

## **ASSIGNMENT AND FUNDING AGREEMENT**

**THIS ASSIGNMENT AND FUNDING AGREEMENT** (the “**Agreement**”) made and entered into, effective as of the date set forth on the City’s signature page (“**Effective Date**”), by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “**City**”) **THE COLORADO MUSEUM OF NATURAL HISTORY d/b/a DENVER MUSEUM OF NATURE & SCIENCE**, a Colorado nonprofit corporation (the “**Museum**”).

### **RECITALS**

**WHEREAS**, the City, through its Department of Parks and Recreation, and Museum desire to collaborate in the design, construction and installation of play equipment and other amenities for the use and benefit of City Park, a Denver designated park (the “**Park**”), the Denver Museum of Nature & Science, and the general public; and

**WHEREAS**, Museum proposes to complete certain improvements within the Park, hereinafter referred to as the “**Project**” as is described in the attached **Exhibit A** to this Agreement;

**WHEREAS**, the Museum’s strategic plan includes collaboration with the City on the creation and use of an outdoor play space to enhance the Museum’s charitable mission and provide outdoor play areas that support its programs and the public it serves;

**WHEREAS**, City is willing to provide partial funding towards the design, construction and installation of the Project; and

**WHEREAS**, Museum is willing and has the present capacity to satisfactorily arrange for consultants and/or contractors to perform the Project for the use and benefit of the public, as specified in this Agreement;

**WHEREAS**, the City, in accordance with §2.4.4(F) of the City Charter, may enter into cooperative agreements and assign certain functions to private agencies;

**WHEREAS**, by means of this Agreement, the City and Museum desire to specify the terms and conditions upon which the Project will be undertaken and completed by Museum;

**NOW, THEREFORE**, in consideration of the above premises which are incorporated in this Agreement, and the mutual promises and covenants contained herein, the City and Museum agree as follows:

1. **The Project:** The “Project,” as used herein, refers to the improvements to be designed, constructed, and installed by Museum within the Park in accordance with a design plan to be submitted by Museum to the City for approval, and in accordance with the attached **Exhibit A** of this Agreement, which is incorporated by reference herein. The Project includes nature play elements, improvements to DeBoer Waterway and the integration of DeBoer with the nature play experience, grading and drainage improvements and new landscape and irrigation improvements. The Project shall be executed in a separate design phase and separate construction and installation phase. The phases of work and location of the work to be performed by Museum is generally described in **Exhibit A**. All plans and specifications are to be made timely available for review and approval by the Department of Parks and Recreation as well as the appropriate City agencies as a material condition of this Agreement. Once a Notice of Final Acceptance is executed by the City consistent with paragraph 4.U., all rights, titles and interest in the final and accepted improvements shall be transferred to and become the property of the City. City shall have all responsibility for the ownership, management, operation and maintenance of the final accepted improvements. Museum shall have no responsibility or liability in the improvements related to the operation and maintenance of the improvements after City’s execution of the Notice of Final Acceptance and transfer of title.

2. **Coordination and Liaison:**

A. **Executive Director’s Representative.** The City's Executive Director of Parks and Recreation or designee (both together referred to as the “**Executive Director**”) is vested with the authority to act on behalf of the City in performing the City's obligations under this Agreement. The Executive Director has designated a Planning, Design, and Construction Senior City Planner with the Department of Parks and Recreation to act on the Executive Director’s behalf as the authorized representative (“**Executive Director’s Representative**”). The City may change its authorized representative at any time by providing written notice to Museum of such change.

B. **Museum’s Representative.** Museum’s authorized representative under this Agreement is Jacqueline Altreuter, Director of Volunteer Experience, (“**Museum’s Representative**”), and, as such, is responsible for overseeing the satisfactory completion of the Project, in accordance with the terms and conditions of this Agreement. Museum may change its authorized representative at any time by providing written notice to the City of such change.

3. **Assignment**: Pursuant to the authority granted in § 2.4.4(F) of the City Charter, the Department of Parks and Recreation hereby assigns to Museum all matters relating to the design, planning, construction, and installation of the Project, including any demolition, and the qualification, selection and retention of all consultants, architects, and contractors engaged in connection therewith.

4. **Museum Responsibilities**: Except as expressly provided in this Agreement, Museum shall have the responsibility with respect to undertaking and completing the Project in accordance with this Agreement.

