



Request for Proposals Exclusive Non-Alcoholic Beverage Partner of Denver Arts & Venues

Beverages shall include carbonated soft drinks, energy drinks, ready-to-drink teas, ready-to-drink coffees, ready-to-drink juices, isotonic sports drinks, protein drinks, frozen flavored beverages, bottled and canned still water, sparkling water, flavored water and enhanced water.

Date Issued: January 27, 2023

Submission Deadline: March 22, 2023 5:00PM MST

Prepared by:
Denver Arts & Venues
Andrew Lindley
Sr. Manager, Corporate Partnerships
1345 Champa Street
Denver, CO 80204

Signature constitutes acceptance of all Terms and Conditions listed on this form and all documents attached AND TO ACCEPT ALL OF THE MANDATORY TERMS IN THE SAMPLE CONTRACT AS DESCRIBED ON PAGE 9 OF THIS RFP.

Print Name

Signature

Date

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Section I

OVERVIEW

Denver Arts & Venues (“A&V”) is requesting proposals from non-alcoholic beverage providers to be an exclusive product and promotional sponsor with respect to City of Denver owned and operated public assembly facilities to include the following: Red Rocks Amphitheatre, Visitor Center and Trading Post; Denver Performing Arts Complex (DPAC) to include the Temple Hoyne Buell Theatre, Ellie Caulkins Opera House and Boettcher Concert Hall; the Denver Coliseum; the Colorado Convention Center; and Loretto Heights Theater (collectively, the “Applicable Locations”).

About Denver Arts & Venues (A&V): Denver Arts & Venues is a special revenue fund of the City & County of Denver. A&V’s mission is to amplify Denver’s quality of life and economic vitality through our premier public venues, public art collection, and free entertainment events and programs.

Any contract entered into as a result of this request will be subject to A&V’s sponsorship policy and any other applicable City agreements.

The selected proposer shall be sensitive to the City’s mission to “create a world-class City where everyone matters.”

For further information regarding Denver Arts & Venues visit:
www.artsandvenuesdenver.com

TERM

The purpose of this Request for Proposal (RFP) is to select a Non-Alcoholic Beverage Partner or Partners for exclusive marketing rights in the soft drink, canned water, energy drink and sparkling water categories for a 5-year term. The Proposed Partnership Plan should be separated by brand and Applicable Location as outlined in Section III for a five (5) year contract.

QUESTIONS

The RFP is issued by the City of Denver, Arts & Venues Division. All questions regarding this bid process and proposal content may be addressed to Andrew Lindley via email Andrew.Lindley@denvergov.org. **Question deadline shall be March 10, 2023 by 5pm.**

Section II

SCOPE OF PARTNERSHIP BENEFITS

The City is now seeking an exclusive Beverage Partner for the Applicable Locations, including but not limited to, providing beverage products, participating in facility improvements, providing marketing assistance, and providing an annual monetary contribution.

Exclusivity: The Agreement between City and select Beverage Partner shall be exclusive whereas the City will not enter into a contract or other legally binding arrangement conferring marketing, pouring rights, or other promotional opportunities at Red Rocks Amphitheatre, Denver Performing Arts Center, the Historic Denver Coliseum, Colorado Convention Center, and the Loretto Heights Theater (“Applicable Locations”) to a company in the business of manufacturing, selling, and distributing carbonated soft drinks, energy drinks, ready-to-drink teas, ready-to-drink coffees, ready-to-drink juices, isotonic sports drinks, protein drinks, frozen flavored beverages, bottled or canned still water, sparkling water, flavored water and enhanced water (collectively, “Partner Soft Drinks”). For the avoidance of doubt, Partner Soft Drinks shall not include natural spring water (e.g. Eldorado Springs) at Red Rocks (the “Product Exceptions”).

With respect to natural spring water products, at all times during the Term, at each City Venue that dispenses natural spring water products, the City shall make available to select Beverage Partner for its bottled or canned still water product the same number of facings that are provided to such natural spring water products. Product Exceptions will not be dispensed or made available through Equipment provided by Partner.

Equipment: Select Partner will loan each City Venue, at no charge, appropriate equipment for dispensing the Partner Soft Drinks, including CO₂, throughout the term of the agreement. The City agrees that the Equipment shall be exclusively used to display and merchandise the Partner Soft Drinks, and the City shall not use the Equipment to display, stock, advertise, sell or maintain any other products (including on the exterior of the Equipment).

Service & Maintenance: Select Beverage Partner will also provide, at no charge to the City, service to the Equipment. Title to such Equipment will remain vested in Sponsor or its affiliate and all such Equipment will be returned to Sponsor upon expiration or earlier termination of this Agreement. Partner will provide, at no charge to the City, preventative maintenance and service to the Equipment. Partner will also provide the City with a telephone number to request emergency repairs and receive technical assistance related to the Equipment after business hours.

