agreement shall be sent directly to the **City and County of Denver, Department of Aviation, Denver International Airport, Concessions Management Section, Airport Office Building, Room 9870, 8500 Pena Boulevard, Denver, Colorado 80249.** City's Contract control number for this Agreement shall be noted on each certificate of insurance. Certificates evidencing the existence of the policies, in such form as City may require, shall be delivered to City prior to the Shell Space Turn Over Date. Upon written request, Concessionaire agrees to furnish City, at any time thereafter during the Term, the original or a certified copy of said policy or policies.
- H. **Concessionaire's Risk.** City in no way warrants and/or represents that the minimum limits contained herein are sufficient to protect Concessionaire from liabilities that might arise out of the performance of the terms and conditions of this Agreement by Concessionaire, its agents, representatives, or employees. Concessionaire shall assess its own risks and as it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Concessionaire is not relieved of any liability or other obligations assumed or pursuant to this Agreement because of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. In no event shall City be liable for any: (i) business interruption or other consequential damages sustained by

Concessionaire; (ii) damage, theft, or destruction of Concessionaire's inventory, Improvements, or property of any kind; or (iii) damage, theft, or destruction of an automobile, whether or not insured.

- I. **Governmental Immunity**. The Parties understand and agree that City, its officers, officials, and employees are relying on and do not waive or intend to waive by any provisions of this Agreement, monetary limitations, or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., or otherwise available to City, its officers, officials, and employees.

In the event Concessionaire has failed to remedy any lapse in coverage within ten (10) days after notice thereof from City, City may affect such coverage and recover the cost thereof immediately from the Surety or from Concessionaire. City reserves the right to modify any Insurance Requirements stated herein. The Parties agree to modify the Summary of Contract Provisions to reflect modifications in the Insurance Requirements. Any such modification will be confirmed by letter executed by the CEO, without need for formal amendment to this Agreement.

ARTICLE XVI. SURETY FOR PERFORMANCE

SECTION 16.01 FORM OF SURETY

To secure payment for rents, fees, charges and other payments required hereunder, Concessionaire will post with City a Surety.

The Surety will be maintained throughout the Term of this Agreement and any holdover or extension until released by City in accordance with Section 16.03 and will be in an amount equal to the sum of the Support Space Rent plus MAPF payable to City hereunder for a period of six (6) months. The Surety will be issued by a bank or surety provider acceptable to City and authorized to do business in the State of Colorado, and will be in a form and content satisfactory to City. The Surety may be issued for a one (1) year period, provided however, Concessionaire covenants and agrees that evidence of renewal or replacement of the Surety must be submitted annually by Concessionaire to City, without prompt, at least sixty (60) days prior to the expiration date of the instrument. The Surety shall contain language that the issuing financial institution shall notify City in writing within forty-five (45) days of a determination that the Performance Surety is to be terminated and or is not going to be renewed.

Notwithstanding any provision herein to the contrary, if at any time during the Term City deems the amount of Surety insufficient to properly protect City from loss hereunder because Concessionaire is or has been in arrears with respect to such monetary obligations or because Concessionaire has, in the opinion of City, violated other terms of this Agreement, Concessionaire covenants that after receiving notice, it will increase the Surety to the amount required by City, provided however, the percentage increase shall not exceed five (5%) of the annual percentage increase that has occurred with respect to Concessionaire's rent, fees, and charges.

Concessionaire shall furnish the Surety within ten (10) days of the Effective Date as security for the full performance of every provision of this Agreement by Concessionaire. Failure to maintain the Surety as set forth herein shall be a material breach hereunder.

SECTION 16.02 APPLICATION OF SURETY

In the event Concessionaire fails to perform the payment terms and conditions of this Agreement, City, in addition to any other rights and remedies available by law or in equity, may, at any time, apply the Surety or any part thereof toward the payment of Concessionaire's obligations under this Agreement. In such an event, within thirty (30) days after notice, Concessionaire will restore the Surety to its original amount. City will not be required to pay Concessionaire any interest on the Surety. Concessionaire understands and agrees that failure to maintain or replenish the Surety shall constitute a material breach of this Agreement and, in addition to all other remedies available to City, City may, in its sole discretion, terminate this Agreement.

SECTION 16.03 RELEASE OF SURETY

The release of the Surety will be subject to the satisfactory performance by Concessionaire of all terms, conditions, and covenants contained herein throughout the entire Term. Upon termination of this Agreement, the release of Surety will not occur until all rents, fees, charges, and other payments due to City are satisfied and City has accepted the findings of Concessionaire's audit or has successfully conducted an audit in accordance with the provisions of Section 5.10 of this Agreement. In the event of a dispute as to the condition of the Premises, only the amount in dispute will be retained for remedy. City shall release the Surety without interest within thirty (30) days of meeting the above requirements.

SECTION 16.04 GUARANTY OF AGREEMENT [RESERVED]

ARTICLE XVII. PROPERTY DAMAGE

SECTION 17.01 COMPLETE DESTRUCTION

If Premises, the Concourse in which the Premises is located, or any portion thereof is destroyed or damaged to an extent that renders it unusable, City may rebuild or repair any portions of the building structure destroyed or damaged, and if the cause was beyond the control of Concessionaire, Concessionaire's obligation to pay the Compensation hereunder shall abate as to such damaged or destroyed portions during the time they are unusable. If City elects not to proceed with the rebuilding or repair of the building structure, it shall give notice of its intent within ninety (90) days after the destruction or damage. At its option, Concessionaire may then terminate this Agreement effective as of the date of such event.

If City elects to rebuild, Concessionaire must replace all Premises Improvements at its sole cost and in accordance with the Capital Investment, subject to increase for inflation. Such replacements must be in accordance with the performance standards set forth herein. City and Concessionaire shall cooperate with each other in the collection of any insurance proceeds that may be payable in the event of any loss or damage.

SECTION 17.02 LIMITS OF CITY'S OBLIGATIONS DEFINED

City shall not be liable for the following: (i) any damage to property of Concessionaire or others located on the Premises or in DEN; (ii) the loss of or damage to any property of Concessionaire or of others by theft or otherwise; (iii) any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, or

snow; (iv) leaks from any part of the Premises or DEN; from the pipes, appliances, or plumbing works; from the roof, street, subsurface, or from any other place; or from dampness or by any other cause of whatsoever nature; (v) any such damage caused by other Concessionaires, persons in the Premises, occupants of adjacent property, of DEN, or of the public; (vi) damages caused by operations in construction of any private, public, or quasi-public work; (vii) any latent defect in the Premises or in the building of which they form a part; and (viii) all property of Concessionaire kept or stored on the Premises is at the risk of Concessionaire only.

Further, Concessionaire shall defend and hold City harmless from and hereby waives any claims arising out of damage to the same or damage to Concessionaire's business, including subrogation claims by Concessionaire's insurance carrier. Concessionaire shall give immediate telephone notice to City in case of fire, casualty, or accidents in the Premises or in the building of which the Premises is a part, of defects therein, or in any fixtures or equipment. Concessionaire shall promptly thereafter confirm such notice in writing.

Redecoration, replacement, and refurbishment of furniture, fixtures, equipment, and supplies will be the responsibility of, paid for by Concessionaire, and will be of equivalent quality to that originally installed hereunder. City will not be responsible to Concessionaire for any claims related to loss of use, loss of profits, or loss of business resulting from any partial, extensive, or complete destruction of the Premises regardless of the cause of damage.

SECTION 17.03 ALTERNATE SPACE

City will use its best efforts to provide Concessionaire with alternate areas acceptable to Concessionaire to continue its operation while City makes repairs to the Premises, in accordance with the terms of this Article, except for damages caused by Concessionaire's acts, omissions, or negligence.

SECTION 17.04 WAIVER OF SUBROGATION

To the extent insurance permits, and then only to the extent collected or collectable by Concessionaire under its property insurance coverage, Concessionaire waives any and all claims against City and its directors, officers, agents, servants and employees for loss or damage to property.

ARTICLE XVIII. DAMAGING ACTIVITIES

No goods or materials will be kept, stored, or used in or on the Premises that are flammable, explosive, hazardous (as defined below), or that may be offensive or cause harm to the general public or cause damage to the Premises. Concessionaire is responsible for compliance and shall require its Contractors to comply with all federal, state, and local environmental rules, regulations, and requirements. This includes compliance with DEN's Rule and Regulation, Rule 180 incorporated hereto by reference. Concessionaire shall obtain all necessary federal, state, local, and DEN permits and comply with all permit requirements. Nothing will be done on the Premises other than as provided in this Agreement that will increase the rate of or suspend the insurance on the Premises or on any structure of City. No machinery or apparatus will be used or operated on the Premises that will damage the Premises or adjacent areas; provided, however, that nothing in this Article will preclude Concessionaire from bringing or using on or about the Premises, with approval by City, such materials, supplies, equipment, and machinery as are appropriate or customary in the

operation of Concessionaire's business under this Agreement. Concessionaire agrees that nothing shall be done or kept on the Premises that might impair the value of City's property or that would constitute waste.

The term "Hazardous" will mean:

1. Any substance the presence of which requires or may later require notification, investigation or remediation under any environmental law; or
2. Any substance that is or becomes defined as a "hazardous waste", "hazardous material", "hazardous substance", "pollutant" or "contaminant" under any federal, state, or local environmental law, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 *et seq.*), the Resources Conservation and Recovery Act (42 U.S.C. §6901 *et seq.*) and the associated regulations; or
3. Any substance that is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise harmful and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, any state of the United States, or any political subdivision within any state; or
4. Any substance that contains gasoline, diesel fuel, or other petroleum hydrocarbons or volatile organic compounds; or
5. Any substance that contains polychlorinated biphenyls, asbestos, or urea formaldehyde foam insulation; or
6. Any substance that contains or emits radioactive particles, waves or materials, including, without limitation, radon gas.

Concessionaire agrees that nothing shall be done or kept on the Premises and no improvements, changes, alterations, additions, maintenance, or repairs made that might impair the structural soundness of the building; result in an overload of utility, plumbing, or HVAC systems serving the Terminal and/or Concourses; or interfere with electric, electronic, or other equipment at DEN. In the event of violations hereof, Concessionaire agrees immediately to remedy the violation at Concessionaire's own cost and expense. Concessionaire shall be responsible for any damage caused by Concessionaire to the Premises, DEN, any City property or operations, or the property of any other concessionaire, person, or entity, either by act, omission, or because of the operations of Concessionaire. In the event of such damage, Concessionaire will give City immediate notice thereof, and Concessionaire will immediately make the necessary repairs at its own cost and expense. Concessionaire shall be required to comply with the obligations set forth in Article X with respect to all work required to be performed in accordance with this Section. City reserves the right, if in the best interest of City, to perform the necessary repairs immediately itself. Concessionaire covenants to reimburse City, for the costs and expenses associated with necessary repairs plus an administrative fee of fifteen percent (15%). If Concessionaire more than once in a twelve (12) month period causes the same type of damage, such as a water leakage, electrical service interruption, or other damage, Concessionaire shall submit a Remediation Plan, as set forth in Section 7.01.