A. **Bid Process; Plan Approvals**. Museum shall be responsible for seeking qualifications, competitively selecting, and retaining qualified and licensed design professionals, construction professionals, installers, surveyors, or other necessary consultants according to the needs of the Project who will prepare the design, construction and/or installation documents for the Project; and for bidding and letting out the work to qualified, licensed and experienced contractors. Before the Project commences, Museum shall submit the plans and specifications, including any subsequent modifications, to the Executive Director's Representative for the written approval of said documents. The plans and specifications will be approved or disapproved, in writing, with the reasons for any disapproval being stated, within 30 days of receipt by the Executive Director's Representative of complete sets of the plans and specifications. Any deficiencies in said plans and specifications shall be remedied by Museum, to the reasonable satisfaction of the Executive Director's Representative, prior to the commencement of Project work.

B. **Inspection; Testing**. Museum shall at all reasonable hours ensure right of entry to any City inspector or other authorized agent of the City to inspect the work site and progress of the Project and to conduct tests and evaluations to determine that the work performed and materials used are of good quality and in conformance with the approved plans and specifications. If it is determined that the work is not being so performed, the Executive Director's Representative may order the cessation of the work until there is satisfactory evidence that the Project work conforms to the approved plans and specifications. If the Executive Director's Representative determines that the work is not otherwise being performed in accordance with this Agreement, the Executive Director's Representative may order that Museum cease to conduct the

work until there is satisfactory evidence that the work will be performed in accordance with this Agreement.

C. Fees. The City shall not charge Museum for the City's activities under this Paragraph 4, including plan and specifications review, inspections, materials testing, and construction monitoring. If required, standard building permit fees and other fees mandated by the City or the State shall be paid by Museum.

D. General Compliance with Laws. Museum shall be solely responsible for assuring that the Project is properly contracted and performed, and that the work and materials 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.

E. Compliance with City Charter and Ordinances. In addition to compliance with the above-mentioned laws, Museum shall be governed and controlled by all limitations and provisions that are imposed on the City's Department of Parks and Recreation and the Department of Transportation and Infrastructure by the Charter or ordinances of the City. Specifically, such work shall be performed in compliance with (i) the provisions for payment of prevailing wages set forth in Sections 20-76 through 20-79 of the Denver Revised Municipal Code ("**D.R.M.C.**"); (ii) for minimum wages set forth in Sections 20-82 through 20-84; (iii) for public art in Sections 20-85 through 28-90, D.R.M.C.; and (iv) 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, Sections 28-117 through 28-199, or Sections 28-201 through 28-249, D.R.M.C.; as any or all of the above may be amended or recodified from time to time. The commencement and continuation of Project shall be dependent upon Museum establishing to the City's reasonable satisfaction through the course of the Project that these Charter and ordinance requirements have been fully and appropriately satisfied. Museum shall fully cooperate with City officials, including the City Auditor, in assuring compliance with these requirements. Failure to comply with the requirements of this subparagraph E. shall be legal grounds under this Agreement for work to be ordered to cease or to be restricted, as deemed appropriate by the Executive Director's Representative or the City Auditor, until compliance is achieved and any unpaid claims or other remedial measures are resolved to the reasonable

satisfaction of the City.

F. Insurance Requirements. Museum shall require the design and construction professionals, contractors and subcontractors (collectively as used in this subparagraph F and **Exhibit B**, “Contractors”) to obtain and maintain insurance in the amounts and types of coverages appropriate for the Project work, which shall include the City and Museum as additional insureds. The insurance requirements shall be those specified in **Exhibit B** attached to and incorporated by reference into this Agreement and specified in any design or construction contract entered by Museum with a Contractor. Failure to comply with the requirements of this subparagraph F shall be legal grounds under this Agreement for work to be ordered to cease or to be restricted, as deemed appropriate by the Executive Director’s Representative or the City’s Risk Management Office, until compliance is achieved and any unpaid claims are resolved to the reasonable satisfaction of the Executive Director’s Representative and the City’s Risk Management Office. The obligations set out in this paragraph F shall survive the expiration or termination of this Agreement.