Marketing & Promotions: Select Beverage Partner will provide guidance to the City for increasing concession sales and profitability. Additionally, select Beverage Partner will provide on-site activation for partner-selected brands to increase product awareness and provide for product sampling, education, or additional consumer experiences. Select Beverage Partner may also propose sponsorship of A&V performances or events. Marketing & Promotions should be included in the Partnership Plan as outlined

in **Section III**.

Partnership Fee: Annual monetary funding the proposer would provide for capital improvements or equipment, being specific as to type of capital improvement or equipment proposed. Pricing proposals should be included in the Pricing Proposal as outlined in **Section III**.

The City will develop a more detailed Scope of Partnership Benefits based on the selected proposer's proposal. Such Scope will be included in the contractual agreement covering the subject matter of this RFP.

Section III

PROPOSAL REQUIREMENTS

To be considered, each proposer shall provide a detailed proposal structured as specified below.

- 1.** The **Partnership Plan** should identify specific marketing and branding objectives separated by brand. The Partnership Plan represents an opportunity for each proposer to provide examples of its innovation, promotional ideas, and understanding of Applicable Locations as well as individual brand expectations and initiatives.
- 2.** Respondents are required to provide details of their proposed **Product Plan** as specified below:
 - a. Equipment:** The proposal should identify the equipment available to distribute respondent's beverages.
 - b. Service:** The proposal should provide an overview of the respondent's service plan, including days and hours of service for both refill and maintenance.
 - c. Marketing & Promotions:** Denver Arts & Venues recognizes the importance of timely and effective marketing to promote the sale of beverages. Respondent shall outline intended efforts to support the marketing and sale of beverages in all distribution channels.
 - d. Product Mix:** Additional consideration will be provided to Beverage Partners that following Healthy Vending Guidelines as outlined in Section IV. Please identify the proposed product mix as it relates to healthy vending choices at Applicable Locations. A&V's concessionaire currently oversees servicing of vending units at Applicable Locations.
 - e. Categories:** Respondent shall outline whether they are responding for the entire Non-Alcoholic Beverage category or specific subcategories (canned water, sparkling water, energy drink, sports drinks, etc.) If bidding on specific subcategories, respondent is required to provide a break out of the sponsorship fee by category.
- 3.** Respondents are required to provide **Pricing Proposals** in line with the following headings:
 - a.** Annual Sponsorship Fee (broken by category if necessary)
 - b.** Additional Financial Compensations
 - c.** Product Trade

Respondents are required to provide supporting assumptions and explanation of their pricing proposals to enable evaluation of value for money.

4. Please submit the name, address and phone number of at least three references.

SUBMISSION INSTRUCTIONS

Proposers are required to e-mail one electronic copy and mail two (2) hard copies to Andrew Lindley at the contact details provided in Section I of this document.

In addition to the aforementioned details, proposers are required to provide the following documentation to be considered:

1. Sign and return the front page of the RFP
2. Sign and return sample contact approval (Section VII)
3. Complete Diversity and Inclusiveness Form (Section VIII) – [Download Form](#)

Section IV

EVALUATION PROCESS & TIMELINE

The awarding of an exclusive beverage partner sponsorship agreement will be based upon a comprehensive review, analysis and negotiation of all proposals that best meet the needs of the City. Proposers may be requested to present their proposals. Additionally, the City reserves the right to conduct negotiations with one or more proposers and to split the category based on product fit.

General criteria upon which proposals will be evaluated include, but are not limited to:

- 1. Partnership Plan**
- 2. Pricing Proposal**
 - a. Annual Sponsorship Fee
 - b. Marketing initiatives to support the Applicable Locations
 - c. Product trade (if applicable)
- 3. Healthy vending practices**

Tentative selection and implementation timeline:

January 27, 2023 – March 10, 2023	A&V to Field Questions & Provide Answers
March 22, 2023 5:00 p.m. MT	Deadline for Proposal Submissions to A&V
Week of April 10, 2023	Meet with individual responders, if necessary
April 21, 2023	Complete Selection Process/Notify Sponsors

The City shall not be bound by and proposers shall not request or rely on any oral interpretation or clarification of this RFP. Therefore any questions regarding this RFP are encouraged and should be submitted in writing to Andrew Lindley at Andrew.lindley@denvergov.org. Andrew Lindley will answer questions received up to and by March 10, 2023 in writing. Answers to written questions from any proposer will be provided to all proposers.

All communications regarding this RFP shall only be through Andrew Lindley. No communication is to be directed to any other City personnel.

In the event it becomes necessary to revise, change, modify or cancel this RFP or to provide additional information, addenda will be issued to all recipients of this RFP.

Section V

TERMS

RFP CONDITIONS AND PROVISIONS:

Each proposal must be signed by a duly authorized official of the proposing company. The completed and signed proposal (together with all required attachments) must be submitted in accordance with Section 1.

