

FUNDING AND ASSIGNMENT AGREEMENT

THIS FUNDING AND ASSIGNMENT AGREEMENT (the “Agreement”), by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **DENVER BOTANIC GARDENS, INC.**, a Colorado nonprofit corporation (the “DBG”).

RECITALS

WHEREAS, the qualified and registered voters of the City approved referred question 2B on November 7, 2017, approving the issuance of general obligation bonds (the “**Bonds**”) by the City in the aggregate principal amount of \$116,907,000.00 for the purpose of financing the cost of repairs and improvements to Denver cultural facilities; and

WHEREAS, the DBG intends to construct new improvements including a new parking structure and educational building and the City desires to make a part of the proceeds, totaling an amount not to exceed \$18,000,000.00 of the Bonds (the “Proceeds”), available to fund costs associated with the above-stated improvements to the buildings and grounds all as more fully described below (the “**Project**”), in accordance with the terms and conditions of this Agreement; and

WHEREAS, DBG is willing and has the present capacity to satisfactorily complete and operate the Project for the use and benefit of the citizens of the City, as specified herein; and

WHEREAS, the undertaking of this Project is in accordance with the Cooperative Agreement dated April 5, 1991, as particularly amended by the First Amendment to Cooperative Agreement dated June 26, 1995 (City Clerk Filing 69682) (the “**Cooperative Agreement**”), by which the City has designated DBG as the City’s agent to develop, manage, control, administer, and be in charge of the City-owned Gardens; and

WHEREAS, the City and DBG desire to specify the conditions upon which these funds, including the Proceeds will be used by DBG for the purposes of completing the Project.

NOW, THEREFORE, in consideration of the above, and the mutual promises and covenants contained herein, the City and DBG agree as follows:

1. **The Project**: The “Project,” as used herein, refers to the improvements to be designed, constructed, and installed by DBG at the Denver Botanic Gardens as described in

EXHIBIT A. The Project will be funded by the Proceeds, to the extent such Proceeds are made available hereunder. DBG will perform or cause to be performed all work items and provide all supplementary funds necessary to satisfactorily complete the Project in accordance with the terms and conditions of this Agreement. DBG is to notify the Manager of any scope or budget revisions to **EXHIBIT A** for review and approval.

2. **Coordination and Liaison:**

A. The City's Program Implementation Manager (the "Manager") is vested with the authority to act on behalf of the City in performing the City's obligations under this Agreement. The Manager may designate someone to act on the Manager's behalf as the authorized representative. The City may change its authorized representative at any time by providing written notice to DBG of such change.

B. The Chief Executive Officer of DBG is DBG's authorized representative under this Agreement and, as such, is responsible for overseeing the satisfactory completion of the Project, in accordance with the terms and conditions of this Agreement. DBG may change its authorized representative at any time by providing written notice to the City of such change.

3. **City Payment and Related Responsibilities:**

A. As consideration for the performance of DBG under this Agreement and in order to enhance the ability of DBG to perform the functions and services set forth in the Cooperative Agreement, the City agrees to pay towards the cost of completing the Project the Proceeds. All other expenditures required to complete the Project or other costs associated with the Project are solely the responsibility of DBG and shall be paid by DBG. If the City utilizes on-call City contracts to complete work on the Project, the value of that work shall be deducted from the Proceeds available to reimburse DBG. The estimated costs of the component parts of the Project are included in **EXHIBIT A**.

Unless otherwise specified herein, the Proceeds shall be made available to DBG to be expended to pay capital costs incurred in completing the Project including, but not limited to, costs associated with design, construction, Project management, furnishings, and equipment. DBG may reallocate the Proceeds among the Project components described on **EXHIBIT A** from time to time. DBG will not utilize the Proceeds for operating or other working capital expenditures. DBG shall submit to the Manager any use of Proceeds for furniture, fixtures, and equipment for prior review and approval.