G. Indemnification. Any agreement with a Contractor pertaining to any work on any part of City property shall include an indemnification and defense clause incumbent upon the Contractor, and approved by the City Attorney’s Office and inured to the benefit of the City and Museum, to protect both the City and Museum against all claims, actions, and demands arising from or related to the Project work performed by the Contractor. Similar indemnification and defense language, benefiting both the City and Museum, shall be included in the Performance and Payment Bond provided by the construction Contractor(s) under paragraph 4.H. below. After completion and full acceptance by the City of all work, Museum shall assign its rights under any contracts for the design and construction of the Project to the City, including but not limited to rights regarding actions or enforcement of rights against the Contractor for liability, damages, defense and indemnification. Such assignment shall not include any of Museum’s obligations, liabilities or duties owed to the Contractor unless specifically accepted by the City. The obligations set out in this paragraph 4.G. shall survive the expiration or termination of this Assignment Agreement.

H. Performance and Payment Bond. Museum shall obtain and maintain or require its contractor(s) and sub-contractor(s) to obtain and maintain, in advance and subject to approval by the Denver City Attorney’s Office, one hundred percent (100%) payment and

performance bond(s) from an acceptable surety. The City and Museum shall be named as obligees on all bonds. Bonds provided by Museum or the Museum's contractor(s) and sub-contractor(s) must be conditioned (1) that prompt payment shall be made for 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 (2) as guarantee of the obligation to complete the Project as provided in this Agreement. In addition, all design professionals, contractors and sub-contractors shall be required to include an indemnification and "hold harmless" clause, approved by and for the benefit of the City and Museum, to protect both parties against claims, actions, and demands arising from or related to the work performed by the design professionals, contractors and sub-contractors. The dollar amount of such bonds shall be modified, as needed, to reflect any change orders that modify the total value of the Project or part of the Project. In addition, Museum shall provide satisfactory evidence that all architects, engineers, designers, and other enrolled professionals have been fully paid. Failure to comply with the requirements of this subparagraph H shall be legal grounds under this Agreement for work to be ordered to cease or to be restricted, as deemed appropriate by the Executive Director's Representative or the City Attorney's Office, until compliance is achieved and any unpaid claims are resolved to the reasonable satisfaction of the Executive Director's Representative and the City Attorney's Office. The obligations set out in this subparagraph H shall survive the expiration or termination of this Agreement.

I. Warranties. Museum shall obtain, exercise and enforce warranties and guarantees for all work it contracts and shall designate the City as an additional express beneficiary for enforcing all warranties and guarantees. After completion of the work and acceptance by the City, all such warranties shall be transferred to the City. Museum shall ensure that such warranties are transferrable. Museum's obligations to transfer warranties to the City under this subsection I shall survive the expiration or termination of this Assignment Agreement, but only if warranties are not transferred before expiration or termination of this Agreement.

J. Compliance Affirmation. Prior to authorizing the commencement of the Project under the construction contract(s) with the construction contractor(s) and subcontractor(s), Museum shall submit to the Executive Director's Representative a letter affirming that the construction contract(s) in connection with the construction of the Project are or will be in full compliance with Paragraph 4 of the Agreement.

K. Taxes. Museum and its contractor(s) and subcontractor(s) 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 Project 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. Museum's obligations set out in this subparagraph K shall survive the expiration or termination of this Agreement. The parties acknowledge that the Museum is a charity formed under Section 501(c)(3) of the Internal Revenue Service Code. Nothing in this paragraph or Agreement requires the Museum to pay taxes for which it is tax exempt.

L. Liens and Debts. Museum shall not permit any mechanic's or materialman's liens or any other liens to be imposed and remain for more than ninety (90) days upon any City-owned property, or any part thereof, by reason of any Project work or labor performed or materials or equipment furnished by any person or legal entity to or on behalf of Museum, either pursuant to C.R.S. § 38-26-107 or by any other authority. Museum shall promptly pay when due all bills, debts and obligations incurred in connection with this Agreement and shall not permit the same to become delinquent. Museum shall not permit any lien, mortgage, judgment, execution or adjudication of bankruptcy which will in any way impair the rights of the City under this Agreement. The Museum's obligations set out in this paragraph L shall survive the expiration or termination of this Agreement.