All participating proposers, by their signature hereunder, shall agree to comply with all of the conditions, requirements and instructions of this RFP as stated or implied herein. Any alteration, erasure or interlineations by a proposer in this proposal shall constitute cause for rejection by A&V. Proposers may not include exceptions or deviations to the requirements set forth in this RFP in its proposal pages; rather, any proposed exceptions or deviations must be made separately on proposer's letterhead and accompany its proposal. Any exceptions or deviations to the requirements of this RFP proposed by a proposer will be taken into consideration when evaluating proposals submitted; however, any such exceptions or deviations are offered for discussion purposes only and the City reserves the right to accept, reject, or further negotiate any or all proposed modifications.

All proposers are required to complete all information requested in this RFP. Failure to do so may result in the disqualification of a proposal.

The City reserves the right to postpone or cancel this RFP, or reject all proposals, if in its judgment it deems it to be in the interest of the City to do so.

The City reserves the right to waive any technical or formal errors or omissions and to reject any and all proposal(s), or to award a contract for the items herein, either in part or whole, if he or she deems it to be in the interest of the City to do so.

The City shall not be liable for any costs incurred by a proposer in the preparation of proposals or for any work performed in connection therewith.

GRATUITIES AND KICKBACKS:

It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee (within six months of termination from City employment), or for any employee or former employee (within six months of termination from City employment) to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any

proceeding of application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime vendor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

In the event that any gratuities or kickbacks are offered or tendered to any City and County of Denver employee, the proposal shall be disqualified and shall not be reinstated.

NON-COLLUSIVE PROPOSER CERTIFICATION

By the submission of this proposal, the proposer certifies that:

- A. The proposal has been arrived at by proposer independently and has been submitted without collusion with any other proposer.
- B. The contents of the proposal have not been communicated by proposer, nor, to its best knowledge and belief, by any of its employees or agents, to any person not an employee or agent of the proposer or its surety on any bond furnished herewith, and will not be communicated to any such person prior to the official opening of the proposal.
- C. No proposer shall submit more than one proposal for this RFP. It shall be the responsibility of each proposer to obtain the prior written permission of the Director of A&V before proposal opening in every situation in which the proposer, due to corporate association or other affiliation, may be found to be impermissibly associated with another vendor. Failure to observe this requirement could result in all such affiliated proposals being rejected.

GREENPRINT DENVER POLICY AND GUIDANCE

The City & County of Denver, through its Greenprint Denver action plan, is committed to protecting the environment, and the health of the public and its employees. In accordance with this policy, City agencies are directed to procure cost-competitive products and services that minimize resource consumption and negative impacts on the environment and human health.

In requesting proposals for the City, when specifically required in the evaluation criteria, the City expects all responsive proposers to demonstrate commitment to and experience in environmental sustainability and public health protection practices applicable to their line of services. The City during its evaluation processes will actively assess the quality and value of all proposals.

Proposers, when applicable, are to follow standards and recommendations of the United States Environmental Protection Agency EPP program, the Green Seal

organization, and standards and practices specified by the U.S. Green Building Council, including the Leadership in Energy and Environmental Design (LEED) program.

Environmentally Preferable Purchasing (EPP) Guidance and Prohibitions:

The City defines Environmentally Preferable Products and services as having a lesser or reduced effect on human health and the environment when compared with competing products and services that serve the same purpose. The City's EPP evaluation may extend to raw materials acquisition, energy consumption in manufacturing and transport, packaging, recyclability, waste disposal, and many other factors.

The City encourages vendors to demonstrate a commitment to and experience in environmental sustainability and public health protection practices applicable to its line of products and/or services being procured in this proposal. See Section A of this proposal for the Greenprint Denver Policy and Guidance. The following are areas that may be addressed.

Explain how your products and/or service support the City's goal of environmentally preferable purchasing.

- Manufacturing Process
- Product Content
- Transportation
- Packaging
- Performance
- End of Life
- Third Party Certification (Green Seal, Eco Logo, Design for the Environment, etc.)
- Other

DISCLOSURE OF CONTENTS OF PROPOSALS

All proposals become a matter of public record and shall be regarded as Public Records, with the exception of those specific elements in each proposal, which are designated by the proposer as Business or Trade Secrets and plainly marked "Trade Secrets", "Confidential", "Proprietary", or "Trade Secret". Items so marked shall not be disclosed unless disclosure is otherwise required under the Open Records Act. If such items are requested under the Open Records Act, the City will use reasonable efforts to notify the proposer, and it will be the responsibility of the proposer to seek a court order protecting the records, and to defend, indemnify, and hold harmless the City from any claim or action related to the City's non-disclosure of such information.

PROOF OF REGISTRATION WITH THE COLORADO SECRETARY OF STATE

If the successful proposer is a corporation or limited liability company, it will be required to furnish a Certificate of Good Standing from the Colorado Secretary of State's Office, as proof that it is properly registered to do business in the State of Colorado, prior to finalization of award and contracting.

Section VI

HEALTH VENDING GUIDELINES

Purpose

Create a sustainable healthy vending standard for the City and County of Denver. An executive order would allow healthy vending to continue into the future regardless of contract changes.