**ARTICLE XIX. COMPLIANCE WITH LAWS, REGULATIONS, ORDINANCES,
AND RULES**

SECTION 19.01 GENERAL COMPLIANCE

Concessionaire, its officers, authorized officials, employees, agents, subcontractors, or those under its control, will at all times comply with applicable federal, state, and local laws and regulations, DEN's Rules and Regulations, Policies, Procedures and Operating Directives as are now or may hereinafter be prescribed or amended, all applicable health rules and regulations and other mandates whether existing or as promulgated from time to time by the federal, state, or local government, or City including, but not limited to, permitted and restricted activities, security matters, parking, ingress and egress, environmental and storm water regulations and any other operational matters related to the operation of DEN. Concessionaire covenants to faithfully observe and comply with the standards, procedures, requirements, directives, delegations of authority, directions and instructions governing the operations of concessions at DEN as identified in both the Concession's Handbook and Tenant Work Permit Handbook, as amended from time to time. Concessionaire's failure to keep and observe said laws, regulations, ordinances, rules, and handbooks shall constitute a material breach of the terms of this Agreement in the manner as if the same were contained herein as covenants.

SECTION 19.02 PAYMENT OF CITY MINIMUM WAGE

Concessionaire shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City's Minimum Wage Ordinance, D.R.M.C. Sections 20-82 through 20-84, including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, Concessionaire expressly acknowledges that Concessionaire is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by Concessionaire, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

ARTICLE XX. AIRPORT SECURITY

Concessionaire, its officers, authorized officials, employees, agents, subcontractors, and those under its control, will comply with safety, operational, or security measures required of Concessionaire or City by the FAA or TSA. If Concessionaire, its officers, authorized officials, employees, agents, subcontractors or those under its control fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against City, then, in addition to any other remedies available to City, Concessionaire covenants to fully reimburse City any fines or penalties levied against City, and any attorney fees or related costs paid by City because of any such violation. This amount must be paid by Concessionaire within fifteen (15) days from the date of the invoice or written notice.

Concessionaire understands and acknowledges that its ability to remain open and conduct operations under this Agreement is subject to changes in alert status as determined by TSA, which is subject to change without notice. If the security status of DEN changes at any time during the Term of this Agreement, Concessionaire shall take immediate steps to comply and assist its employees, agents, independent Contractors, invitees, successors, and assigns in complying with security modifications that occur because of the changed status.

At any time, Concessionaire may obtain current information from DEN's Security Office regarding DEN's security status in relation to Concessionaire's operations at the DEN.

ARTICLE XXI. AMERICANS WITH DISABILITIES ACT

Concessionaire will comply with the applicable requirements of the Americans with Disabilities Act ("ADA") 42 USC § 12000 *et seq.* and any similar or successor laws, ordinances, rules, standards, codes, guidelines and regulations and will cooperate with City concerning the same subject matter. If compliance cannot be achieved, Concessionaire shall proceed formally to the federal, state, or local agency having jurisdiction for a waiver of compliance.

ARTICLE XXII. FAA APPROVAL

This Agreement may be subject to approval of the FAA. If the FAA disapproves this Agreement, it will become invalid, and both Parties will bear their own expenses relative to this Agreement, up to the date of disapproval.

ARTICLE XXIII. RIGHT OF FLIGHT

Concessionaire's right to use the Premises for the purposes set forth in this Agreement shall be secondary and subordinate to the operation of DEN. Concessionaire acknowledges that because of the location of the Premises at DEN, noise, vibrations, fumes, debris, and other interference with the Permitted Use(s) will be caused by DEN operations. Concessionaire hereby waives all rights or remedies against City arising out of any noise, vibration, fumes, debris, and/or interference that is caused by the operation of DEN. City specifically reserves for itself and for the public a right of flight for the passage of aircraft in the airspace above the surface of DEN. Additionally, City reserves for itself the right to cause in said airspace such noise, vibration, fumes, debris, and other interference as may be inherent in the present and future operation of aircraft. Concessionaire expressly agrees for itself, its successors, and assigns, to prevent any use of the Premises, which would interfere with or adversely affect the operation or maintenance of DEN, or otherwise constitute an airport hazard.

ARTICLE XXIV. FEDERAL RIGHT TO RECLAIM

In the event a United States governmental agency demands and takes over the entire facilities of DEN or the portion thereof wherein the Premises are located, for public purposes, for a period beyond ninety (90) consecutive days, then this Agreement will terminate and City will be released and fully discharged from all liability hereunder. In the event of such termination, Concessionaire's obligation to pay rent will cease; however, nothing herein will be construed as relieving either Party from any of its liabilities relating to events or claims of any kind whatsoever prior to this termination.

ARTICLE XXV. PROPERTY RIGHTS RESERVED

This Agreement is subject and subordinate to the terms, reservations, restrictions, and conditions of any existing or future agreements between City and the United States, when the execution of such agreements has been or may be required as a condition precedent to the transfer of federal rights or property to City for DEN purposes and the expenditure of federal funds for the extension, expansion, or development of DEN. The provisions of the attached Appendices 1 and 2 are incorporated herein by reference and if the FAA or its

successors requires modifications or changes to this Agreement as a condition precedent to the granting of funds for the improvement of DEN, or otherwise. Concessionaire understands, accepts, and agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required to satisfy the FAA requirements.

ARTICLE XXVI. ASSIGNMENT AND SUBCONTRACT

Concessionaire may not assign, subcontract, and/or sublease its privileges, interests, or obligations in whole or in part under this Agreement without the prior written consent of City in City's sole and absolute discretion. Concessionaire shall not grant any Agreement or concession hereunder, or permit any other person or persons, company, or corporation to occupy the Premises without first obtaining written consent of City in City's sole and absolute discretion. Any attempt by Concessionaire to in any way directly transfer all or part of its interest in this Agreement (including any attempt to transfer ownership of the equity or voting interest in the stock of Concessionaire if Concessionaire is a corporate entity or the ownership interest in such other entity or control of Concessionaire or Concessionaire's operations through sale, exchange, merger, consolidation, or other such transfer) without prior written consent of City shall, at the option of the CEO, automatically terminate this Agreement and all privileges of Concessionaire hereunder. Subject to the terms and conditions set forth in this Section, and only after it has received City's written approval and consent, Concessionaire shall be permitted to subcontract with respect to all or any portions of the Premises.

Each party to a subcontract and each subcontract, and any contemporaneous or subsequent addendum, amendment, modification or other agreement relating to any such subcontract, must be approved in advance by City. The subcontract must contain substantially the same business terms and conditions as those found in this Agreement, and the subcontract must acknowledge the existence of this Agreement and that the subcontracting parties are jointly bound by the terms and conditions of this Agreement, and state that the subcontracting parties shall comply with the satisfy the requirements and obligations of Concessionaire hereunder. All rent, fees, charges, or other monies due and payable hereunder which are, pursuant to any subcontract, to be paid by a subcontractor shall not be marked-up by Concessionaire. Sub-lessees must independently operate any subcontracted premises, adhere to, and comply with all of the terms, conditions, requirements, restrictions, obligations and standards set forth herein, including without limitation, all audit standards incorporated herein. Subleasing parties shall be jointly bound by the terms and conditions of this Agreement, and the subcontracting parties shall comply with the requirements and obligations of Concessionaire hereunder.

ARTICLE XXVII. CORPORATE TENANCY

If Concessionaire is a corporation, partnership, or limited liability business organization, the undersigned officer of Concessionaire hereby warrants and certifies to City that Concessionaire is a corporation in good standing, is authorized to do business in the State of Colorado, and the undersigned officer is authorized and empowered to bind the corporation to the terms of this Agreement by his or her signature thereto.

Further, If Concessionaire is a partnership or other business organization, each member shall be deemed to be jointly and severally liable if such members are subject to personal

liability.

No director, officer, or employee of City shall be held personally liable under this Agreement because of its good faith execution or attempted execution.

ARTICLE XXVIII. NON-EXCLUSIVE RIGHTS

This Agreement will not be construed to grant or authorize the granting of an exclusive right within the meaning of 49 USC 40103(e) or 49 USC 47107(a), as may be amended from time to time, and related regulations.

ARTICLE XXIX. RIGHT TO DEVELOP AIRPORT

Concessionaire recognizes that from time to time during the Term, it may be necessary for City to commence or complete extensive programs of construction, expansion, relocation, maintenance, and repair for DEN and its facilities to be maintained, improved, completed, and operated in accordance with any present or future master layout plan. Further, Concessionaire acknowledges that such construction, expansion, relocation, maintenance, and repair may inconvenience Concessionaire in its operation at DEN. Concessionaire agrees that no liability shall attach to City, its officers, agents, employees, Contractors, subcontractors, and representatives by way of such inconveniences. Concessionaire agrees to waive any right to claim damages or other consideration therefrom.

It is covenanted and agreed that City reserves the right to further develop or improve DEN and all landing areas and taxiways as it may see fit, regardless of the desires or views of Concessionaire or its subcontractors and without interference or hindrance.

Further, Concessionaire agrees that no liability shall attach to City, its officers, agents, and employees due to any efforts or action toward implementation of any present or future Master Layout Plan for DEN. Concessionaire agrees that no liability shall attach to City, its officers, agents, and employees due to any efforts or action toward implementation of any present or future Concessions Master Plan for DEN. Concessionaire waives any right to claim damages or other consideration arising therefrom.

ARTICLE XXX. ADMINISTRATIVE HEARING

Concessionaire's disputes of all decisions, determinations, or other actions by City arising out of this Agreement shall be resolved by administrative hearing according to the procedures outlined in D.R.M.C. §5-17. However, City shall retain its right to obtain an order of eviction in accordance with applicable state law. Compliance with the procedures of D.R.M.C. § 5-17 shall be a condition precedent to Concessionaire's right to dispute any decision, determinations or other actions by City.