M. Environmental Requirements. Museum and its construction contractor(s) and subcontractor(s) shall obtain all federal, state, and local environmental permits necessary for the work to be performed and shall comply with all applicable federal, state, and local environmental permit requirements applicable to the work. Museum and its construction contractor(s) and subcontractor(s) shall comply with all applicable local, state, and federal environmental guidelines, rules, regulations, statutes, laws, and orders applicable to the work (collectively, "**Environmental Requirements**"), including but not limited to Environmental Requirements regarding the storage, use, transportation, and disposal of Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment. The term "**Hazardous Materials**" shall mean asbestos, asbestos contaminated soils, and asbestos-containing materials, special wastes, polychlorinated biphenyls (PCBs), any petroleum products, natural gas, radioactive source material, pesticides, any hazardous waste as defined at 42 U.S.C. §

6903(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42 U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act, and chemical substance as defined at 15 U.S.C. § 2602(2) of the Toxic Substances Control Act, and any guidelines issued and rules or regulations promulgated pursuant to such statutes, or any other applicable federal or state statute. Museum's obligations set out above in this paragraph M shall survive the expiration or termination of this Agreement. If asbestos containing material is discovered within the Project site, the cost of remediation shall be equally shared by Museum and the City. Museum's contractor shall have a materials handling protocol pre-approved by the Denver Department of Environmental Health in place during the Project work.

N. Impact Reduction. Museum shall take all reasonable measures to minimize and control noise, water and air pollution, water discharges, and soil erosion resulting from work and activities associated with the Project and to avoid adverse impacts to City-owned property and surrounding property, wherever possible, as a result of noise, water and air pollution, water discharges, and soil erosion resulting from the Project work and activities.

O. Confirmation of Lawful Employment.

(1) The Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

(2) Museum agrees and represents that:

(a) It shall not enter into a contract with a consultant, contractor or sub-contractor that fails to certify to Museum that it shall not knowingly employ or contract with an illegal alien to perform work for the Project.

(b) If it obtains actual knowledge that a consultant, contractor or sub-contractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such consultant, contractor or sub-contractor and the City within three (3) days. Museum will also then terminate such consultant, contractor or subcontractor if within three (3) days after such notice the consultant, contractor or sub-contractor does not stop employing or contracting with the illegal alien, unless during such three-day period the consultant, contractor or sub-contractor provides information to establish that the consultant, contractor or sub-contractor has not knowingly employed or contracted with an illegal alien.

(c) It will comply with any reasonable request made in the



course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. 20-90.3.

(3) The consultant, contractor or sub-contractor for Museum is liable for any violations as provided in the Certification Ordinance. If the consultant, contractor or sub-contractor violates any provision of this paragraph N. or the Certification Ordinance, the City may terminate this Agreement for a breach of agreement. If the Agreement is so terminated, the consultant, contractor or sub-contractor shall be liable for actual and consequential damages to the City. Any such termination of the Agreement due to a violation of this paragraph N or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Museum from submitting proposals for future contracts or agreements with the City.

P. Compliance. Museum shall ensure that all improvements are constructed in accordance with approved plans and specifications and that no material changes to these plans and specifications will occur during construction, unless approved in advance and in writing by the Executive Director's Representative. Failure to request approval or to comply with rejections for material changes shall be legal grounds under this Agreement for construction work to be ordered to cease or to be restricted, as deemed appropriate by the Executive Director's Representative until such approval is obtained or the unapproved work is corrected. City shall remain a part of the Project team to provide input, recommendations and oversight. City shall provide advanced notice to Museum if additional review and approval is required for any part of the Project.

Q. Delay. If, for any reason, construction of the Project is delayed or halted while in process for more than ten (10) days, Museum shall take reasonable measures to protect the existing Project site and improvements from weather damage, erosion, vandalism and other similar threats and to protect public safety on and around the Project.

R. Claims Related to the Project. Claims related to the design, construction and installation of the Project as addressed by this Agreement, including but not limited to design deficiencies, construction defects, deficient workmanship, failure to comply with environmental requirements, failures to make payment, and other claims under the Museum's contracts with its contractors or consultants for the Project work shall be reported to the City immediately upon discovery. Museum shall, where applicable, delegate responsibility and liability for the Project work by contract to the contractor or consultant retained by Museum to perform the Project work. Contracts executed by the Museum for Project work shall contain indemnity provisions requiring

the contractor or consultant indemnify the City as well as the Museum. Museum shall require of the contractors and consultants the insurance set forth in **Exhibit B**, and the bond requirements under 4.H. and require that the contractor or consultant include the City as an additional insured to any insurance policies. This subparagraph R in no way modifies the indemnification obligations and requirements under Paragraph 4.G. Claims under this subparagraph R do not include claims related to the City's rights after Museum completes the Project to the City's satisfaction including City ownership, operation and maintenance, and does not affect the City's rights to any warranties.

