

AGREEMENT

THIS AGREEMENT ("Agreement"), is made and entered into as of the date set forth on the City's signature page below, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized and existing pursuant to Article XX of the *Constitution of the State of Colorado* (the "City"), and **AEG PRESENTS – ROCKY MOUNTAINS LLC**, a Delaware limited liability company, whose address for notice purposes is 930 W. 7th Avenue Denver, Colorado, 80204 ("AEG").

RECITALS

A. The City, through Arts & Venues Denver, operates the following entertainment facilities: Red Rocks Amphitheatre ("Red Rocks"), the Denver Coliseum (the "Coliseum"), and the Denver Performing Arts Complex (the "Arts Complex").

B. AEG has considerable expertise in the entertainment industry, and in the promotion and booking of concerts and live events. The City does not have comparable in-house concert promotion expertise.

C. The City wishes to provide AEG with an incentive to promote and book concerts and live events at the venues listed in Recital A above, because of the resulting financial and other public benefits to the City and its residents of such bookings.

NOW THEREFORE, in consideration of the mutual covenants, terms, conditions, privileges and obligations set forth herein, and intending themselves to be legally bound hereby, the City and AEG mutually agree as follows:

SECTION 1: PROMOTER COMMISSION. The City will pay as a commission to AEG a percentage as specified below of the amount paid to the City by AEG as rent for each "Qualifying Event," as hereafter defined.

A. Red Rocks. The City will pay as a commission to AEG a percentage as set forth below of the amount paid to the City by AEG as rent for each Qualifying Event at Red Rocks. With regard to Red Rocks, a "Qualifying Event" shall mean any commercial event at Red Rocks during a calendar year during the term of this Agreement for which AEG and the City have executed a City booking agreement and to which 2,000 or more tickets are sold to the public. When a single booking agreement covers multiple concerts or live events, each concert or live event to which 2,000 or more tickets are sold shall constitute a Qualifying Event (load in and load out days shall not be counted). Concerts or events covered by a booking agreement to which any entity other than AEG is a party shall not be Qualifying Events. To be eligible for a commission during a calendar year of the Term of this Agreement from booking at Red Rocks, AEG must book not less than five (5) Qualifying Events during said calendar year of the Term. The commission percentage will increase as the number of Qualifying Events in a calendar year increases, as follows: (i) for each Qualifying Event up to and including 30 events during a calendar year, the commission shall be forty percent (40%) of the rental paid (subject to the 5 event minimum); (ii) for Qualifying Events 31 through and including 40 during a calendar year, the commission shall be fifty percent (50%) of the rental paid; and (iii) for Qualifying Events 41 and above during a calendar year, the commission shall be sixty percent (60%) of the rental paid.

B. Arts Complex. The City will pay as a commission to AEG twenty-five percent (25%) of the amount paid to the City by AEG as rent for each Qualifying Event at the Arts Complex. With regard to the Arts Complex, a “Qualifying Event” shall mean any commercial event at the Arts Complex during a calendar year for which AEG and the City have executed a City booking agreement with each other, and to which 750 or more tickets are sold to the public. Booking Agreements by and between AEG and a third party, and those involving the City and a third party other than AEG shall not constitute a Qualifying Event for the Arts Complex. When a single booking agreement covers multiple concerts or live events, each concert or live event to which 750 or more tickets are sold shall constitute a Qualifying Event (load in and load out days shall not be counted). As noted above, concerts or events covered by a booking agreement to which any entity other than AEG and the City is a party shall not be a Qualifying Event. To be eligible for a commission during a calendar year during the Term of this Agreement, AEG must book not less than five (5) Qualifying Events during that calendar year at the Arts Complex.

C. The Coliseum. The City will pay as a commission to AEG fifty percent (50%) of the amount paid to the City by AEG as rent for each Qualifying Event at the Coliseum. With regard to the Coliseum, a “Qualifying Event” shall mean any commercial event at the Coliseum during a calendar year for which AEG and the City have executed a City booking agreement and to which 2,000 or more tickets are sold to the public. Where a single booking agreement covers multiple concerts or live events, each concert or live event to which 2,000 or more tickets are sold shall constitute a Qualifying Event (load in and load out days shall not be counted). Concerts or events covered by a booking agreement to which any entity other than AEG is a party shall not be a Qualifying Event.