ARTICLE XXXI. ATTORNEY'S FEES AND COSTS

In the event legal action is required by City to enforce this Agreement, City will be entitled to recover costs and attorneys' fees, including in-house attorney time (fees) and appellate fees.

ARTICLE XXXII. RIGHT TO AMEND

If the FAA or its successors requires amendments, modifications, revisions, supplements, or

deletions in this Agreement as a condition precedent to the granting of funds for the improvement of DEN, Concessionaire agrees to consent to such amendments, modifications, revisions, supplements, or deletions to this Agreement as may be required to obtain such funds.

ARTICLE XXXIII. NOTICES AND COMMUNICATIONS

All notices or communication, whether to City or to Concessionaire pursuant hereto, will be deemed validly given, served, or delivered upon receipt by the party by three (3) days after depositing such notice or communication in a postal receptacle, return receipt requested, or one (1) day after depositing such notice or communication with a reputable overnight courier service, and addressed as follows:

| | |
|---|---|
| TO CITY (MAIL DELIVERY): | TO CONCESSIONAIRE (MAIL DELIVERY): |
| Attn: Chief Executive Officer Denver International Airport 8500 Pena Boulevard Denver, Colorado 80249-6340 | Provenzano Resources LLC 1881 16 th Street, Suite 500 Denver, CO 80202 cc: Teller Street Investors, LLC 1881 16th Street, Suite 500 Denver, Colorado 80202 Provenzano Resources, Inc. 1211 Sunset Plaza Dr. #307 Los Angeles, CA 90069 |

or to such other address or parties within the State of Colorado as either party may designate in writing by notice to the other Party delivered in accordance with the provisions of this Article.

If the notice is sent through a mail system, a verifiable tracking documentation, such as a certified return receipt or overnight mail tracking receipt, is encouraged.

ARTICLE XXXIV. BOND ORDINANCES

This Agreement is in all respects subject and subordinate to any City bond ordinances applicable to the DEN, and to any other bond ordinances, which should amend, supplement, or replace such bond ordinances. The Parties to this Agreement acknowledge and agree that all property subject to this Agreement that was financed by the net proceeds of tax-exempt bonds is owned by City. Concessionaire agrees not to take any action that would impair or omit to take any action required to confirm the treatment of such property as owned by City for purposes of §142(b) of the Internal Revenue Code of 1986, as amended. Concessionaire agrees to make and hereby makes an irrevocable election (binding on itself and all successors in interest under this Agreement) not to claim depreciation or an investment credit with respect to any property subject to this Agreement that was financed by the net proceeds of tax-exempt bonds. Concessionaire shall execute such forms and take such other action as City may request to implement such election.

At City's sole discretion, through its CEO, City may from time to time reestablish the rentals, fees, and charges provided for herein at intervals of not more than five (5) years and are subject to the requirements of any outstanding bond ordinance pertaining to DEN. City agrees that such reestablished schedule of rentals, fees, and charges shall be reasonable in relation to the cost of providing, operating, and maintaining property, services, and facilities of DEN. If City proposes any changes in the schedule of rentals, fees, and charges, City will give notice thereof to Concessionaire no less than ninety (90) days before the same is to become effective. Concessionaire may decline to pay Compensation at the new rate(s) if such proposed rentals, fees, and charges result in an increase of more than five percent (5%) in the dollar amount of Compensation paid by Concessionaire under Article V of this Agreement for the previous calendar year. In such a case, Concessionaire shall promptly advise the CEO of its intention to cancel and terminate this Agreement at least sixty (60) days prior to the proposed effective date of such schedule of rentals, fees, and charges. Upon such notice of intent to cancel and terminate, Concessionaire shall surrender the Premises upon a date specified by City within at least one hundred twenty (120) days after Concessionaire advised City. Should Concessionaire fail to give such notice of cancellation and termination, then Concessionaire shall be deemed to have accepted the new rate(s) of compensation as promulgated by City. Failure by City to reestablish the rentals, fees, and charges at a five (5) year interval date shall not waive City's right to reestablish the rentals, fees, and charges at any time thereafter.

ARTICLE XXXV. FORCE MAJEURE

Neither Party hereto shall be liable to the other for any failure, delay, or interruption in the performance of any of the terms, covenants, understandings, or conditions of this Agreement due to causes beyond the control of that Party, including without limitation strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage, or any other circumstance for which such Party is not responsible or which is not in its power to control. A lack of funds, however, will never be deemed beyond a Party's power to control, and in no event shall this paragraph be construed to allow Concessionaire to reduce or abate its obligation to pay the any obligation due herein.

ARTICLE XXXVI. RELATIONSHIP OF THE PARTIES

Concessionaire is and will be deemed an independent Contractor and operator responsible to all parties for its respective acts or omissions, and City will in no way be responsible therefore. It is further expressly understood and agreed that City shall not be construed by a third party or held by Concessionaire to be a partner, associate, or joint venture partner of Concessionaire in the conduct of its business.

ARTICLE XXXVII. CITY APPROVALS

Except as otherwise indicated elsewhere in this Agreement, wherever in this Agreement approvals are required to be given or received by City, it is understood that the CEO, or a designee of the CEO, is hereby empowered to act on behalf of City. Further, except as otherwise indicated elsewhere in this Agreement, wherever in this Agreement approvals are required to be given by the CEO, it is understood that the CEO may further delegate such authority through the Concessions Handbook and/or Tenant Work Permit Handbook.

ARTICLE XXXVIII. INVALIDITY OF CLAUSES

The invalidity of any part, portion, article, paragraph, provision, or clause of this Agreement will not have the effect of invalidating any other part, portion, article, paragraph, provision, or clause thereof, and the remainder of this Agreement will be valid and enforced fully permitted by law.

ARTICLE XXXIX. TIME IS OF THE ESSENCE

Time is of the essence of this Agreement.

ARTICLE XL. TAXES

Concessionaire will bear, at its own expense, all costs of operating its business including all applicable sales, use, intangible and possessory interest taxes of any kind, against Concessionaire's Premises, the real property and any improvements thereto, Trade Fixtures and other personal property used in the performance of the Concession or estate which are created herein, or which result from Concessionaire's occupancy or use of the Premises or assessed on any payments made by Concessionaire hereunder, whether levied against Concessionaire or City. Concessionaire will also pay any other taxes, fees, or assessments against the Premises or estate created herein. Concessionaire will pay the taxes, fees, or assessments reflected in a notice Concessionaire receives from City within thirty (30) days after Concessionaire's receipt of that notice or within the period prescribed in the tax bill. City will attempt to cause the taxing authority to send the applicable tax bills directly to Concessionaire and Concessionaire will remit payment directly to the taxing authority, in such instance. Concessionaire may reserve the right to contest such taxes, fees, or assessments and withhold payment upon written notice to City of its intent to do so, so long as the nonpayment does not result in a lien against the real property or any improvements thereon or a direct liability on the part of City. Concessionaire shall pay to City, with each payment of Compensation, Support Space Compensation, Privilege Fee, and Concession Services Fees to City, all sales or other taxes which may be due with respect to such payments, and upon receipt, City shall remit such taxes to the applicable taxing authorities.

ARTICLE XLI. PATENTS AND TRADEMARKS

Concessionaire covenants, warrants, and represents that it is the owner of or fully authorized to use any services, processes, machines, articles, marks, names, or slogans used by it in its operations under this Agreement. Concessionaire will not utilize any protected patent, trademark, or copyright, including any patents, trademarks, or copyrights owned by City, in its operations under this Agreement, unless it has obtained prior proper permission, all releases, and other necessary documents. Concessionaire agrees to indemnify, defend, and hold harmless City, its officers, employees, agents, and representatives from any loss, liability, expense, suit, or claim for damages regarding any actual or alleged infringement of any patent, trademark, or copyright arising from any alleged or actual unfair competition or other similar claim arising out of the operations of Concessionaire under this Agreement.

ARTICLE XLII. AGENT FOR SERVICE OF PROCESS

It is expressly agreed and understood that if Concessionaire is not a resident of the State of Colorado, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, then in any such event Concessionaire does designate the

Secretary of State, State of Colorado, as its agent for the purpose of service of process in any court action between it and City arising out of or based upon this Agreement, and the service will be made as provided by the laws of the State of Colorado for service upon a non-resident. It is further expressly agreed, covenanted, and stipulated that if for any reason service of such process is not possible, and Concessionaire does not have a noted resident agent for service of process, as an alternative method of service of process, Concessionaire may be personally served with such process out of this State, by the registered mailing of such complaint and process to Concessionaire at the address set out in this Agreement. Such service will constitute valid service upon Concessionaire as of the date of mailing. Concessionaire will have thirty (30) days from date of mailing to respond thereto. It is further expressly understood that Concessionaire hereby agrees to the process so served, submits to the jurisdiction of the court, and waives any and all obligation and protest thereto, any laws to the contrary notwithstanding.

ARTICLE XLIII. COMPLIANCE WITH PUBLIC RECORDS LAW

- A. **Agreement Subject to Colorado Open Records Act.** Concessionaire acknowledges, understands, and accepts that City is subject to the provisions of the Colorado Open Records Act, Colorado Revised Statutes §24-72-201 *et seq.* Concessionaire acknowledges all documents prepared or provided by Concessionaire under this Agreement may be subject to the provisions of the Colorado Open Records Act. Any other provision of this Agreement notwithstanding, including Exhibits, Attachments, and other documents incorporated into this Agreement by reference, all materials, records, and information provided by Concessionaire to City shall be considered confidential by City only to the extent provided in the Open Records Act, and Concessionaire agrees that any disclosure of information by City consistent with the provisions of the Open Records Act shall result in no liability of City. Concessionaire agrees to defend, indemnify, hold harmless, and fully cooperate with City in the event of a request for disclosure or legal process arising under such act for the disclosure of any documents or information, which Concessionaire asserts is confidential and exempt from disclosure.
- B. **Indemnification in Event of Objection.** In the event of a request to City for disclosure of such information, time, and circumstances permitting, City will make a good faith effort to advise Concessionaire of such request in order to give Concessionaire the opportunity to object to the disclosure of any material Concessionaire may consider confidential, proprietary, or otherwise exempt from disclosure. In the event Concessionaire objects to disclosure, City, in its sole and absolute discretion, may file an application to the Denver District Court for a determination of whether disclosure is required or exempted. In the event a lawsuit to compel disclosure is filed prior to City's application, City will tender all such material to the court for judicial determination of the issue of disclosure. In both situations, Concessionaire agrees it will either waive any claim of privilege or confidentiality or intervene in such legal process to protect materials Concessionaire does not wish disclosed. Concessionaire agrees to defend, indemnify, and hold harmless City, its officers, agents, and employees from any claim, damages, expense, loss, or costs arising out of Concessionaire's objection to disclosure including prompt reimbursement to City of all reasonable attorney fees, costs, and damages that City may incur directly or may be ordered to pay by such court.