B. Upon the City's receipt of the Proceeds, the City agrees to pay to DBG the Proceeds from available funds upon notice from DBG that it is ready to commence the Project and as draws are submitted and approved by the Manager for payment from the Proceeds, as further described in paragraph 5B below.

C. Upon final completion of the Project, DBG will provide to the City an accounting of all Proceeds and other funds expended on the Project and attaching all required or requested supporting documentation. Such accounting, including supporting documentation, shall be sufficient to demonstrate that the Proceeds have been expended only for actual costs associated with the completion of the Project and in accordance with the terms and conditions of this Agreement. The accounting shall itemize the expenditure of the Proceeds for Project design cost, construction cost, project management cost, furnishing cost, equipment cost, or other administrative cost category and must also provide a total of all expenditures, to date, for each referenced category, regardless of the source of funds.

D. The parties agree that the obligation of the City for all or any part of its payment obligation hereunder, whether direct or indirect, shall extend only to the payment of the Proceeds that are duly and lawfully appropriated by the City Council for the purpose of this Agreement.

4. **Assignment:** Pursuant to the authority granted in Section 2.3.3(A) of the City Charter, the Mayor hereby assigns to DBG, as agent for the City under the Cooperative Agreement, all matters relating to the design, planning, and construction of the Project, including any demolition, and the qualification, selection and retention of all consultants, architects, and contractors engaged in connection therewith. The Project must be designed, planned, and constructed in accordance with master plans adopted by DBG and approved by the Manager in accordance with the Cooperative Agreement.

5. **DBG Responsibilities:** Except as otherwise provided in this Agreement, DBG shall have sole responsibility with respect to undertaking and completing the Project in accordance with this Agreement.

A. Before any phase of the work is commenced, DBG shall submit design plans and specifications for such work for the written approval of said documents to the Manager and the Executive Director of the City's Department of Parks and Recreation (the "Executive Director") for the written approval of said documents.

a. DBG shall provide Interim Project Plans (approximately 50% design development) for review, comment and approval by the Director or designee, which shall be provided within thirty (30) days.

b. DBG shall provide Final Project Plans (100% design development) for review and approval, which shall be provided within 30 days. Any deficiencies in Interim Project Plans shall be remedied by DBG, to the reasonable satisfaction of the Manager and the Executive Director, or designee, prior to the commencement of construction.

c. Design review will include a review for safety engineering purposes by City's insurance carrier and the City's Risk Management office, which review and recommendation will be reported to the Program Manager of Public Works.

B. DBG shall submit quarterly draw requests that anticipate the Proceeds and other funds needed for the coming quarter. With each draw request, the DBG shall provide (1) a schedule of values; (2) a cash flow and detailed report of anticipated future expenditures for the next quarter and for the full Project, showing projected expenditures compared to the budget for the Project; and (3) a detailed report of the expenditures made in the past on the Project, showing past expenditures compared to the budget for the Project. Failure to provide such documents as requested may result in a delay by City of providing Proceeds requested in the draw request.

C. DBG shall provide to the Manager a public communication plan for approval and will continue to coordinate its public outreach efforts with the Manager.

D. DBG shall at all reasonable hours ensure right of entry to any City inspector or other authorized agent of the City to the work site to conduct tests and evaluations to determine that the work performed and materials used are of good quality and in conformance with the approved design plans and specifications. If the City determines that the work is not otherwise being performed in accordance with this Agreement, the Manager may order that DBG cease to conduct the work until there is satisfactory evidence that the work will be performed in accordance with this Agreement.

E. The City shall not charge DBG for the City's activities under this paragraph 5, including design plan and specifications review, inspections, material testing, and construction monitoring. Standard building permit fees and other fees mandated by existing ordinance or rule for construction approvals will be paid, from either Proceeds or by DBG.

F. DBG shall be solely responsible for assuring that all phases of the Project are properly contracted and performed and that the work done and the materials used are in conformance with all applicable laws (local, state, and federal) that govern the performance of the work, including (to the extent applicable) the requirements of the federal Americans with Disabilities Act and any other federal or state laws requiring access for the disabled to public accommodations.