Facts

Mayor Michael Hancock's Children's Cabinet has the goal to reduce childhood obesity by 5% by 2018.

Denver's Community Health Improvement Plan has a goal to increase the number of children at a healthy weight by 5 percentage points by 2018.

Past Proclamations have supported healthy choices:

1. Proclamations CP13-0855, Series 2013 to Encourage Healthy Opportunities and Choices for Members of the Denver Community.
2. Proclamation No. 19, Series 2008 to promote healthy eating and active lifestyles.

The Need

During the 2012/2013 school year 31% of Denver's school-aged children were overweight or obese (DPS).

Evidence-based best practices shows that an extra sugar sweetened beverage a day increases a child's risk for obesity by 60 percent. Obese children are at higher risks for long-term health problems such as cardiovascular disease, Type 2 diabetes, asthma, and certain cancers. Colorado's childhood obesity rate is ranked 23rd in the nation, and is rising faster than in 49 other states.

The City and County of Denver has a strong interest in providing an environment that is conducive to the health and well-being of children, which leads to better school attendance, improved behavior, lower incidence of illness, increased attention, creativity, and academic achievement.

Standards:

Food Vending

For all food vending machines:

1. No less than 100% of the food sold in vending machines in Denver County-owned or leased facilities meet the following nutrition standards:
2. Have no more than 250 mg of sodium per serving
3. Have no more than 10% of its calories from saturated fat
4. Have no more than 35% of calories from sugar
5. Be no more than 250 calories per serving
6. Dried fruit and nuts (whole or chopped) are excluded from the nutritional standards above. The exclusion does not apply to items containing only nut butters without whole or chopped nuts.

Beverage Vending

For beverage vending machines that are generally open and accessible to the public:

100% of the beverages sold in vending machines in Denver County-owned or leased facilities must meet the following nutrition standards:

1. Fruit based and vegetable based drinks that are at least 50 percent fruit juice without added caloric sweeteners, such as sugar or high-fructose corn syrup
2. Water (0 calories)
3. Non-fat or 1% low-fat milk, including soy, cow's milk, chocolate, or other flavored milk, containing no more than 15 grams of added sugar per 240 ml serving or 3 tsp. sugar per cup
4. Sport drinks with no more than 100 calories per container All other non-caloric beverages, including diet sodas
5. For beverage vending machines that are primarily in office spaces frequented by adults, at least 70% of the beverages sold in vending machines must meet the above beverage criteria.

Vending Pricing

All of the food and beverages vending machines shall have price differentials. Food items in the healthiest tier will be lowered by \$0.25. All chips and candy items will be increased from their current price by \$0.25. Similar pricing will be in force for beverages. Water, fruit and vegetable based juices, and milk will be \$0.25 less than sports drinks, diet soda, and regular soda. Where possible water will be \$1.00.

The goal of the healthy vending policy is to make the healthy choice, the easy choice.

Section VII

SAMPLE CONTRACT

Any award as a result of this proposal shall be contingent upon the execution of an appropriate contract. The sample contract attached hereto contains the proposed terms and conditions. These terms and conditions shall form the basis of a contract covering the subject matter of this proposal. Each proposer is required to complete the Contract Certification Form provided below, by which proposer certifies that it is the proposer's intent to comply with each and every term and provision contained in the sample contract and proposes no exceptions, deviations, or modifications to the sample contract except for those separately identified on the proposer's letterhead and accompanying the proposal. On such separate sheet, proposer shall, in typewritten form, reference the article or section number, reproduce the subject language, and underline or highlight those words, phrases, sentences, paragraphs, etc. for which proposer proposes an exception, deviation, or modification. Proposer shall include a brief explanation and alternative language, if any. Any such changes to the terms and conditions of the sample contract proposed by the proposer, if any, are offered for discussion purposes only and the City reserves the right to accept, reject, or further negotiate any or all proposed exceptions, deviations, or modifications to the sample contract.

I, on behalf of the proposer identified below, hereby certify that I have read a copy of the sample contract attached to this RFP and understand the terms, conditions, and provisions contained in that contract. I further certify that it is the proposer's intent to comply with each and every term and provision contained in the sample contract and propose no exceptions, deviations, or modifications to the sample contract except for those separately identified on the proposer's letterhead and accompanying the proposal. I understand that any exceptions, deviations, or modifications to the sample contract proposed by the proposer, if any, are offered for discussion purposes only and the City reserves the right to accept, reject, or further negotiate any or all proposed exceptions, deviations, or modifications to the sample contract.

Proposer Name:

Authorized Signatory:

Name (please print):

**THIS IS A SAMPLE TEMPLATE FOR PROFESSIONAL SERVICES
CHECK FOR ALTERNATIVE AND FILL-IN PROVISIONS INDICATED BY __ or [].**

SPONSORSHIP AGREEMENT

(Exclusive Non-Alcoholic Beverage Sponsor)

THIS SPONSORSHIP AGREEMENT (this “**Agreement**”) is made and entered by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized and existing under and by virtue of Article XX of the Constitution of the State of Colorado (the “**City**”) and _____, a _____ [corporation], located at _____ (“**Sponsor**”).