ARTICLE XLIV. DATA SECURITY

Concessionaire will establish and maintain safeguards against the destruction, loss, or alteration of City data or third-party data that Concessionaire may gain access to or be in possession of in the performance of this Agreement. Concessionaire will not attempt to access, and will not allow its personnel access to, City data or third-party data that is not required for the performance of the services of this Agreement by such personnel. Concessionaire will adhere to and abide by the security measures and procedures established by City. In the event Concessionaire or Concessionaire's subcontractor (if any) discovers or is notified of a breach or potential breach of security relating to City data or third party data, Concessionaire will promptly: (i) notify City of such breach or potential breach; and ii) if the applicable City data or third party data was in the possession of Concessionaire at the time of such breach or potential breach, Concessionaire will investigate and cure the breach or potential breach.

ARTICLE XLV. USE, POSSESSION, OR SALE OF ALCOHOL OR DRUGS

Concessionaire, its officers, agents, and employees shall cooperate and comply with the provisions of the Federal Drug-Free Workplace Act of 1988 and Denver Executive Order No. 94, or any successor thereto, concerning the use, possession, or sale of alcohol or drugs. Except as may be otherwise authorized by this Agreement, Concessionaire shall also prohibit consumption of alcohol within the Concession Space. Violation of these provisions or refusal to cooperate with implementing this alcohol and drug policy can result in City barring Concessionaire from City facilities or participating in City operations.

ARTICLE XLVI. HAZARDOUS SUBSTANCES

No goods, merchandise, or material will be kept or stored by Concessionaire at DEN, which are explosive or hazardous; and no offensive or dangerous trade, business or occupation will be carried on therein or thereon. Nothing will be done in the performance of this Agreement that will increase the rate of or suspend any insurance policy or coverage of City. Concessionaire covenants that all materials, equipment, and all other items used in the performance of this Agreement follow Occupational Safety and Health Administration (OSHA).

ARTICLE XLVII. CITY'S SMOKING POLICY

Concessionaire agrees that it will prohibit smoking by its employees and the public in the Premises. Concessionaire further agrees to not sell or advertise tobacco products. Concessionaire acknowledges that smoking is not permitted in DEN buildings and facilities except for designated areas. Concessionaire and its officers, agents, and employees shall cooperate and comply with the provisions of City's Executive Order No. 99 dated December 1, 1993, Executive Order No. 13 dated July 31, 2002, the provisions of D.R.M.C., §§ 24-301 to 317 *et seq.*, and the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 *et seq.* and DEN's Rules and Regulations Rules 30 and 40.

ARTICLE XLVIII. WAIVERS

No waiver by City at any time of any of the terms, conditions, covenants, or agreements of this Agreement, or noncompliance therewith, will be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein

contained, nor of the strict and prompt performance thereof by Concessionaire. No delay, failure or omission of City to exercise any right, power, privilege or option arising from any breach nor subsequent payment of charges then or thereafter accrued, will impair any such right, power, privilege or option, or be construed to be a waiver of any such breach or relinquishment thereof or acquiescence therein. No notice by City will be required to restore or revive time as being of the essence hereof after waiver by City or breach in one or more instances. No option, right, power, remedy, or privilege of City will be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options, or remedies given to City by this Agreement are cumulative and no one of them will be exclusive of the other or exclusive of any remedies provided by law, and that the exercise of one right, power, option or remedy by City will not impair its rights to any other right, power, option or remedy.

ARTICLE XLIX. COMPLETE CONTRACT

This Agreement represents the complete understanding between the Parties, and any prior Contracts or representations, whether written or verbal, are hereby superseded. This Agreement may subsequently be amended only by written instrument signed by the Parties hereto, unless provided otherwise within the terms and conditions of this Agreement.

ARTICLE L. ORDER PRECEDENCE

The documents listed below are a part of this Agreement and are hereby incorporated by reference. In the event of inconsistency between the documents, unless otherwise provided herein, the terms of the following documents will govern in the following order of precedence:

- A. Appendixes A - 3;
- B. Terms and Conditions as contained in this Agreement;
- C. Concessionaire's Response, and any subsequent information submitted by Concessionaire during the evaluation process, as modified and accepted by City.

ARTICLE LI. BROKER'S COMMISSION

Concessionaire represents and warrants that it has not caused nor incurred any claims for brokerage commissions or finder's fees regarding the execution of this Agreement. Concessionaire shall defend, indemnify, and hold City harmless against all liabilities arising from any such claims caused or incurred by it (including the cost of attorney fees in connection therewith).

This Agreement does not, and shall not be deemed or construed to, confer upon or grant to any Third Party or parties (except parties to whom the Concessionaire may assign this Agreement in accordance with the terms hereof, and except any successor to City) any right to claim damages or to bring any suit, action or other proceeding against either City or the Concessionaire because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein.

ARTICLE LII. NO LIMIT ON CITY'S POWERS

Nothing in this Agreement shall limit in any way the power and right of City to exercise its governmental rights and powers, including its powers of eminent domain.

ARTICLE LIII. SIGNATURES

This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed one instrument. This Agreement is expressly subject to and shall not be or become effective or binding on City until approved by City Council, if so required by City's Charter, and fully executed by all signatories of City and County of Denver. The Parties, in the manner specified by City, may sign this Agreement electronically.

[SIGNATURE PAGES, EXHIBITS, AND APPENDIXES FOLLOW]

Contract Control Number:

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

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: PLANE-201842226-00

Contractor Name: Provenzano Resources, LLC
a Colorado limited liability company
By: Teller Street Investors, LLC
a New York limited liability company
Its: member

By: _____

Name: Mark G. Falcone
(please print)

Title: Managing Member
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



APPENDIX A

COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

NOTE: As used below the term "Contractor" shall mean and include Concessionaire, and the term "sponsor" shall mean the "City."

During the term of this Contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

1. **Compliance with Regulations.** The Contractor will comply with the Title VI List of Pertinent Non-Discrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.

2. **Nondiscrimination.** The Contractor, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, creed, color, national origin, or sex in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment.** In all solicitations, either by competitive bidding or negotiation, made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this Agreement and the Acts and Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. **Information and Reports.** The Contractor will provide all information and reports required by the Acts, Regulations, or directives issued pursuant thereto and will permit access to its books, records, accounts other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the sponsor or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance.** In the event of a Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the sponsor will impose such Contract sanctions as it or the FAA may determine to be appropriate including, but not limited to:

- a. Withholding of payments to the Contractor under this Agreement until the Contractor complies; and/or
- b. Cancelling, terminating, or suspending this Agreement, in whole or in part.

6. **Incorporation of Provisions.** The Contractor will include the provisions of paragraphs one (1) through six (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations or directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into such litigation to protect the interests

of the United States.

APPENDIX C

STANDARD FEDERAL ASSURANCES AND NONDISCRIMINATION IN CONSTRUCTION, MAINTENANCE, OPERATION OF FACILITIES

As used below, the term "sponsor" will mean City.

Concessionaire, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as part of consideration hereof, does hereby covenant and agree, as a covenant running with the land that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Concessionaire will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities, as may be amended from time to time, such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. With respect to this Agreement, in the event of breach of any of the above Nondiscrimination covenants, sponsor will have the right to terminate this Agreement, and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if this Agreement had never been made or issued.

APPENDIX D

STANDARD FEDERAL ASSURANCES AND NONDISCRIMINATION IN CONSTRUCTION, USE, OR ACCESS TO FACILITIES

As used below, the term "sponsor" will mean City.

- A. Concessionaire for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Concessionaire will use the Premises in compliance with all other requirements imposed by or pursuant to the List of Pertinent Nondiscrimination Authorities.

- B. With respect this Agreement, in the event of breach of any of the above nondiscrimination covenants, sponsor will have the right to terminate this Agreement and to enter, re-enter, and repossess said land and the facilities thereon, and hold the same as if this Agreement had never been made or issued.

APPENDIX E

TITLE VI LIST OF PERTINENT NONDISCRIMINATION AUTHORITIES

As used below, the term "Contractor" will mean and include Concessionaire and the term "sponsor" will mean City.

During the performance of this Agreement, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits' discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation-Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S. C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC§ 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and Contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of

limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S. C. 1681 et seq).

APPENDIX 1

DISADVANTAGED BUSINESS ENTERPRISES- REQUIRED STATEMENTS

As used below, the term "Contractor" will mean and include Concessionaire, and the term "sponsor" will mean City.

Contract Assurance (§ 26.13) – The Contractor or subcontractor will not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor will carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted Contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the recipient deems appropriate.

Prompt Payment (§26.29) – The prime Contractor agrees to pay each subcontractor under this prime Contract for satisfactory performance of its Contract no later than thirty (30) days from the receipt of each payment the prime Contractor receives from Contractor. The prime Contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the sponsor. This clause applies to both DBE and non-DBE subcontractors.

APPENDIX 2

ACDBE NONDISCRIMINATION AND ASSURANCE REQUIREMENTS

(1) This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR part 23. Concessionaire or Contract agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management Contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23.

(2) The Concessionaire or Contractor agrees to include the above statements in any subsequent concession agreement or Contract covered by 49 CFR part 23, that it enters and cause those business to similarly include the statements in further agreements.

APPENDIX 3

ACDBE/DBE POLICY AND OBJECTIVE STATEMENTS:

This part 23 seeks to achieve several objectives:

- (a) To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance;
- (b) To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
- (c) To ensure that the Department's ACDBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as ACDBEs;
- (e) To help remove barriers to the participation of ACDBEs in opportunities for concessions at airports receiving DOT financial assistance; and
- (f) To provide appropriate flexibility to airports receiving DOT financial assistance in establishing and providing opportunities for ACDBEs.

Policy Statement

Section 26.1, 26.23 Objectives/Policy Statement

City has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. City has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, City has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of City to ensure that DBEs are defined in part 26, have an equal opportunity to receive and participate in DOT-assisted Contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT- assisted Contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted Contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted Contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

DSBO has been delegated as the DBE Liaison Officer. In that capacity, DSBO is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the sponsor in its financial assistance agreements with the Department of Transportation.