G. In addition to compliance with the above-mentioned laws, DBG shall be governed and controlled by all limitations and provisions that are imposed on the City Department of Public Works by the Charter or ordinances of the City. Specifically, such work shall be performed in compliance with the provisions:

- for competitive procurement set forth in the Denver City Charter at 2.3.3(A)(i) and Section 20-56 of the Denver Revised Municipal Code (“DRMC”);
- for payment of prevailing wages set forth in Sections 20-76 through 20-79, DRMC;
- for public art in Sections 20-85 through 28-90, DRMC;
- and for small business enterprise, equal employment opportunity, and minority and women business enterprise participation that are contained, respectively, in Sections 28-31 through 28-91, DRMC,

as the same may be amended or re-codified from time to time. **No construction contracts shall be entered until DBG has established to the City’s reasonable satisfaction that these Charter and ordinance requirements have been fully and appropriately satisfied.**

H. Workforce Development. The City values increasing the awareness, outreach, training, and employment opportunities of people in economically disadvantaged areas and populations and addressing shortages in qualified construction workers. In support of this, DBG shall include the following workforce development related activities for this Project:

- a. Identify a designated point of contact for workforce development activities.
- b. Post new positions online with Connecting Colorado at www.connectingcolorado.com.

- c. Participate in WORKNOW and or City led outreach and recruitment events.
- d. Utilize WORKNOW (work-now.org) and City employment support services to help build easy on-ramps to project, including training and support services
- e. Provide quarterly reports on the number of outreach and job fairs held or attended, including information about where it was held, who sponsored the event, and number of people hired at and or as a result of participating in the event.

These activities are not intended to replace existing and or on-going workforce development activities that DBG and its contractors and subcontractors utilize and or provide.

I. Insurance requirements.

a. **General Conditions:** DBG agrees to secure, and maintain, the following insurance covering all operations, goods or services provided pursuant to this Agreement, or any extension thereof, during any warranty period, and for any claims-made policy, three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed to do business in Colorado and rated by A.M. Best Company as “A” and “Financial Size Category of Class VIII” or better, or other insurer acceptable to the City

If any policy is in excess of a deductible or self-insured retention, the City must be notified by DBG. DBG 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 DBG. If a policy provides higher limits of coverage the policy shall not limit the City’s coverage as an additional insured to the minimum limits stated in this Agreement. DBG 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.

b. **Proof of Insurance:** DBG shall provide a copy of this Agreement to its insurance agent or broker. DBG shall provide proof of required insurance to the City, through a certificate of insurance or other proof of insurance as required by the City’s Risk Management Office. The parties agree that if DBG provides an Accord (paper) Certificate it will satisfy the proof of insurance requirement under this paragraph. Each policy shall contain a valid provision

or endorsement stating “Should any of the above-described policies be canceled or should any coverage be reduced before the expiration date thereof, the issuing company shall send written notice to the Denver Risk Administrator, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202 by certified mail, return receipt requested. Such written notice shall be sent thirty (30) days prior to such cancellation or reduction unless due to non-payment of premiums for which notice shall be sent ten (10) days prior.”

c. **Workers’ Compensation/Employer’s Liability Insurance:** DBG shall maintain the Workers’ Compensation Coverage as required by statute and Employer’s Liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. DBG expressly represents to the City, as a material condition and requirement of this Agreement, that none of DBG’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 DBG executes this Agreement.

d. **General Liability:** DBG shall maintain limits of \$1,000,000 for each occurrence claim, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations for each occurrence, and \$2,000,000 policy aggregate.

e. **Automobile Liability:** DBG shall maintain limits of \$1,000,000 for combined single limit applicable to all vehicles operating on City property and elsewhere which includes auto pollution liability coverage for any vehicle hauling cargo containing pollutants or contaminants.