1. **RECITALS:** The City through Denver Arts and Venues (“**A&V**”) owns and operates certain public entertainment venues (collectively, the “**City Venues**”), specifically the Quigg Newton Denver Municipal Auditorium “**Ellie Caulkins Opera House**,” the Buell Theatre, Boettcher Concert Hall (sometimes referred to collectively as the “**Denver Performing Arts Complex**”), Red Rocks Amphitheatre & Visitor Center, the Loretto Heights Theater, the Denver Coliseum, and the Colorado Convention Center. The City also produces and promotes certain programs and events.

The City has entered into tax exempt Bond and Certificate financing transactions (collectively “**Financings**”) to finance various construction and maintenance projects at the City Venues and, pursuant to the Financings and authorizing ordinances and the tax-exempt status of the Financings, the City Venues are subject to regulation under the Internal Revenue Code and certain uses require review by Bond Counsel. Bond Counsel means the nationally recognized law firm or firms with expertise in public finance delivering their approving opinions with respect to the excludability from gross income for federal income tax purposes of interest on the Financings. The City Attorney’s Office retains a list of approved Bond Counsel.

Sponsor is a manufacturer and distributor of non-alcoholic beverages, and would like to obtain certain sponsorship opportunities in connection with Red Rocks Amphitheatre and the Denver Coliseum.

The City and Sponsor have, therefore, agreed to a sponsorship arrangement in accordance with the following terms and conditions.

2. **AGREEMENT:** By and in consideration of the mutual promises set forth hereafter, the parties agree as follows:
 - 2.1. **Term.** The term of this Agreement shall commence as of [July 1, 2023] (the “**Effective Date**”), and shall end at 12 o’clock midnight on [December 31,] 2027 (the “**Term**”). For purposes of this Agreement, a “**Contract Year**” shall mean each period commencing on January 1 and ending on the following December 31 throughout the Term. The Term may not be increased without approval of Bond Counsel.
 - 2.2. **Grant of Sponsorship Rights and Benefits.** For each Contract Year of this Agreement, Sponsor shall be entitled to the rights and benefits set forth in **Exhibit A**. Sponsorship rights or benefits not used in one Contract Year [will/

not] “carry over” or otherwise be available in an ensuing Contract Year.

- 2.3. Sponsorship Rights Fees. In consideration of the rights and benefits provided to Sponsor as set forth in this Agreement, Sponsor shall pay to the City the fees set forth in **Exhibit B** in accordance with the schedule set forth in Exhibit B. The rights fees may not be amended without approval of Bond Counsel.
- 2.4. [Additional Consideration by Sponsor]. As further consideration for the rights and benefits afforded to Sponsor, Sponsor shall provide to the City the additional consideration specifically set forth in **Exhibit C**. The City may choose not to utilize such in-kind compensation and benefits at its sole discretion. Should the City not utilize such in-kind benefits, it shall have no effect on any other provision of this Agreement. The additional consideration may not be amended without approval of Bond Counsel. Additional consideration not used in one Contract Year [will/ not] “carry over” or otherwise be available in an ensuing Contract Year.]
- 2.5. Requirements of the Financings. The parties agree that due to the Financings of the City Venues that this Sponsorship Agreement must be and has been approved by Bond Counsel, [Stradling Yocca Carlson & Rauth, PC, 1400 16th Street, Suite 400, Denver, Colorado 80202]. It is understood that the use City Venues is restricted by the Bond Ordinances, and by all applicable rules, regulations, statutes or ordinances promulgated by any federal, state or municipal agency having jurisdiction over the City Venues. The parties agree that, the Bond Ordinances permit the terms of the Sponsorship Agreement as written and that Sponsor shall comply with all IRS regulations and take no action that would jeopardize the tax exempt status of the Bonds. This Sponsorship Agreement has been approved by Bond Counsel, attached hereto as **Exhibit D**. The Sponsor agrees that in its activities and occupancy hereunder it will comply with all of the terms and conditions of the Financings as those requirements are stated in this Agreement and that it will take no action, nor omit to act in any manner, which would cause the City to breach or be in default under the Financings.
- 2.6. Uses and Protection of Trademarks/Service Marks and Other Intellectual Property. The City and Sponsor each acknowledge that the other party owns [or is licensed to use] certain names, trademarks, service marks, copyrights and other intellectual property associated with their respective businesses which marks will be specifically identified on **Exhibit E** (hereinafter collectively referred to as “**Marks**”), and each owns certain merchandising rights in and to the Marks, and all goodwill associated with or symbolized by the Marks.