D. Summary of Qualifying Events. On or before January 15 of each year during the Term, beginning on January 15, 2021, the City shall provide AEG a list of the prior calendar year’s Qualifying Event(s) and the rent paid to the City by AEG for each such event. By way of example only, the foregoing list for Qualifying Events in 2020 shall be provided by January 15, 2021. AEG shall review said summary and provide the City with written notice confirming or disputing the City’s calculation of Qualifying Events and amounts owed. In the event of any dispute in this regard, the parties will cooperate in good faith to resolve any discrepancies.

E. Payment. Provided AEG has paid City all amounts in connection with the prior calendar year’s Qualifying Events and agrees with City’s calculation of commission amounts owed, as provided in Section 1(D) above, within 30 days of AEG’s written confirmation of agreement in accordance with Section 1(D), City shall issue a warrant in the amount of the resulting promoter commission for that calendar year.

F. Intent. For purposes of clarity only, AEG shall have an opportunity to earn an incentive payment on account of shows promoted for each distinct calendar year during the Term of this Agreement as provided herein. AEG shall not be paid or given credit in any subsequent calendar year of the Term for shows previously promoted during the Term.

SECTION 2: ADDITIONAL TERMS.

A. The commission program set forth in this Agreement shall not apply to concerts or other live events that are booked at non-profit, not-for-profit, or other reduced rental rates.

B. The commission program set forth in this Agreement shall only apply to concerts and other live events and performances.

C. Each concert and live event shall be considered a separate event if the concert or live event has a discrete audience for a discrete period of time in which a ticket is used for admittance and otherwise meets the requirements of this Agreement.

D. AEG acknowledges that the City discourages rental caps and any such caps shall be subject to the City's approval, in its sole discretion.

SECTION 3: SEPARATE BOOKING AGREEMENTS. This Agreement shall not be deemed to replace or supplant the City's booking agreements for City venues, which shall be required to be executed for each Qualifying Event, and which shall govern the parties' rights with respect to, without limitation: broadcast and advertising rights; liability, indemnification and insurance; event services; rent; facility fees; and other charges. The City's standard booking policies and procedures shall apply to all events held at City venues, and the City reserves the right to negotiate, approve and disapprove the terms of individual booking agreements in its sole discretion. The City's booking agreements distinguish the amount payable as rent from other charges such as taxes, facility fees and other charges, and the amount payable as rent will be the only amount on which the commission hereunder will be calculated. AEG shall have satisfied all material obligations pursuant to the booking agreement for a Qualifying Event and shall be current on all charges and payments due to the City in order to receive a commission payment on account of such Qualifying Event.

SECTION 4: TERM. The Term of this Agreement shall commence on January 1, 2020 and end at midnight on December 31, 2022. The City may extend this Agreement for two (2) extension terms of two (2) years each by the Director of Denver Arts and Venues ("Director") providing AEG written notice of City's intention to renew this Agreement prior to expiration of the then-current Term. The initial term and any extension term(s) shall hereinafter be referred to as the "Term."

SECTION 5: FUNDING. Payments to AEG hereunder shall be made only after revenue from Qualifying Events is received as provided in section 1 above, and shall not in any event exceed **EIGHT MILLION FIVE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$8,550,000.00)**, unless this Agreement is modified to increase said amount by a duly authorized and written amendment to this Agreement executed by the parties in the same manner as this Agreement. It is expressly understood and agreed that the obligation of the City to make any other payments hereunder shall only extend to monies appropriated by the Denver City Council, paid into the Treasury of the City, and encumbered for the purposes of this Agreement. AEG acknowledges that (i) the City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. The City shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by the City's Revised Municipal Code.

SECTION 6: EXAMINATION OF RECORDS AND AUDITS. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the

right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to AEG's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. AEG shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require AEG to make disclosures in violation of state or federal privacy laws. AEG shall at all times comply with D.R.M.C. 20-276.