Sponsor has disseminated this policy statement to the City and County of Denver and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT -assisted Contracts.

CHIEF EXECUTIVE OFFICER

DATE

CONCESSIONS HANDBOOK

(ACKNOWLEDGMENT ONLY)

ACKNOWLEDGMENT AND AGREEMENT

As the Owner/Operator/Regional Manager/General Manager or other designee, I hereby acknowledge and agree to abide by all the terms stated in this Concession's Handbook as amended from time to time.

Per Article XIX of the Standard Concessions Use Agreement, "Concessionaire covenants to faithfully observe and comply with the standards, procedures, requirements, directives, delegations of authority, directions and instructions governing the operations of concessions at DEN as identified in both the Concession's Handbook and Tenant Work Permit Handbook, as amended from time to time. Concessionaire's failure to keep and observe said laws, regulations, ordinances, rules, and handbooks shall constitute a material breach of the terms of this Agreement in the manner as if the same were contained herein as covenants."

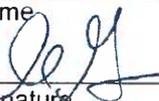
It is the responsibility of each Concessionaire to communicate the information contained in this Concession's Handbook to all personnel, contractors, and third party vendors. Violations will be handled via Article VIII and/or other applicable provisions of the Standard Concession's Use Agreement.

The City reserve the right to update this Concession Handbook at any time. Concessionaires will be informed of such updates via letter sent to the email provided. Acknowledged and Agreed:

CONCESSIONAIRE: Provenzano Resources, LLC

Mark G. Falcone

Name


Signature

Managing Member of Teller Street Investors, LLC, the Member of
Title Provenzano Resources, LLC
February 28, 2019

Date

TENANT WORK PERMIT HANDBOOK

(ACKNOWLEDGMENT ONLY)

ACKNOWLEDGMENT AND AGREEMENT

As the Owner/Operator/Regional Manager/General Manager or other designee, I hereby acknowledge and agree to abide by all the terms stated in this Tenant Work Permit Handbook as amended from time to time.

Per Article XIX of the Standard Concessions Use Agreement, "Concessionaire covenants to faithfully observe and comply with the standards, procedures, requirements, directives, delegations of authority, directions and instructions governing the operations of concessions at DEN as identified in both the Concession's Handbook and Tenant Work Permit Handbook, as amended from time to time. Concessionaire's failure to keep and observe said laws, regulations, ordinances, rules, and handbooks shall constitute a material breach of the terms of this Agreement in the manner as if the same were contained herein as covenants."

It is the responsibility of each Concessionaire to communicate the information contained in this Tenant Work Permit Handbook to all personnel, contractors, and third party vendors. Violations will be handled via Article VIII and/or other applicable provisions of the Standard Concession's Use Agreement.

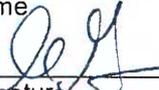
The City reserve the right to update this Tenant Work Permit Handbook at any time. Concessionaires will be informed of such updates via letter sent to the email provided.

Acknowledged and Agreed:

CONCESSIONAIRE: Provenzano Resources, LLC

Mark G. Falcone

Name



Signature

Managing Member of Teller Street Investors, LLC, the Member of
Title Provenzano Resources, LLC

February 28, 2019

Date

EXHIBIT A (PREMISES DESCRIPTION)

Exhibit A

Concourse A

| Location Number | Building | Size | SF | Type | Initial MAG | Reserved | Monthly Electric | Monthly Trash | #1 |
|-----------------|----------|-----------|------|-------|--------------|----------|------------------|---------------|-----|
| 2090 | A | 10' x 12' | 120 | Kiosk | \$46,920.00 | | \$129.00 | \$30.00 | Yes |
| 2091 | A | 10' x 12' | 120 | Kiosk | \$37,260.00 | | \$129.00 | \$30.00 | Yes |
| 2092 | A | 10' x 12' | 120 | Kiosk | \$40,920.00 | | \$129.00 | \$30.00 | Yes |
| 2093 | A | 4' x 8.5' | 34 | Cart | \$27,600.00 | | \$129.00 | \$9.00 | Yes |
| 2094 | A | 4' x 8.5' | 34 | Cart | \$27,600.00 | | \$129.00 | \$9.00 | Yes |
| 2095 | A | 4' x 8.5' | 34 | Cart | \$28,152.00 | | \$129.00 | \$9.00 | Yes |
| 2096 | A | 4' x 8.5' | 34 | Cart | \$27,600.00 | | \$129.00 | \$9.00 | Yes |
| 2097 | A | 10' x 12' | 120 | Kiosk | \$49,680.00 | | \$129.00 | \$10.00 | Yes |
| 2098 | A | 10' x 15' | 150 | Kiosk | \$40,020.00 | | \$129.00 | \$30.00 | Yes |
| 2099 | A | 10' x 15' | 150 | Kiosk | \$0.00 | | \$129.00 | \$30.00 | Yes |
| 2010 | A | 4' x 8.5' | 34 | Cart | \$22,080.00 | | \$129.00 | \$9.00 | Yes |
| 2011 | A | 4' x 8.5' | 34 | Cart | \$22,080.00 | | \$129.00 | \$9.00 | Yes |
| 2012 | A | 10' x 12' | 120 | Kiosk | \$40,020.00 | | \$129.00 | \$10.00 | Yes |
| | | | 1104 | | \$409,032.00 | | \$1,677.00 | \$164.00 | |

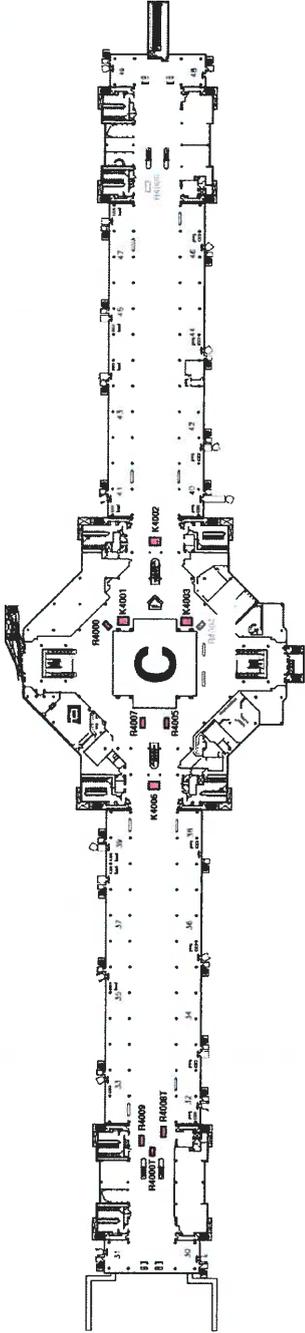
Concourse A

| Location Number | Building | Size | SF | Type | Initial MAG | Reserved | Monthly Electric | Monthly Trash | |
|-----------------|----------|-----------|------|-------|--------------|----------|------------------|---------------|-----|
| 3001 | B | 4' x 8.5' | 34 | Cart | \$22,080.00 | | \$129.00 | \$9.00 | Yes |
| 3001 | B | 4' x 8.5' | 34 | Cart | \$34,560.00 | | \$129.00 | \$9.00 | Yes |
| 3002 | B | 10' x 12' | 120 | Kiosk | \$24,840.00 | | \$129.00 | \$25.00 | Yes |
| 3003 | B | 10' x 17' | 170 | Kiosk | \$74,840.00 | | \$129.00 | \$27.00 | Yes |
| 3004 | B | 4' x 8.5' | 34 | Cart | \$28,152.00 | | \$129.00 | \$7.00 | Yes |
| 3005 G | B | 10' x 30' | 300 | Kiosk | \$49,680.00 | | \$258.00 | \$50.00 | Yes |
| 3007 | B | 4' x 8.5' | 34 | Cart | \$13,800.00 | | \$129.00 | \$9.00 | Yes |
| 3008 | B | 4' x 8.5' | 34 | Cart | \$24,840.00 | | \$129.00 | \$9.00 | Yes |
| 3009 | B | 4' x 8.5' | 34 | Cart | \$20,700.00 | | \$129.00 | \$9.00 | Yes |
| 3010 | B | 4' x 8.5' | 34 | Cart | \$14,532.40 | | \$129.00 | \$9.00 | Yes |
| 3011 | B | 4' x 8.5' | 34 | Cart | \$11,800.00 | | \$129.00 | \$9.00 | Yes |
| 3012 | B | 4' x 8.5' | 34 | Cart | \$20,700.00 | | \$129.00 | \$9.00 | Yes |
| 3013 | B | 4' x 8.5' | 34 | Cart | \$20,700.00 | | \$129.00 | \$9.00 | Yes |
| 3014 | B | 4' x 8.5' | 34 | Cart | \$21,080.00 | | \$129.00 | \$9.00 | Yes |
| 3015 | B | 4' x 8.5' | 34 | Cart | \$21,080.00 | | \$129.00 | \$9.00 | Yes |
| 3016 | B | 10' x 10' | 100 | Kiosk | \$60,720.00 | | \$129.00 | \$25.00 | Yes |
| 3017 | B | 10' x 10' | 100 | Kiosk | \$27,600.00 | | \$129.00 | \$25.00 | Yes |
| | | | 1120 | | \$445,641.40 | | \$1,322.00 | \$256.00 | |

Concourse C

| Location Number | Building | Size | SF | Type | Initial MAG | Reserved | Monthly Electric | Monthly Trash | |
|-----------------|----------|-----------|-----|-------|--------------|----------|------------------|---------------|-----|
| 4000 | C | 4' x 8.5' | 34 | Cart | \$27,600.00 | | \$129.00 | \$7.00 | Yes |
| 4001 | C | 10' x 12' | 120 | Kiosk | \$55,200.00 | | \$129.00 | \$30.00 | Yes |
| 4002 | C | 10' x 12' | 120 | Kiosk | \$45,540.00 | | \$129.00 | \$30.00 | Yes |
| 4003 | C | 10' x 12' | 120 | Kiosk | \$46,920.00 | | \$129.00 | \$30.00 | Yes |
| 4004 | C | 4' x 8.5' | 34 | Cart | \$27,600.00 | | \$129.00 | \$7.00 | Yes |
| 4005 | C | 4' x 8.5' | 34 | Cart | \$34,500.00 | | \$129.00 | \$7.00 | Yes |
| 4006 | C | 10' x 12' | 120 | Kiosk | \$27,600.00 | | \$129.00 | \$40.00 | Yes |
| 4007 | C | 4' x 8.5' | 34 | Cart | \$14,500.00 | | \$129.00 | \$9.00 | Yes |
| 4008 | C | 4' x 8.5' | 34 | Cart | \$22,080.00 | | \$129.00 | \$9.00 | Yes |
| 4009 | C | 4' x 8.5' | 34 | Cart | \$22,080.00 | | \$129.00 | \$9.00 | Yes |
| | | | 668 | | \$343,620.00 | | \$1,290.00 | \$170.00 | |