It is agreed and understood that in marketing and promoting events at the City Venue and other A&V programs and events (the “**Events**”) and various activities associated therewith, the City and Sponsor may make various references to each other and may display the Marks of the City and Sponsor as well as photographs or graphic images of these activities. Each party grants to the other a non-exclusive, non-transferable license to use its Marks during the Term of this Agreement, subject to the terms and conditions hereafter set forth, solely in connection with advertising and promoting the

Events and activities incidental thereto. The City and Sponsor shall agree in writing as to the form and content of any promotional or advertising materials which bear the other party's Marks, and the media in which such materials are to be used prior to their use, which approval the parties shall not unreasonably withhold. Such use may be subject to such reasonable conditions as either party may impose, including, but not limited to, conditions affording each party adequate protection of its Marks. Upon termination or expiration of this Agreement, both parties shall cease all use of the Marks of the other party as soon as practicable, but, in any event, within 30 days, unless the particular media which has been approved requires a longer lead time, but in no event longer than 90 days.

Neither party will challenge or assist in a challenge to the validity of the other party's Marks, any registrations thereof or the ownership thereof. Each party will be solely responsible for taking such actions, as it deems appropriate to obtain trademark, service mark, or other protection of its respective Marks.

Neither party is granted any right or license under this Agreement to sell or otherwise distribute for sale, any of the promotional advertising material or items related thereto, unless specifically set forth herein. If a party desires to sell or distribute for sale any of such materials or other merchandising or novelty items bearing the Marks of the other party, then it shall request permission to do so from the other party and, if granted, the parties shall negotiate in good faith a separate licensing agreement covering such materials or items before they may be sold or distributed for sale.

- 2.7. Approval of Promotional Concepts. Each party reserves the right to approve all promotional concepts, which the other party wishes to use in connection with its identification with the first party. Under no circumstances will promotions which reflect unfavorably upon the City, or which are prohibited or restricted by law, rule, regulation, or executive order, be approved by the City.
- 2.8. Exclusivity. This Agreement between the City and Sponsor contained herein shall be exclusive. As used herein "exclusive" means that the City will not enter into a contract or other legally binding arrangement conferring sponsorship rights for non-alcoholic beverage pouring rights at City Venues as shown on **Exhibit A**. Sponsor acknowledges that the City cannot control certain components of the City Venues when promoters or other tenants rent or otherwise use the City Venues; competing brand logos, signage, and the like may be visible or competing products otherwise promoted at these times and will not constitute a breach of this Agreement. In addition, the City may, without breaching this Agreement, enter into booking agreements for the use of the City Venues with entities who may compete or have sponsors that compete with Sponsor.

Sponsor shall be subject to Arts & Venues Denver Venue Sponsorship Policy, as the same may be amended from time to time. A copy of the current policy is attached hereto as **Exhibit F**.

- 2.9. Independent Status. It is agreed and understood between the parties that

nothing contained herein shall constitute or imply an agreement or understanding of joint venture, agency, partnership or employment between the parties, and neither party shall have the authority to incur any financial or contractual obligations on behalf of the other party. Sponsor shall have no power of direction and control over the City or the City's employees, agents, subcontractors, or volunteers, or the manner or method utilized by the City in the performance of its functions. The City shall determine and have sole discretion over the manner and methods utilized to achieve the results desired by Sponsor and shall be solely responsible for the direction, control and supervision of Sponsor's acts and those of Sponsor's agents, employees, volunteers, and subcontractors relating to the performance of this Agreement.

2.10. Indemnification. Sponsor shall (i) defend, release, indemnify and save and hold harmless the City and (ii) with respect to the serving, selling, and/or sampling by Sponsor of Sponsor products, release, indemnify and save and hold harmless ARAMARK Sports and Entertainment Services, LLC, a Delaware limited liability company ("**Aramark**"), as concessionaire of the Red Rocks Amphitheatre (including the Visitor Center and Trading Post) and the Denver Coliseum: (x) against any and all damages to property or injuries to or death of any person or persons, including property and employees or agents of the City or Aramark ("**Damages**"), and (y) from any and all claims, demands, suits, actions, liabilities, causes of action or legal or equitable proceedings of any kind or nature, including workers' compensation claims, or by anyone whomsoever ("**Claims**"). Sponsor's foregoing obligations shall apply to Damages and Claims in any way resulting from or arising out of and to the extent caused by acts, errors, or omissions of Sponsor or its officers, employees, representatives, suppliers, invitees, licensees, subconsultants, subcontractors, or agents in the performance under this Agreement; provided, however, that Sponsor need not indemnify and save and hold harmless the City, its officers, agents, and employees from damages proximately resulting from the sole negligence of the City's officers, agents, and employees. This indemnity clause shall also cover the City's defense costs, in the event that the City, in its sole discretion, elects to provide its own defense. Defense costs coverage must be included in the liability coverage provided for the City and County of Denver, its officers, officials and employees as additional insureds. These indemnification obligations shall survive the termination of this Agreement by expiration of the Term hereof or otherwise.