S. Pursuit of Remedies. In the event of any material default by Museum's contractor(s) or sub-contractor(s) under any contracts or otherwise, Museum agrees to diligently pursue any remedies available against said parties, and to timely advise the City as to Museum's efforts in this regard and to allow the City's participation, if the City so requests. City has the option, but not the obligation, to handle any claims, suits, proceedings or settlement on behalf of the Museum. In such case, and upon mutually agreed upon terms and conditions, Museum shall be required to assign its rights under any contracts to the City.

T. Lien Releases. Museum shall provide the Executive Director's Representative with complete, final and unconditional waivers or releases of all lien and claim rights from each contractor, sub-contractor, and supplier for all labor, equipment, and materials used or furnished by each for the Project.

U. Notice of Completion; Acceptance; As-Builts. Museum shall provide the Executive Director's Representative with written notification of substantial completion in order that the City may participate in all punch list reviews and sign off on the Project. Museum shall provide the Executive Director's Representative with written notification of final completion in order that the City may inspect all improvements as constructed and verify that the improvements have been constructed in accordance with approved plans and specifications and this Agreement without any material deviations, and the Project work is at final completion. Upon determination that the requirements set forth in this subparagraph U. have been fully satisfied, the Executive Director's Representative shall arrange with the Executive Director to issue a Notice of Final Acceptance letter accepting the improvements. Detailed and stamped "as-built" plans will be provided to the Executive Director's Representative within sixty (60) days following the City's final inspection.

5. **Term; Termination; Remedies:**

A. Term. The term of this Agreement shall commence on the Effective Date of this Agreement and shall terminate upon the Notice of Final Acceptance issued as provided in Paragraph 4 of the Agreement and except for those financial obligations of Museum set forth in Paragraph 6 below which shall continue until the City and Museum mutually agree that these obligations are satisfied; provided, however, termination of the Agreement may occur as provided in this Paragraph 5.

B. Termination; Remedies. This Agreement may be terminated as follows:

(1) Museum Default. In the event that Museum shall default or breach, on its part, in the performance or fulfillment of one or more material terms or conditions of this Agreement (“**Museum Default**”), and shall fail to cure such Museum Default within ninety (90) days following delivery of written notice from the Executive Director to Museum specifying the Museum Default, the Executive Director may, in the Executive Director’s reasonable discretion, terminate this Agreement. If the Executive Director decides to terminate the Agreement upon Museum Default not being cured by the cure deadline date, then the Executive Director shall so notify Museum that the provisions of sub-subparagraph 5.B.5 below shall be effective on the termination date.

(2) City Default. In the event that the City shall default or breach, on its part, in the performance or fulfillment of one or more material terms or conditions of this Agreement (“**City Default**”) and shall fail to cure such City Default within ninety (90) days following delivery of written notice from Museum to the Executive Director, Museum may, in its reasonable discretion, terminate this Agreement. If Museum decides to terminate the Agreement upon the City Default not being cured by the cure deadline date, then Museum shall so notify the Executive Director that the provisions of sub- subparagraph 5.B.5 below shall be effective on the termination date.

(3) Time Extension. Upon mutual agreement of the parties, the time to cure any Museum Default or City Default may be extended to a date certain and the manner and extent of cure may be modified. The deadline for any cure under this subparagraph 5.B. shall not excuse the obligation of any defaulting party to take timely and proper action to prevent, stop, mitigate, or alleviate any recent or impending damage to city-owned property or any existing or imminent threat to public health and safety.

(4) Mutual Consent Termination. Upon mutual written consent, the City

and Museum may terminate this Agreement, with or without cause.