EAST



WEST

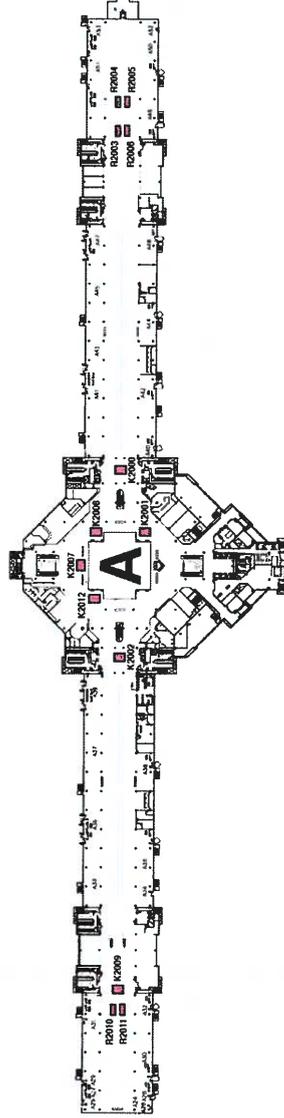
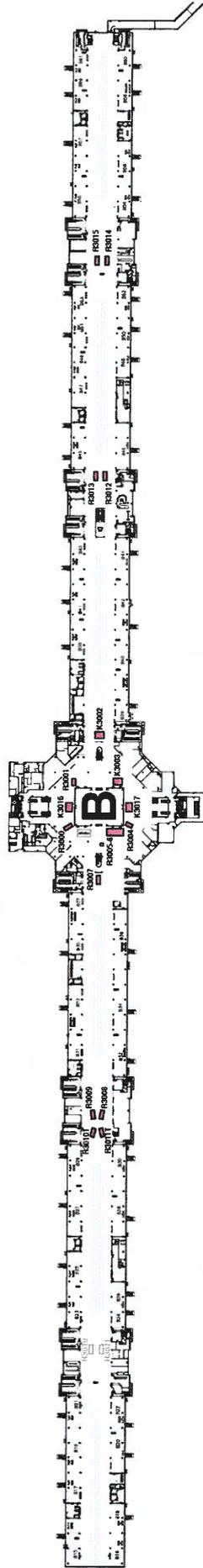


Exhibit A-1

INLINE Locations

Concourse A, R17-2-3A

Concourse A, R17-2-3-WS-S7-1

Vending

Airside Building B - V-AS-001

Main Terminal

VEND 1 - Concourse B

VEND 2 - Bagdrop Building

VEND-A1 West

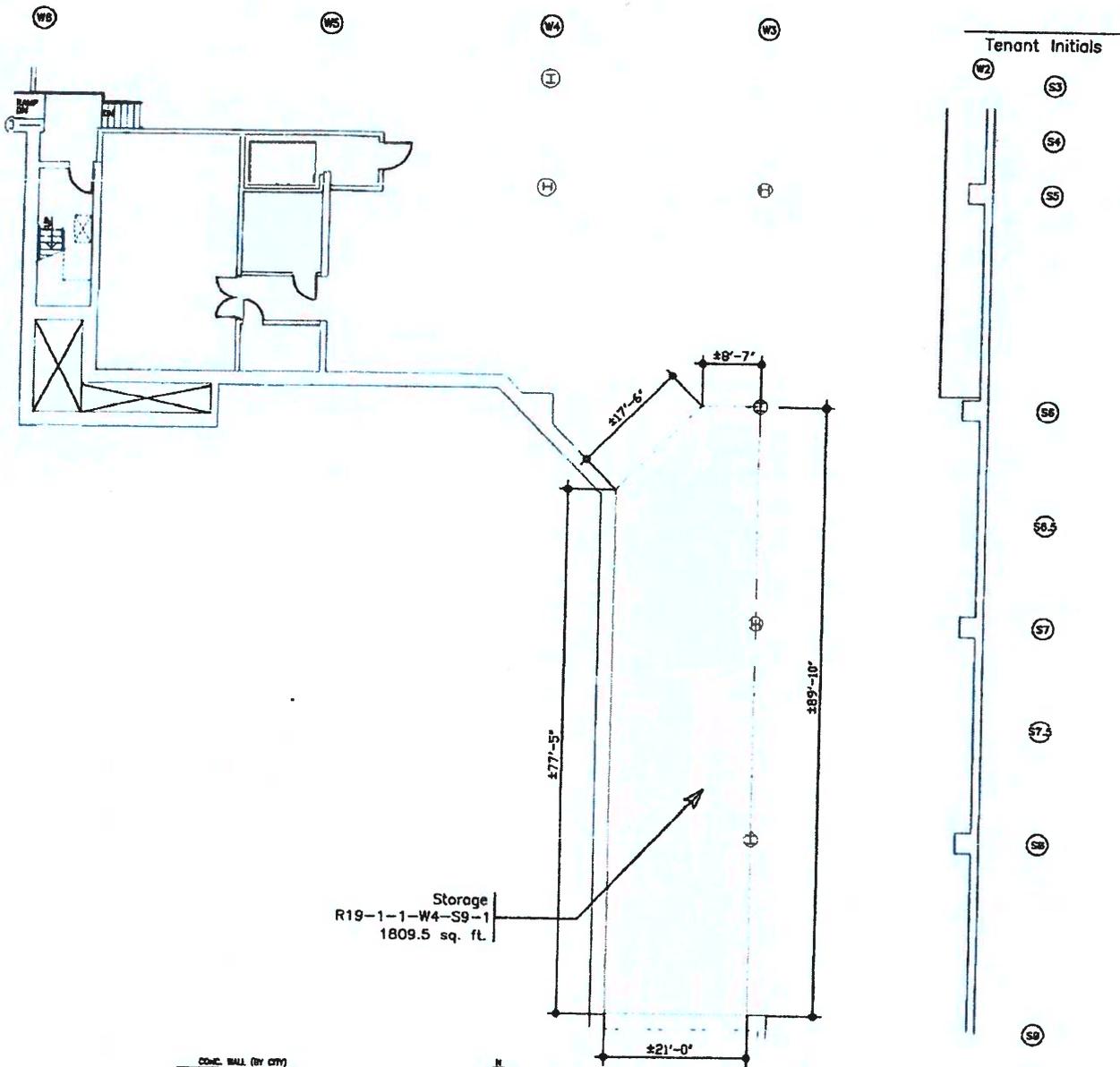
VEND-A2 East

VEND-B38, Concourse B

VEND-C40, Concourse C

HLE, Commercial Holding Lot East

CCA021W028



NOTE:

This exhibit depicts only approximate dimensions and square footage of leased area based upon planning data and is not intended to show dimensions for construction details.

Ronald Horn
 MANAGER OF DESIGN

| | | | | |
|--------------------------|--|----------|---|--|
| KEY PLAN CONCOURSE C | | REVISED | DENVER INTERNATIONAL AIRPORT | |
| | | | EXHIBIT A Concourse C Bsmt. Level RMU Storage | |
| | | CC#: rmu | DATE: 10/06/10 | |

R19-1-1-13-1

EXHIBIT B (PERMITTED USES)

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EXHIBIT C (MONTHLY & QUARTERLY CONCESSIONS REPORTS)



| PERCENTAGE FEE | | | |
|---------------------|----------|----------|-----------|
| Concession Location | Rate (%) | Due (\$) | Paid (\$) |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

| OTHER FEES | | | | | |
|-------------------------|---------------------------------|---------------------|-----------|-----|------|
| Concession Services Fee | Common Maintenance Services Fee | Joint Marketing Fee | Utilities | CAM | CACI |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

OATH:

The undersigned states that the sales, receipts, and calculations shown by this statement are correct to the best of his or her knowledge and belief, and the percentage shown is due the City and County of Denver in accordance with the Concession Agreement.

Signature

Authorized Officer Title

Date



EXHIBIT D (DEVELOPMENT SCHEDULE)

TO BE SUBMITTED

EXHIBIT E (FORM OF GUARANTY OF AGREEMENT)

RESERVED

EXHIBIT F (INSURANCE CERTIFICATE & SURETY FORMS)

**CITY AND COUNTY OF DENVER
INSURANCE REQUIREMENTS - DEPARTMENT OF AVIATION**

Certificate Holder:

CITY AND COUNTY OF DENVER
Attn: Risk Management, Suite 8810
Manager of Aviation
Denver International Airport
8500 Pena Boulevard, Room 8810
Denver CO 80249

CONTRACT NAME & NUMBER TO WHICH THIS INSURANCE APPLIES: 201842226 – Asset Manager RMU Program

I. PRIMARY COVERAGE

Colorado Workers' Compensation and Employer Liability Coverage

Coverage: COLORADO Workers' Compensation

Minimum Limits of Liability (In Thousands)

WC Limits: \$100, \$500, \$100

And Employer's Liability Limits:

Any Policy issued under this section must contain, include or provide for the following:

1. All States Coverage or Colorado listed as a covered state for the Workers' Compensation
2. Waiver of Subrogation and Rights of Recovery against the City and County of Denver (the "City"), its officers, officials and employees.

