

FOURTH AMENDATORY AGREEMENT

THIS FOURTH AMENDATORY AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City"), and **CLIFF GARTEN & ASSOCIATES, INC.** doing business as **CLIFF GARTEN STUDIO**, a California corporation, whose address is 1315 Preston Way, Venice, CA 90291 (the "Artist").

W I T N E S S E T H:

WHEREAS, the City and the Artist previously entered into an Agreement dated May 28, 2020 and amended by Amendatory Agreement dated March 23, 2021, by Second Amendatory Agreement dated March 2, 2023 and by Amended and Restated Public Art Program Agreement dated January 18, 2024 (collectively, the "Agreement") to design, execute, fabricate, deliver plans and the design for a work of art (the "Work"), such Work to be integrated into the Plaza at the National Western Center Main Campus (the "Site"), after consultation with Denver Arts and Venues (DAV), Site designers, Department of Transportation and Infrastructure and National Western Center personnel; and

WHEREAS, the Artist will need additional time to complete the Work; and

WHEREAS, it has been determined that it is beneficial for the City to decrease the Scope of Work by removing certain foundation and electrical work from the Scope of Work; and

WHEREAS, decreasing the Scope of Work will decrease the amount of compensation to the Artist needed for completion of the Work;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and obligations herein set forth, the parties agree as follows:

1. The revised Scope of Work is attached hereto and incorporated herein as **Exhibit A-2** and all references to "Exhibit A" are hereby amended to read "**Exhibits A, A-1, and A-2** as applicable".
2. Subparagraph 1.4(b) of Article 1 of the Agreement entitled "Work to Be Performed" is amended to read:
 - b. The submission shall also include a budget, not to exceed Six Hundred Forty Five Thousand One Hundred Fifty Six Dollars (\$645,156.00), as described herein, that includes all costs for design, engineering, execution, fabrication, transportation, delivery, installation, insurance, contingencies,

consultant fees, fees and permits, and any other costs associated with the Work, and the Artist's fee.

3. Subparagraph 3.1 of the Agreement, entitled "Term," is amended to read as follows:

3.1 Term. The term of the Agreement shall commence May 28, 2020 (the "Effective Date") and terminate on completion of the services to be performed by the Artist hereunder, or on December 31, 2027, whichever is earlier.

4. That subparagraph 4.1 of Article 4 of the Agreement entitled "Payment" is amended to read:

4. PAYMENT:

4.1 Fee. The Artist agrees to accept, and the City agrees to pay, as full and complete compensation for completion of all the items of work contained in this Agreement a fixed fee of Six Hundred Forty Five Thousand One Hundred Fifty Six Dollars (\$645,156.00), which shall constitute full compensation for all services and materials whatsoever to be performed and furnished by the Artist under this Agreement. It is agreed that the City has no obligations regarding commission, or any agreements with galleries or agents with whom the Artist may have contracted. **The fee shall be paid in the following installments, subject to receipt by the City of acceptable periodic invoices and supporting documentation from the Artist, each installment to represent full and final payment for all services and materials provided by the Artist prior to the submittal of such periodic invoice for the specific phase of performance:**

a.	Execution of Design Contract	\$ 15,000.00
b.	Preliminary Design Review	\$ 40,000.00
c.	Final Design Review and Design Acceptance	\$ 20,000.00
d.	Execution of Amended and Restated Public Art Contract	\$ 258,500.00
e.	Mid-Point Fabrication	\$ 168,500.00
f.	Completion of Fabrication	\$ 67,578.00
g.	Delivery to Site	\$ 47,578.00
g.	Installation	\$ 18,000.00
h.	Final Acceptance	<u>\$ 10,000.00</u>

Total Contract Amount Not to Exceed (100%) \$645,156.00

The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement and for all other miscellaneous charges hereunder. Nothing contained in this Agreement shall entitle the Artist to retain funds paid by the City hereunder in the event that the Artist fails to fabricate, transport and install a satisfactory Work in accordance with this Agreement, and

nothing contained in this Agreement shall prevent or prohibit the City from seeking damages or reimbursement from the Artist in the event of the Artist's breach or default of this Agreement.

5. That subparagraph 4.3 of Article 4 of the Agreement entitled "Payment" is amended to read:

4.3 Maximum Amount Payable. The maximum amount payable by the City under this Agreement shall not exceed Six Hundred Forty Five Thousand One Hundred Fifty Six Dollars (\$645,156.00).

6. Except as herein amended, the Agreement is revived, affirmed and ratified in each and every particular.

Remainder of page left intentionally blank.

Contract Control Number:
Contractor Name:

THTRS-202580137-04 [201952966-04]
CLIFF GARTEN AND ASSOCIATES INC

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

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

Attorney for the City and County of Denver

By: _____

REGISTERED AND COUNTERSIGNED:

By: _____

By: _____

Contract Control Number:
Contractor Name:

THTRS-202580137-04 [201952966-04]
CLIFF GARTEN AND ASSOCIATES INC

By:

DocuSigned by:

Cliff Garten

EC39F974287144E...

Name:

Cliff Garten

(please print)

Title:

President

(please print)

ATTEST: [if required]

By:

Name:

(please print)

Title:

(please print)

EXHIBIT A-2
(exhibit follows)

Total Deductive Change Order \$ (104,844.00)

For efficiency and cost savings, the Plaza Art Plinth/ Foundation and electrical work for the Cliff Garten Studio's artwork commissioned by the City of Denver at the National Western Center Complex were transferred to Whiting-Turner Contracting for a new contract amounting to \$645,156.00

- a. execution of design contract – \$15,000.00
- b. preliminary design review – \$40,000.00
- c. final design review and design acceptance – \$20,000.00
- d. execution of amended and restated public art contract – \$258,500.00
- e. mid-point fabrication – \$168,500.00
- f. completion of fabrication – \$120,000.00
- g. delivery to site – \$100,000.00
- h. installation – \$18,000.00
- i. final acceptance – \$10,000.00

total contract amount not to exceed (100%) – \$750,000.00

- a. execution of design contract – \$15,000.00
- b. preliminary design review – \$40,000.00
- c. final design review and design acceptance – \$20,000.00
- d. execution of amended and restated public art contract – \$258,500.00
- e. mid-point fabrication – \$168,500.00
- f. completion of fabrication – \$67,578.00
- g. delivery to site – \$47,578.00
- h. installation – \$18,000.00
- i. final acceptance – \$10,000.00

Total new contract amount not to exceed (100%) – \$645,156.00