f. **Crime:** DBG shall maintain minimum limits of \$1,000,000 in commercial crime insurance coverage. Coverage shall include theft of City's money, securities or property by contractor's employees, including any extended definition of employee. The City and County of Denver shall be named as Loss Payee as its interest may appear.

g. **Additional Provisions:**

- (i) For all general liability, the policies must provide the following:
 - (a) Unlimited defense costs outside of policy limits;
 - (b) Contractual liability covering the indemnification provisions of this Agreement;

- (d) A severability of interests provision;
- (e) Waiver of exclusion for lawsuits by one insured against another;
- (f) A provision that coverage is primary; and
- (g) A provision that coverage is non-contributory with other coverage or self-insurance provided by the City.

(ii) For all general liability, if the policy is a claims-made policy, then the retroactive date must be on or before the date of this Agreement.

h. **Additional Insured's:** For all coverages, DBG's insurer shall name the City as an additional insured.

i. **Waiver of Subrogation:** For the General Liability and Workers' Compensation coverages, DBG's insurer shall waive subrogation rights against the City.

J. DBG shall submit to the City the form of all contracts to be entered into or entered into by DBG in connection with the construction of the Project, which will be reviewed by the Office of the City Attorney to assure compliance with the requirements of this Agreement, including compliance with City insurance requirements for the construction, similar to those listed in **EXHIBIT B**, in amounts to be determined based on size and complexity of the Project, in consultation with the City's Risk Management Office. The Office of the City Attorney shall review such contracts within 21 days of the submittal of the contracts to the Office of the City Attorney by DBG. Any warranty to be provided by the contractor to DBG shall include the City as a beneficiary of the warranty.

K. DBG and its contractors and subcontractors shall pay all applicable taxes, including sales and use taxes and occupational privilege taxes, levied by the State and the City on any tangible property built into or incorporated into the work. Upon request by the City, an itemized and certified statement, including the names and addresses of the suppliers, the amount of such taxes owed or paid, and the dates of payment, shall be furnished to the City.

L. DBG or its contractors shall obtain a bond or bonds or other financial guarantee acceptable to the City Attorney, conditioned (1) that DBG and its contractors shall promptly make payment of all amounts lawfully due to all contractors, subcontractors, and persons or entities furnishing labor or materials used in the prosecution of the work on any phase of the Project, and shall indemnify the City to the extent of all payments in connection with performing the work, and (2) guaranteeing performance of DBG of its obligation to complete the

Project. The dollar amount of such bonds shall be modified to reflect any change orders that modify the total value of the Project or part of the Project.

M. DBG will provide and install at the Project site signs, in a form mutually agreeable to Manager and DBG, stating the scope of the Project and acknowledging the participation of the City and the bond funding for the Project.

N. If, for any reason, construction of any phase of the Project is delayed or halted while in process for more than 21 days, DBG shall take reasonable measures to protect the existing Project site and buildings from weather damage, vandalism and other similar threats.

O. DBG agrees to complete the Project within three (3) years of the date of the first draw of Proceeds by DBG, in accordance with the terms and conditions of this Agreement.

P. DBG agrees that any Proceeds received from the City may not be invested, if at all, at a rate greater than the rate to be provided by the City's Finance Department at the time of disbursement of the Proceeds to DBG. DBG agrees to provide evidence of compliance with this responsibility at the time the investment, if any, occurs. DBG agrees to monitor the deposit and any investment of Proceeds pending disbursement to a third party and provide the City with copies of all bank statements relating to the investment and expenditure of such amounts.

6. **Reporting & Audits:**

A. DBG shall provide, or cause its contractors to provide, to the City Auditor documentation of expenditures for the Project, in form and detail sufficient to enable the Auditor to perform his responsibilities under the Charter and ordinances of the City. Such documentation shall include periodic invoices evidencing the work performed and the payroll reporting requirements contained in DRMC Section 20-76(d).

B. DBG agrees that any duly authorized representative of the City shall, until the expiration of three (3) years after completion of the Project, have access to and the right to examine any directly pertinent books, documents, papers and records of DBG involving transactions related to this Agreement, including expenditure data and investment of Proceeds, if any, required by the City's Department of Finance.