SECTION 7: INDEMNIFICATION. AEG shall defend, release, indemnify and save and hold harmless the City, including its officers and employees acting in their official capacity and/or in the scope of their employment, 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, and shall defend, release, indemnify, and save and hold harmless the City, including its officers and employees acting in their official capacity and/or in the scope of their employment, 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, of or by anyone whomsoever, in any way resulting from or arising out of and to the extent caused by the City's entering into this Agreement or the errors, omissions or other wrongful acts of any of the officers, employees, representatives, suppliers, licensees, subconsultants, subcontractors, or agents of AEG in their performance under this Agreement, provided, however, that AEG need not defend, release, 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. These indemnification obligations shall survive the termination of this Agreement by expiration of the Term hereof or otherwise. This indemnity clause shall not cover the City's defense costs in the event that the City, in its sole discretion, elects to provide its own defense. If the City elects to control its defense, it shall provide written notice to AEG, in which event AEG shall be relieved of any further obligation to defend the City with respect to such claim; provided, however, the City shall not settle any claim for which it is entitled to an indemnity from AEG without AEG's prior written consent. In the event AEG desires to settle any claim for which it has agreed to indemnify the City, and the City, by its City Attorney, objects to same, AEG shall not be liable for any costs of settlement in excess of those for which it asked the City to settle, and in the event the actual liability of the City is greater than the settlement amount proposed by AEG, for any costs of defense of the City after the time of such proposed settlement. The provisions of this indemnity obligation shall not be deemed to extend to individual event obligations contained in the City's rental agreements, which have separate indemnity requirements.

SECTION 8: ASSIGNMENT. This Agreement, and each of the rights, duties and obligations hereunder, including the right to receive payments, shall not be assigned, pledged, transferred, sublet or otherwise disposed of, in whole or in part, by AEG without the express written approval of the City, which shall not be unreasonably withheld.

SECTION 9: NO DISCRIMINATION IN EMPLOYMENT. In connection with the performance of work under this Agreement, AEG 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, gender, age, national origin, military status, sexual orientation, gender identity or gender expression, marital status or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.

SECTION 10: CONDITIONS PRECEDENT TO EFFECTIVENESS OF AGREEMENT. This Agreement shall not be or become effective until the Denver City Council shall have passed an ordinance approving the execution of this Agreement, and the Agreement shall have been executed by all required City signatories.

SECTION 11: PAYMENT OF CITY MINIMUM WAGE. AEG shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City’s Minimum Wage Ordinance, Sections 20-82 through 20-84 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, AEG expressly acknowledges that AEG is aware of the requirements of the City’s Minimum Wage Ordinance and that any failure by AEG, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.”

SECTION 12: PROMOTOR COMMISSION PROGRAM. This Agreement is consistent with and reflects the objectives of the City’s promoter commission program utilized by Denver Arts and Venues for Red Rocks, the Coliseum and the Denver Performing Arts Complex, as may be amended from time-to-time (the “Program”). Should material changes be made to the Program after the commencement of this Agreement, City and AEG shall discuss in good faith whether an amendment to this Agreement is necessary to reflect any future iteration of the Program.

SECTION 13: MISCELLANEOUS.

A. **No Partnership.** It is understood and agreed that nothing herein contained is intended or shall be construed to in any way create or establish the relationship of partners or a joint venture between the City and AEG. None of the officers, agents or employees of AEG shall be or be deemed to be employees of the City for any purpose whatsoever.

B. **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the availability or payment to AEG of any promoter commission by the City, and no statements, promises or inducements made by either party or agents for either party with respect thereto, not contained in this Agreement, shall be binding or valid.

C. **Written Amendments.** This Agreement shall not be altered, modified or amended in whole or in part, except upon agreement of all parties and in writing executed by the parties hereto in the same manner as this Agreement. Written additions, deletions, or changes in the provisions of this Agreement which do not comply with this requirement shall not be binding on either party. No oral modifications, additions, deletions or changes to the Agreement shall have any validity whatsoever.