2.11. Insurance.

2.11.1. General Conditions: Sponsor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Sponsor shall keep the required insurance coverage in force at all times during the Term of this Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of this Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or

endorsement requiring notification to the City in the event any of the required policies are canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices paragraph of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless such cancellation or non-renewal is due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Sponsor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices paragraph of this Agreement by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by Sponsor. Sponsor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of Sponsor. Sponsor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

- 2.11.2. Proof of Insurance: A certificate of insurance shall be supplied to the City prior to the execution of this Agreement. Sponsor may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. Sponsor certifies that the certificate of insurance complies with all insurance requirements of this Agreement. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Sponsor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.
- 2.11.3. Additional Insureds: For Commercial General Liability, Sponsor's and any subcontractors' or subconsultants' insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
- 2.11.4. Waiver of Subrogation: For all coverages required under this Agreement, Sponsor's insurer shall waive subrogation rights against the City.
- 2.11.5. Subcontractors and Subconsultants: All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and

shall procure and maintain the same coverages required of Sponsor. Sponsor shall include all such subcontractors and subconsultants as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Sponsor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

- 2.11.6. Workers' Compensation/Employer's Liability Insurance: Sponsor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Sponsor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of Sponsor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the Term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Sponsor executes this Agreement.
- 2.11.7. Commercial General Liability: Sponsor shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$50,000 fire damage legal (\$300,000 if a City facility is leased), \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.
- 2.11.8. Business Automobile Liability: Contractor shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.
- 2.11.9. Additional Provisions: For Commercial General Liability, the policies must provide the following:
 - 1.13.13.1.1. That this Agreement is an Insured Contract under the policy;
 - 1.13.13.1.2. Defense costs are outside the limits of liability;
 - 1.13.13.1.3. A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
 - 1.13.13.1.4. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.
- 2.12. Termination. The City and Sponsor may terminate this Agreement as follows:
 - 2.12.1. If the other party (i.e., the City or Sponsor) commits a material

breach of this Agreement and fails to cure said breach after receiving 30 days' notice in writing of the alleged breach from the aggrieved party.

- 2.12.2. If the other party (i.e., the City or Sponsor) is unable to pay its liabilities when due, or makes an assignment for the benefit of creditors, or files a petition under any federal or state bankruptcy statute, or files a voluntary petition in bankruptcy, or is adjudicated bankrupt or insolvent, or if any receiver is appointed for its business or property, or if a trustee in bankruptcy or insolvency is appointed under the laws of the United States government or of the several states.
- 2.13. Effect of Termination. In the event this Agreement expires in accordance with its own Term, or is terminated prior to expiration as set forth above, the City and Sponsor shall cease using the other party's Marks. As soon as practicable after termination, the parties shall use all reasonable efforts to cease distribution of materials or broadcast of television promotional spots and other similar activities that reflect the relationship of the parties or the parties' Marks.
- 2.14. Miscellaneous General Provisions.
- 2.14.1. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties, as well as their respective successors in interest, whether by merger, reorganization or acquisition.
 - 2.14.2. Assignment. Neither party shall assign or transfer its rights, nor delegate its obligations under this Agreement to any third party without the prior written approval of the other party, which may be withheld for any or no reason, with the exception that such assignment may be made without obtaining consent to (i) any affiliate of a party, or (ii) any entity (or its affiliate) acquiring all or substantially all of the assets or stock, by merger or otherwise, of a party or any affiliate of a party. For purposes of this provision, "affiliate" shall mean any entity controlling, controlled by or under common control with the referenced party.
 - 2.14.3. Entire Agreement. This Agreement contains the entire understanding between the parties and supersedes all prior agreements between the said parties, whether written or oral, no representation, inducement, promises or agreements or otherwise, which are not embodied herein, shall be of any force or effect. This Agreement may not be amended or otherwise modified except by written agreement executed and authorized by all parties.
 - 2.14.4. Severability. Any provisions of this Agreement prohibited by law, or found to be invalid by any court or agency having jurisdiction thereof, shall be ineffective to the extent of such prohibition or invalidity, without in any way invalidating or affecting the remaining

provisions of this Agreement.

2.14.5. Counterparts. This Agreement may be executed in any number of counterparts, who together shall constitute one and the same instrument, but shall be effective only upon execution by each of the parties named below.

2.14.6. Notice. Any notice, request, approval or consent under this Agreement to be given by either party to the other shall be given in writing, and shall be considered served when delivered in person, or three (3) days after the date mailed by certified or registered mail, return receipt requested, addressed to the recipient at its address set forth below, or to such other address as the recipient may subsequently have furnished in writing to the sender.