Commercial General Liability Coverage

Coverage: Commercial General Liability (coverage at least as broad as that provided by ISO form CG0001 or equivalent)

Minimum Limits of Liability (In Thousands):

| | |
|--|---------|
| Each Occurrence: | \$1,000 |
| General Aggregate Limit: | \$2,000 |
| Products-Completed Operations Aggregate Limit: | \$2,000 |
| Liquor Liability | \$2,000 |
| Personal & Advertising Injury: | \$1,000 |

Any Policy issued under this section must contain, include or provide for the following:

1. City, its officers, officials and employees as additional insureds, per ISO form CG2010 and CG 2037 or equivalents.
2. Coverage for defense costs of additional insureds outside the limits of insurance, per CG0001.
3. Liability assumed under an Insured Contract (Contractual Liability).
4. The full limits of coverage must be dedicated to apply to each project/location, per ISO form CG2503 or equivalent.
5. Waiver of Subrogation and Rights of Recovery, per ISO form CG2404 or equivalent.
6. If alcoholic beverages are served or sold at the Airport by the Concessionaire, the Commercial General Liability insurance shall include Host Liquor Liability coverage.
7. Separation of Insureds Provision required

Coverage: Personal Property, Contents, Fixtures, Tenant Improvements and Betterments

Minimum Limits of Liability (in Thousands):

- o 100% of the Replacement Cost value of Personal Property, Contents, Fixtures, Tenant Improvements and Betterments
- o Covered Cause of Loss – Special Form including glass coverage and signs
- o Replacement Cost Endorsement

Any Policy issued under this section must contain, include or provide for the following:

1. City, its officers, officials and employees as additional insureds.
2. Waiver of Subrogation Applies to City as Landlord for any protected Landlord Property.
3. In the event of payment of any Loss involving Tenant Improvements and Betterments, permanent fixtures, etc, the insurance carrier shall pay the City (as Landlord) its designee first for said property loss

Coverage: Business Interruption Insurance

Concessionaire shall procure and maintain Business Interruption insurance in such amounts as will reimburse Concessionaire for direct or indirect loss of earnings attributable to the perils commonly covered by the Concessionaire's property insurance described above, which shall include losses arising from mechanical failures on or interruption of services to Airport premises.

III. ADDITIONAL CONDITIONS

It is understood and agreed, for the benefit of the City, that the following additional conditions shall apply to all coverage specified herein:

1. All coverage provided herein shall be primary and any insurance maintained by the City shall be considered excess.
2. The City shall have the right to verify or confirm, at any time, all coverage, information or representations contained herein, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City may elect to undertake.
3. Advice of renewal is required
4. With the exception of workers compensation, all insurance companies issuing policies hereunder must carry at least an A -VI rating from A.M. Best Company or obtain a written waiver of this requirement from the City's Risk Administrator.
5. Compliance with coverage requirement by equivalent herein must be approved in writing by the City's Risk Administrator prior to contract execution.
6. No changes, modifications or interlineations on these insurance requirements shall be allowed without the review and approval of the Risk Administrator prior to contract execution.
7. The Insured named above shall promptly advise the City in the event any general aggregates or other aggregate limits are reduced below the required per occurrence limits. At the Insured's expense, the Insured will reinstate the aggregate limits to comply with the minimum requirements and shall furnish to the City a new Certificate showing such coverage is in force.

IV. NOTICE OF CANCELLATION

It is understood and agreed that should any Policy issued hereunder be cancelled or non-renewed before the expiration date thereof, or sustain a material change in coverage adverse to the City, the issuing company or its authorized Agent shall give notice to the Department of Aviation in accordance with policy provisions.

ISSUING BANK IDENTIFICATION:

DATE:

IRREVOCABLE LETTER OF CREDIT NO. _____:

BENEFICIARY:

CITY AND COUNTY OF DENVER
DEPARTMENT OF AVIATION
DENVER INTERNATIONAL AIRPORT
AIRPORT PROPERTY OFFICE/AIRPORT OFFICE BLDG.
8500 PENA BOULEVARD, ROOM 9870
DENVER, COLORADO 80249-6340

APPLICANT:

LADIES AND GENTLEMEN:

WE HEREBY ISSUE IN YOUR FAVOR OUR IRREVOCABLE LETTER OF CREDIT FOR THE ACCOUNT OF _____, FOR UP TO THE AGGREGATE AMOUNT OF USD _____ (_____ AND NO/100 U.S. DOLLARS) AVAILABLE SOLELY BY YOUR DRAFT(S) AT SIGHT DRAWN ON US AND ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

1. THE ORIGINAL OF THIS LETTER OF CREDIT AND ALL AMENDMENTS THERETO, IF ANY.
2. BENEFICIARY'S SIGNED AND DATED STATEMENT READING AS FOLLOWS:

"DENVER'S MANAGER OF AVIATION HAS DECLARED A DEFAULT OR VIOLATION UNDER THE _____ Agreement BETWEEN THE CITY AND COUNTY OF DENVER AND _____, AT DENVER INTERNATIONAL AIRPORT" AND/OR "THE RULES AND REGULATIONS FOR THE MANAGEMENT, OPERATION, CONTROL AND USE OF THE DENVER MUNICIPAL AIRPORT SYSTEM, ADOPTED JANUARY 11, 1994, WITH SUCH AMENDMENTS, REVISIONS, ADDITIONS AND EXTENSIONS AS MAY FROM TIME TO TIME BE ADOPTED ("AIRPORT RULES AND REGULATIONS") AND/OR THE DENVER INTERNATIONAL AIRPORT TENANT DEVELOPMENT GUIDELINES AS FROM TIME TO TIME THEY MAY BE AMENDED, REVISED OR SUPPLEMENTED."

PARTIAL DRAWINGS ARE ALLOWED.

ALL DRAFTS DRAWN MUST BE MARKED "DRAWN UNDER _____ BANK, N.A., LETTER OF CREDIT NO. _____ DATED _____."

WE HEREBY ENGAGE WITH THE DRAWERS, ENDORSERS AND BONA FIDE HOLDERS THAT ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS CREDIT WILL BE DULY HONORED UPON PRESENTATION FOR PAYMENT OF THIS ORIGINAL LETTER OF CREDIT AND THE ABOVE SPECIFIED DOCUMENT AT THIS OFFICE BEFORE THE CLOSE OF OUR BUSINESS ON OR BEFORE _____. PURSUANT TO U.S. LAW WE ARE PROHIBITED FROM ISSUING, TRANSFERRING, ACCEPTING OR PAYING LETTERS OF CREDIT TO ANY PARTY OR ENTITY IDENTIFIED BY THE OFFICE OF FOREIGN ASSETS CONTROL, U.S. DEPT.

OF TREASURY, OR SUBJECT TO THE DENIAL OF EXPORT PRIVILEGES BY THE U.S. DEPT. OF COMMERCE.

THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY LETTER OF CREDITS (2007 Revision) and/or THE INTERNATIONAL STANDBY PRACTICES (1998), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600 AND AS TO MATTERS NOT GOVERNED BY THE REFERENCED DOCUMENTS, THIS CREDIT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF COLORADO.

ALL CORRESPONDENCE AND ANY DRAWINGS HEREUNDER ARE TO BE DIRECTED TO

_____ BANK, N.A.

AUTHORIZED SIGNATURE

Bond No. _____

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned _____, organized under the laws of _____ and authorized to transact business in the State of Colorado, hereinafter referred to as the "PRINCIPAL" and _____, a _____ organized under the laws of the State of _____, and authorized to transact business in the State of Colorado, hereinafter referred to as "SURETY," and held and firmly bound unto the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, hereinafter referred to as the "OBLIGEE," in the penal sum of _____ and ___/100 Dollars \$ _____), lawful money of the United States of America, for the payment of which sum the principal and Surety bind ourselves and our heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

Commencing the ___ day of _____, 20___, and ending the ___ day of _____, 20___.

WHEREAS, the Principal has entered into a written agreement with the Obligee for " _____ Agreement between the City and County of Denver and _____." At Denver International Airport ("DEN"), and the term of said agreement is as indicated below:

Commencing the _____ day of _____, 20___, and ending the ___ day of _____, 20___.

WHEREAS, the Principal by virtue of entering into said agreement(s), license, permit or permission with the Obligee is, among its others duties, obligated to comply with the Rules and Regulations for the Management, Operation, Control, and Use of the Denver Municipal Airport System, adopted January 11, 1994, with such amendments, revisions, additions and extensions as may from time to time be adopted, ("DEN Rules and Regulation"), the DEN Concession Handbook and DEN Tenant Work Permit Handbook as from time to time they may be amended, revised or supplemented.

NOW, THEREFORE, the condition of this obligation is such, if the Principal shall and will in all particulars well, truly, promptly and faithfully observe, perform and abide by each and every covenant, condition, and part of said agreement, license, permit or permission; Rules and Regulations for the Management, Operation, Control, and Use of the Denver Municipal Airport System, adopted January 11, 1994, with such amendments, revisions, additions and extensions as may from time to time be adopted, ("DEN Rules and Regulation the DEN Concession Handbook and DEN Tenant Work Permit Handbook as from time to time they may be amended, revised or supplemented; and if the Principal shall pay all loss, costs, expenses or damage to Obligee caused by Principal's noncompliance with or breach of any agreements, laws, statutes, ordinances, rules or regulations pertaining to such agreements, licenses, permits, or permissions issued to the Principal, then this obligation shall be and become void, otherwise it shall remain in full force and effect.

PROVIDED, that if this bond is for a fixed term, it may be continued by Certificate executed by the Surety; and

PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that any and

all amendments, supplements, extensions of terms or other such changes in the agreement(s) identified above or compliance or noncompliance with the formalities in the said agreement(s) for making such changes shall not affect the Surety's obligations under this bond and the Surety hereby waives notice of any such changes.

[Signature Page Follows]

IN WITNESS WHEREOF, said Principal and said Surety have executed these presents as of this ____ day of _____, 20__.

Company _____

By:

Witness Principal

_____ Insurance Company

By:

_____, Attorney-in-Fact

EXHIBIT G (ACDBE COMMITMENT FORMS)

ACDBE Letter of Intent

Name of Concession/vendor firm: Provenzano Resources, LLC

Address: 31828 Corte Rosario

City: Temecula

State: California

Zip: 92592

Telephone: 858-488-2734

E-mail address: Ross@ProResourcesInc.com

Name of ACDBE Firm: Provenzano Resources, Inc.

Address: 1211 Sunset Plaza Dr., #307

City: Los Angeles

State: California

Zip: 90069

Telephone: 310-734-7843

E-mail address: Deborah@ProResourcesInc.com

Description of Goods and Services or work to be performed by ACDBE firm:

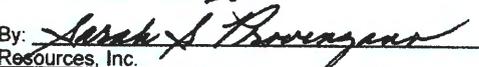
Day to day, Program Management

The Concessionaire is committed to utilizing the above named ACDBE for the goods and services or work described above. The estimated dollar value of this work is \$300,000 /yr.

AFFIRMATION:

The above-named ACDBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By:  CEO, Provenzano Resources,
Ins. Member of Provenzano Resources, LLC
Concessionaire Signature Title

By:  Secretary of Provenzano
Resources, Inc. Title
ACDBE Signature

ACDBE COMMITMENT FORM
DENVER INTERNATIONAL AIRPORT
CITY AND COUNTY OF DENVER
DIVISION OF SMALL BUSINESS OPPORTUNITY

Proposal for: Asset Manager of Den RMU Kiosk Program and Terminal Redevelopment
Temporary Operations

SECTION A – PROPOSER INFORMATION

Name of Firm: Provenzano Resources LLC

Address: 1881 16th St.