C. DBG agrees to maintain its files relating to the Proceeds for the Project and expenditures therefore for the life of the bonds issued to make the Proceeds available for the

Project and to make such files available to the City if the City is audited by the Internal Revenue Service and requests such files in order to respond to such an audit.

7. **Term:** The term of this Agreement shall commence on the date above first written and shall terminate upon the completion of all phases of the Project.

8. **Title:** As provided in the Cooperative Agreement, upon completion of construction of any aspect of the Project, and upon approval and acceptance by the City, DBG shall be deemed to have conveyed to the City all right, title and interest in the improvement made as part of the Project.

9. **No Discrimination in Employment:** In connection with the performance of work under this contract, DBG may not refuse to hire, discharge, promote or demote, or 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. The DBG shall insert the foregoing provision in all subcontracts.

10. **Limitation on Application of Agreement:** The provisions of this Agreement are intended to govern the commencement and completion of the Project and shall not be construed to prohibit, limit, waive, or modify other agreements between the parties currently existing or entered in the future.

11. **Notices:** Any notices, responses, or communications given hereunder may be personally delivered or sent by first class mail, addressed to the following:

To the City:

Bond Program
Project Implementation Project Manager
201 West Colfax Avenue, Dept. 506
Denver, CO 80202

City Attorney
c/o Shaun Sullivan
201 W. Colfax Avenue, Dept. 1207
Denver, CO 80202

To DBG:

Brian Vogt, CEO
Denver Botanic Gardens
909 York Street

Denver, CO 80206

The contacts and addresses specified above may be changed by the parties at any time upon written notice to the other party.

12. **Conflict of Interest:** The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the Project or related services or property described herein.

13. **No Third Party Beneficiaries:** The Parties expressly agree 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 DBG; and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such agreements. The City and DBG expressly agree that any person other than the City and DBG receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

14. **Subject to Local Laws; Venue:** Each and every term, provision or condition herein is subject to and shall be construed in accordance with the provisions of Colorado law, the Charter and Municipal Code of the City and County of Denver, and the applicable ordinances, regulations, executive orders, or fiscal rules, enacted or promulgated pursuant thereto. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

15. **Execution of Agreement:** This Agreement is expressly subject to and shall not be or become effective or binding on the City and DBG until fully executed by all signatories of the City and DBG.

16. **Legal Authority:** The City and DBG each represent that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

17. **Agreement as Complete Integration; Amendments:** Except for the Cooperative Agreement, this Agreement is intended as the complete integration of all understandings between the parties, and no prior or contemporaneous addition, deletion or other amendment shall have any force or effect, unless embodied herein in writing. Amendments to this Agreement will become effective only when approved by both parties and executed in the same manner as this Agreement.

18. **Counterparts of Agreement:** This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement, and all of which, taken together, shall constitute one and the same document.

19. **Electronic Signatures and Electronic Records:** DBG consents to the use of electronic signatures by the City. The 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 the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

EXHIBIT A

PROJECT DESCRIPTION AND BUDGET

A new Freyer Newman Center for Science, Art & Education and renovation of the Boettcher Memorial Building for a total cost estimated at \$41,500,000

GO Bond contributions shall not exceed \$18,000,000 and may include the following components:

- Construction Freyer Newman Center
- Public Art
- Project Contingency

EXHIBIT B

EXAMPLE OF CONSTRUCTION INSURANCE REQUIREMENTS

Note: The City and County of Denver’s Risk Management Office must be consulted on final insurance to be required of all contractors.

INSURANCE:

A. General Conditions: General Contractor 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. General Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for eight (8) years after termination of the 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 be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such written notice shall be sent thirty (30) days prior to such cancellation or reduction unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s). The General Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements do not lessen or limit the liability of the General Contractor. The General Contractor 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.