CITY:

City and County of Denver
Director, Arts and Venues Division
1345 Champa Street
Denver, CO 80204

With a copy to:

City and County of Denver
Finance Director, Arts and Venues Division
1345 Champa Street
Denver, CO 80204

SPONSOR:

2.14.7. Force Majeure. Neither party shall be deemed in default hereunder and neither shall be liable to the other if either is subsequently unable to perform its obligations hereunder by reason of any fire, earthquake, flood, epidemic, accident, explosion, strike, riot, civil disturbance, act of public enemy, embargo, act of God, any municipal, county, state, or national ordinance or law, any executive or judicial order, or similar event beyond the parties' control; provided, however, that no party shall be entitled to relief under this Paragraph unless such party shall have given the other party reasonable notice of such event, and shall have exhausted all reasonable means of complying or implementing alternative means of compliance with its contractual obligations hereunder.

2.14.8. Governing Law, Venue. This Agreement shall be governed by and interpreted under the laws of the State of Colorado and the City and County of Denver. Any action regarding this Agreement shall be

filed in the District Court in and for the Second Judicial District of the State of Colorado, without regard to any statute or rule of law which would suggest or require another venue.

- 2.14.9. Authority. Each party represents and warrants that each, respectively, has full power and authority to enter into this Agreement.
- 2.14.10. Exhibits. All references to exhibits herein are to exhibits that are specifically incorporated by reference to this Agreement.
- 2.14.11. Headings. All headings and captions are for convenience only, and shall in no way affect their construction and interpretation.
- 2.14.12. Survival. The provisions of this Agreement, and the obligations of the parties which, by their own terms, contemplate actions to be performed after termination, including, but not limited to, payment of fees and other consideration, and the terms of this Agreement regarding indemnification, effect of termination, governing law, venue, and Marks, shall survive the termination of this Agreement.
- 2.14.13. No Express Or Implied Agency. This Agreement shall not be valid or binding in any way upon the City until fully executed by the City's authorized representatives appearing below.
- 2.14.14. No Discrimination In Employment. In connection with the performance under this Agreement, Sponsor agrees not to refuse to hire, discharge, promote, or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability; and Sponsor further agrees to insert the foregoing provision in all subcontracts hereunder.
- 2.14.15. No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and Sponsor, and nothing contained in this Agreement gives or allows any claim or right of action to any third person or entity. It is the express intention of the City and Sponsor that any person other than the City or Sponsor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
- 2.14.16. Review Of Records. Sponsor agrees that any duly authorized representative of the City shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, and records of Sponsor involving matters directly related to this

Agreement. The City’s Auditor shall have the right at any time, and from time to time, to audit all of the records of Sponsor, directly related to this Agreement, and Sponsor, upon request, shall make all such matters available for such examination. The City’s right to have such audit made with respect to any year, and Sponsor’s obligation to retain the above records, shall expire three (3) years after Sponsor’s final payment has been delivered to the City.

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

[Remainder of page intentionally left blank]

Section VIII

DIVERSITY AND INCLUSIVENESS – EXECUTIVE ORDER #101

Definitions

Diversity: Diversity refers to the extent to which a contractor/consultant has people from diverse background or communities working in its organization at all levels, is committed to providing equal access to business opportunities and achieving diversity in procurement decisions for supplies, equipment, and services, or promotes training and technical assistance to diverse businesses and communities such as mentoring and outreach programs and business engagement opportunities.

Inclusiveness: Inclusiveness, for purposes of Executive Order No. 101, includes the extent to which a contractor/consultant invites values, perspectives and contributions of people from diverse backgrounds and integrates diversity into its hiring and retention policies, training opportunities, and business development methods to provide an equal opportunity for each person to participate, contribute and succeed within the organization’s workplace. Inclusiveness also includes the extent to which businesses have an equal opportunity to compete for new business opportunities and establish new business relationships in the private and public sector.

Requirements

Using the attached form, entitled “Diversity and Inclusiveness in City Solicitations Information Request Form”, please state whether you have a diversity and inclusiveness program for employment and retention, procurement and supply chain activities, or customer service, and provide the additional information requested on the form. The information provided on the Diversity and Inclusiveness in City Solicitations Request Form will provide an opportunity for City contractors/consultants to describe their own diversity and inclusiveness practices. Contractors/Consultants are not expected to conduct intrusive examinations of their employees, managers, or business partners in order to describe diversity and inclusiveness measures. Rather, the City simply seeks a description of the contractor/consultant’s current practices, if any.

Diversity and Inclusiveness information provided by City contractors/consultants in response to City solicitations for services or goods will be collated, analyzed, and made available in reports consistent with City Executive Order No. 101. However, no personally identifiable information provided by or obtained from contractors/consultants will be in such reports.

A completed and signed copy of the “Diversity and Inclusiveness in City Solicitations Request Form” must be included with your bid or RFP response. Failure to include this form will render your bid or RFP non-responsive.

Download Diversity and Inclusiveness Form:

[http://artsandvenuesdenver.com/images/files/Diversity and Inclusiveness in City Solicitations Information Request Form.pdf](http://artsandvenuesdenver.com/images/files/Diversity_and_Inclusiveness_in_City_Solicitations_Information_Request_Form.pdf)