D. **Interpretation.**

(1) In General. It is the intention of the parties hereto that the language hereof and all parts of this Agreement shall be in all cases construed simply according to their fair meaning and not strictly for or against any party.

(2) Governing Law; Venue.

(i) Governing Law. This Agreement shall be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted and/or promulgated pursuant thereto, including any amendments. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are expressly incorporated into this Agreement as if fully set out herein by this reference.

(ii) Venue. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver.

(3) Section and Paragraph Headings. The Section and/or paragraph headings herein and through this Agreement are for the convenience of reference only, and are not intended, nor shall they be used, to construe the intent of this Agreement or any part thereof, or to modify, amplify, or aid in the interpretation or construction of the provisions thereof.

(4) Gender and Number. The use of any gender herein shall include any or all genders, and use of any number shall be construed as the singular and/or the plural, all as the context may require.

(5) Consent or Approval. Except as may otherwise be expressly provided in this Agreement, whenever under this Agreement of the consent or approval of a party is required, the party so requested shall act reasonably and diligently in making its decision to grant or deny such request and will not unreasonably withhold, or unreasonably delay in responding to the request for, such consent or approval. In addition, in connection with "acting reasonably" the party so requested shall be entitled to consider public and governmental policy, moral and ethical standards as well as business and economic considerations. In every case wherein consent or approval is required, such consent or approval shall be obtained in writing prior to taking the action at issue.

(6) No Third Party Beneficiary. This Agreement is solely for the benefit of the parties hereto and no third party shall be entitled to claim or enforce any rights hereunder.

(7) Severability. If any Section or provision of this Agreement, or any portion of any Section or provision, shall for any reason be held to be void, illegal or otherwise unenforceable, all other portions of this Agreement shall nevertheless remain in full force and effect.

E. Notices.

(1) All notices required to be given by AEG to the City pursuant to this Agreement shall be in writing and sent by registered or certified mail, to:

Venue Manager, Arts & Venues Denver
4600 Humboldt Street
Denver, Colorado 80216

Venue Manager, Arts & Venues Denver
1345 Champa Street
Denver, Colorado 80204

With a copy to:

Finance Director, Arts & Venues Denver
City and County of Denver
1345 Champa Street
Denver, Colorado 80204

or to such other place(s) as the City may from time to time designate in writing.

(2) All notices required to be given by the City to AEG pursuant to this Agreement shall be directed in writing and sent by registered or certified mail to:

AEG Presents – Rocky Mountains LLC
Attn: Brent Fedrizzi
930 West 7th Avenue
Denver, CO 80204

or to such other place(s) as they may from time to time designate in writing to the City.

F. Non-Waiver. A failure by either party to take any action with respect to any default or violation by the other of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of such party to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default.

G. No Personal Liability. No elected official, director, officer, agent or employee of the City nor any director, officer or employee of AEG, shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

H. Representations and Warranties of AEG. All required approvals have been obtained, and AEG has full legal right, power and authority to enter into and perform its obligations hereunder, and this Agreement has been duly executed and delivered by AEG, and constitutes a valid and binding obligation, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally, by law or by general equitable principles.

I. Compliance with Laws. AEG and their officers, agents, servants, employees, and any other persons over which they have control or right of control shall comply with all present

and future laws, charter provisions, ordinances, orders, directives, rules and regulations of the United States of America, State of Colorado, and the City and County of Denver applicable to or affecting directly or indirectly their operations and activities on or in connection herewith.

J. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.

K. Electronic Signatures and Electronic Records. AEG 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.

[SIGNATURE PAGE TO FOLLOW]

Contract Control Number:
Contractor Name:

THTRS-201952921-00
AEG PRESENTS -- ROCKY MOUNTAINS LLC

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:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

THTRS-201952921-00
AEG PRESENTS -- ROCKY MOUNTAINS LLC

By: _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Contract Control Number:
Contractor Name:

THTRS-201952921-00
AEG PRESENTS -- ROCKY MOUNTAINS LLC

By:  _____

Name: Brent Fedrizzi
(please print)

Title: Co-President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)