City: Denver State: Colorado Zip: 80202

Contact Person: Ross V. Provenzano

Telephone: 858-488-2734

Email: Ross@ProResourcesInc.com

Is your firm ACDBE Certified: NO

SECTION B – ACDBE COMMITMENT

The ACDBE goal on this concession is 30%.

NOTE: The DSBO will only credit ACDBE participation that is certified as such by the City and County of Denver, Division of Small Business Opportunity (DSBO) or the Colorado Department of Transportation.

1. The undersigned proposer/concessionaire has satisfied the ACDBE concession requirements in the following manner (please check the appropriate space).

The proposer is committed to a minimum of 30% ACDBE utilization on this concession contract which meets or exceeds the ACDBE goal on this concession opportunity. The amount and type of participation proposed will become a firm commitment in the Lease Agreement.

The proposer, unable to meet the ACDBE goal, is committed to a minimum of % ACDBE utilization on this concession contract and submits its documentation demonstrating good faith efforts.

The proposer is unable to meet the ACDBE goal and submits documentation demonstrating good faith efforts.

2. Identify ACDBE sub-concessionaire, ACDBE joint venture partner, ACDBE equity partnership or other legal ACDBE business arrangement that meets ACDBE goal and eligibility standards in 49 CFR Part 23.

NOTE: An ACDBE Letter of Intent must be submitted for all ACDBE suppliers listed below. Attach copy of the ACDBE Certification Letter for all ACDBEs, regardless of participation type.

| Name & Address of ACDBE Firm | Role of ACDBE | % Level of Participation |
|------------------------------|--------------------------|--------------------------|
| Provenzano Resources, Inc | Operations Management | 30% |
| Click here to enter text | Click here to enter text | Click here to enter text |
| Click here to enter text | Click here to enter text | Click here to enter text |
| Click here to enter text | Click here to enter text | Click here to enter text |

(Use Additional Sheets if Necessary)

ACDBE UTILIZATION – VENDOR/SUPPLIERS OPPORTUNITIES

NOTE: Complete only if suppliers will be used to meet any portion of the ACDBE goal

List all actual and anticipated major vendors/suppliers; include both ACDBE and non-ACDBE to be utilized on the concession (use additional sheets if necessary) Examples: Janitorial services, accounting services, HR services, etc

NOTE: The DSBO will only credit ACDBE participation that is certified as such by the City and County of Denver, Division of Small Business Opportunity (DSBO) or the Colorado Department of Transportation.

| Name and Address of Company | Business Area | Work to be Performed or Goods/Services to be provided | Estimated Amount (\$) | ACDBE | | LOI & Cert Lette Attach |
|-----------------------------|--------------------------|---|--------------------------|-------|---|--------------------------|
| | | | | Y | N | |
| Click here to enter text | Click here to enter text | Click here to enter text | Click here to enter text | | | Click here to enter text |
| Click here to enter text | Click here to enter text | Click here to enter text | Click here to enter text | | | Click here to enter text |
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(Use Additional Sheets if Necessary)

SECTION C – GOOD FAITH EFFORTS

NOTE: Complete only if the ACDBE goal was not achieved.

The following items are minimally considered as good faith efforts and demonstrate specific initiatives made in attempting to achieve the concession specific ACDBE goal. Proposers are not limited to these particular areas and may include other efforts deemed appropriate. Please feel free to elaborate on any question below.

| GOOD FAITH EFFORT QUESTIONS | Y | N |
|--|---|---|
| • If applicable, did you attend pre-proposal conference? | | |
| • Did your firm request and obtain a copy of the certified ACDBE firms? | | |
| • Were ACDBE firms contacted or solicited for concession participation? | | |
| • Provide listing of solicited ACDBE firms with whom contact was made? Please identify name of company, contact person, date, phone number and briefly describe nature of solicitation. <i>(Include as an Attachment)</i> | | |
| • Was direct contact made with the City's DSBO office? If yes, please identify date/person contacted and assistance sought <i>(Include as an Attachment)</i> | | |
| • Identify all ACDBE support agencies/associations contacted for ACDBE assistance or solicitation (Minority Chambers of Commerce, purchasing councils, contractor groups, etc.) <i>(Please attach copies of solicitation letters of assistance and/or describe, as an Attachment to this section, the personal contact made)</i> | | |
| • Were concession-related opportunities to this project advertised in minority/women newspapers and trade journals? <i>(If yes, please include a copy of the advertisement or detail the name of the publication(s), date of advertisement and describe the solicitation)</i> | | |

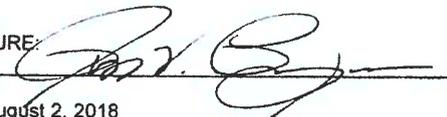
| | | |
|---|--|--|
| <ul style="list-style-type: none"> • Were copies of concession RFP furnished to any ACDBEs? | | |
| <ul style="list-style-type: none"> • Identify efforts made to assist interested ACDBEs in obtaining bonding, insurance, or line of credit (Please detail any assistance that was provided or if they were referred, to whom) | | |
| <p>10. Discuss efforts made to define additional elements of the work proposed to be performed by ACDBEs in order to increase the likelihood of achieving the ACDBE goal.</p> | | |
| <p>11. List, as an Attachment, all ACDBE negotiations and/or bids received but rejected. Identify company name, contact person, telephone number, date, trade area and the reason for rejecting the proposal or bid.</p> | | |
| <p>12. Discuss any other effort(s) aimed at involving ACDBEs (Include as an Attachment):</p> <p>(a) Identify any specific efforts to divide work, in accordance with normal industry practices to allow maximum ACBE participation.</p> <p>(b) Discuss joint ventures initiatives, requesting second-tier ACDBE subcontracting, etc., if any.</p> <p>(c) List all other good faith efforts employed, please elaborate.</p> <p>(d) Discuss types of participation considered. If any methods were not pursued, please provide the rationale behind this decision.</p> | | |

SECTION D - AFFIRMATION

I HEREBY AFFIRM THAT THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE. I FURTHER UNDERSTAND AND AGREE THAT, THIS DOCUMENT SHALL BE ATTACHED THERTO AND BECOME A BINDING PART OF THE CONCESSION CONTRACT.

Ross V. Provenzano, Member:

SIGNATURE:

 CED

DATE: August 2, 2018

City and County of Denver [denver@mwdbe.com]

Sent: Tue, 4:27 pm
To: deborah@proresourcesinc.com
Deborah Kravitz
Provenzano Resources, Inc
1211 Sunset Plaza Drive
Suite 307
West Hollywood, CA 90069

Dear Deborah Kravitz:

The Division of Small Business Opportunity is pleased to inform you that Provenzano Resources, Inc is certified as a Airport Concessionaire Disadvantaged Business Enterprise (ACDBE) pursuant to the US Department of Transportation's Regulation 49 CFR Part 26. Your firm will be listed on the Colorado Unified Certification Program's (UCP) on-line directory of eligible DBEs at www.coloradodbe.org.

Provenzano Resources, Inc is eligible to participate as a DBE on US Department of Transportation financially-assisted projects in Colorado in the work codes appearing as part of your firm's listing on the directory as eligible to be counted toward DBE participation. It is your responsibility to manage your firm's work codes to ensure they are correct.

CO UCP NAICS 541618: OTHER MANAGEMENT CONSULTING SERVICES

Consultant to retailers, shopping centers and airports in strategic business planning, management, lease negotiation and site selection

The anniversary date of your firm's DBE certification is November 14, 2018. You will be notified prior to the anniversary date that eligibility must be re-evaluated. However, if you do not receive notification from this office, it is your responsibility to contact us. Pursuant to 49 CFR 26.83(i), submittal of this information is required to ensure that there is no interruption of your firm's status as a certified DBE. If any changes occur in the firm's legal structure, ownership, management, control, or work performed, you must notify the division immediately.

Sincerely,

Director

City and County of Denver
Office of Economic Development
<http://www.denvergov.org/ocd>
<http://denver.mwdbe.com>

Asset Manager of DEN RMU Kiosk Program and Terminal Redevelopment Temporary Operations
RFQ No. 201842226
Provenzano Resources, LLC
Page 102

This message was sent to: deborah@proresourcesinc.com
Sent on: 7/24/2018 6:27:04 PM
System ReferenceID: 66015782

City and County of Denver [denver@mwdb.com]

Sent: Tue, 4:27 pm
To: deborah@proresourcesinc.com
Deborah Kravitz
Provenzano Resources, Inc
1211 Sunset Plaza Drive
Suite 307
West Hollywood, CA 90069

Dear Deborah Kravitz:

SUBJECT: Airport Concessionaire Disadvantaged Business Enterprise (ACDBE) Certification, Pursuant to 49 CFR Part 23 of the U.S. Department of Transportation's Regulations.

The Division of Small Business Opportunity is pleased to inform you that Provenzano Resources, Inc is certified as a Airport Concessionaire Disadvantaged Business Enterprise (ACDBE) pursuant to the US Department of Transportation's Regulation 49 CFR Part 23. Your firm will be listed on the Colorado Unified Certification Program's (UCP) on-line directory of eligible ACDBEs at www.coloradodbc.org. Your firm is certified with the following dates:

August 11, 2016 to November 14, 2019

Provenzano Resources, Inc is eligible to participate as an ACDBE on US Department of Transportation financially-assisted projects in Colorado in the NAICS work codes appearing below.

NAICS CODES

CO UCP NAICS 541618: OTHER MANAGEMENT CONSULTING SERVICES

Consultant to retailers, shopping centers and airports in strategic business planning, management, lease negotiation and site selection

Your business enterprise is required to maintain an accurate mailing address, email address and telephone number information with DSBO. If any changes occur in the firm's legal structure, ownership, management, control, or work performed, you must notify DSBO immediately. Failure to report any of these changes may result in removal of your business enterprise from the Certification Directory and possible revocation of certification of your business enterprise as an ACDBE.

The anniversary date of your firm's ACDBE certification is November 14, 2018. You will be notified prior to the anniversary date that eligibility must be re-evaluated. It is your responsibility to request and submit a renewal application and all of the documents

EXHIBIT H (CITY'S WORK)

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EXHIBIT I (SCHEDULE OF ASSETS AND AMORTIZATION)