B. Proof of Insurance: General Contractor shall provide a copy of this Agreement to its insurance agent or broker. General Contractor further agrees to have its agent or broker provide proof of General Contractor’s required insurance. The [CULTURAL FACILITY] reserves the right to require the General Contractor to provide a certificate of insurance, a policy, or other proof of insurance as required by the [CULTURAL FACILITY]’s Risk Administrator in his sole discretion.

C. Additional Insureds: For general liability, excess/umbrella liability, and Builder’s Risk, the General Contractor’s insurer shall name the [CULTURAL FACILITY] and the City and County of Denver as an additional insured, and/or loss payee.

D. Waiver of Subrogation: For all coverages, General Contractor’s insurer shall waive subrogation rights against the [CULTURAL FACILITY].

E. Subcontractors: All subcontractors, 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 the General Contractor. General Contractor shall include all such subcontractors, independent contractors, suppliers or other entities as insureds under its policies or shall ensure that all subcontractors maintain the required coverages. General Contractor agrees to provide proof of insurance for all such subcontractors, independent contractors, suppliers or other entities upon request by the [CULTURAL FACILITY].

F. Worker's Compensation/Employer's Liability Insurance: General Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. General Contractor expressly represents to the [CULTURAL FACILITY], as a material representation upon which the [CULTURAL FACILITY] is relying in entering into this Agreement, that none of the General Contractor'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 General Contractor executes this Agreement. These coverages shall apply to all work or services performed outside the United States. These coverages shall apply to any work or services performed by employees covered by the Federal Employee's Liability and Compensation Act.

G. General Liability: General Contractor shall maintain limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury, \$1,000,000 products and completed operations for each occurrence, and \$2,000,000 policy aggregate. Aggregate limits must be "per project" or "per location".

H. Business Automobile Liability: General Contractor shall maintain \$1,000,000 combined single limit applicable to all vehicles operating on [CULTURAL FACILITY] property and elsewhere which includes auto pollution liability coverage for any vehicle hauling cargo containing pollutants or contaminants. If transporting wastes, hazardous material, or regulated substances, Contractor shall carry a pollution coverage endorsement and an MCS 90 endorsement on their policy. Transportation coverage under the Contractors Pollution Liability policy shall be an acceptable replacement for a pollution endorsement to the Business Automobile Liability policy.

I. Builders' Risk or Installation Floater (if required by Risk Management): Contractor shall maintain limits equal to the completed value of the project. Coverage shall be written on an all risk, replacement cost basis including coverage for soft costs, flood and earth movement, if in a flood or quake zone, and, if applicable, equipment breakdown including testing. The City and County of Denver, Contractor, and sub-contractors shall be Additional Named Insureds under the policy. Policy shall remain in force until acceptance of the project by the City.

The General Contractor shall be responsible for the ultimate costs associated with deductibles under the builder's risk insurance as a Cost of the Work.

J. Excess/Umbrella Liability: General Contractor shall maintain \$ ____ (TBD by Risk Management) excess/umbrella liability coverage.

K. Contractors Pollution Liability (if required by Risk Management): General Contractor shall maintain limits of \$1,000,000 per occurrence and \$2,000,000 policy aggregate. Policy to include bodily injury; property damage including loss of use of damaged property; defense costs including costs and expenses incurred in the investigation, defense or settlement of claims; and clean-up costs.

L. Additional Provisions:

(a) For all general liability and excess/umbrella liability, the policies must provide the following:

- (i) That this Agreement is an Insured Contract under the policy;
- (ii) Defense costs are in excess of policy limits;
- (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
- (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(b) For claims-made coverage:

- (i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier

(c) Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

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 _____

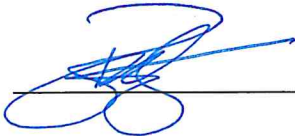
By _____

By _____



Contract Control Number: PWADM-201841940-00

Contractor Name: DENVER BOTANIC GARDENS, INC.,

By:  _____

Name: Brian R. Vogt
(please print)

Title: CEO
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