(5) Effect of Termination. Upon termination of this Agreement, and to the extent necessary to enforce any remedies or judgments, City Park and any improvements contained therein shall remain the property of the City. Museum shall take all reasonable measures to turn over the portion of the city-owned property used by Museum under this Agreement to the City in a timely manner and in reasonably good condition. Museum shall remove all personal property belonging to or leased by Museum from the portion of the city-owned property used by Museum under this Agreement in a timely manner and without causing any damage. Failure by Museum to comply with this paragraph may result in the City bringing a legal action against Museum to recover property and the costs of restoration resulting from damage caused by Museum, and, if successful, the City shall be entitled to its attorney's fees and costs from Museum.

(6) Remedies. The parties agree that this Agreement may be enforced in law or in equity for specific performance, injunctive, or other appropriate relief, including actual damages, costs, expenses and attorney's fees (and including any obligations of Museum that are specified under Paragraph 4 of this Agreement to survive termination), as may be available according to the laws and statutes of the State of Colorado. No provision of this Agreement may be enforced by the creation or recording of any type of lien against real property owned by the City, nor may any foreclosure process be utilized to recover any moneys owed by the City to Museum.

6. **Funding:**

A. City Funding: Contingency. The City shall provide to Museum the costs of the Project in an amount not to exceed Three Million Dollars (\$3,000,000.00).

B. City's Maximum Financial Obligation: In no case shall the City's financial obligation under this Agreement exceed Three Million Dollars (\$3,000,000.00). This Agreement shall require approval of Denver City Council, as well as any subsequent proposal and amendment. Any amendment shall be approved and executed in the same manner as this Agreement.

C. Museum's Maximum Financial Obligation: In no case shall the Museum's financial obligation under this Agreement exceed Three Million Dollars (\$3,000,000.00). This Agreement shall require approval of the Museum's Board of Trustees. Any amendment shall be approved and executed in the same manner as this Agreement.

D. Museum's Funding; Contingency. Notwithstanding any provision of this Agreement to the contrary, the City agrees that the rights and obligations of the Museum under this Agreement are contingent upon all funds necessary for work or expenditures contemplated under this Agreement being obtained and approved by the Museum's Board of Trustees prior to the beginning of the design and construction phases as set forth in **Exhibit A**, and such approval shall not be unreasonably withheld.

E. Project Costs/Management: The parties shall work together to budget for each phase of work in order to proactively manage costs and avoid overruns. In the event there are cost overruns to approved budgets, and subject to the limitations under Paragraph 6.A., 6.C., and Paragraph 8.D., the parties shall negotiate in good faith to address any Project financial shortfalls or overruns. In no event shall either party be required to fund the Project beyond their respective \$3,000,000.00 commitment by each party.

7. **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, modify or waive other agreements between the parties currently existing or entered in the future.

8. **General Provisions:**

A. Authority of Museum. The scope of authority that Museum may exercise with respect to the Project shall be as expressly delegated, assigned, or allowed under, or necessarily implied in, this Agreement. Museum shall have no authority to avoid, modify or waive any applicable City ordinances or regulatory requirements enacted or adopted under the City's police or taxing powers. Museum has no authority to obligate the City to any contract or agreement with third parties without City's consent. This Agreement is not intended, nor shall this Agreement be construed, to establish or constitute a joint venture between the City and Museum.

B. Reasonable Efforts; Good Faith; Fair Dealing.

(1) Reasonable Efforts; Good Faith. Museum and the City agree to work diligently together and in good faith, using reasonable efforts to resolve any unforeseen issues and disputes and to expeditiously take such actions as are necessary and appropriate to perform the duties and obligations of this Agreement.

(2) Fair Dealing. In all cases where the consent or approval of one party is required before the other may act, or where the agreement or cooperation of the parties is

separately or mutually required as a legal or practical matter, then in that event the parties agree that each will act in a fair and reasonable manner with a view to carrying out the intents and goals of this Agreement as the same are set forth herein, subject to the terms hereof; provided, however, that nothing in this Agreement shall be construed as imposing on either party any greater duty or obligation to the other than that which already exists as a matter of Colorado law, including but not limited to any fiduciary duty or other responsibility greater than that of reasonable parties contracting at arm's length.

C. Financial Interests. The parties agree and covenant that any financial interests created in, or used to secure financing and payment for the costs of, any work performed under this Agreement, including but not limited to any bonds, certificates of participation, purchase agreements, and Uniform Commercial Code filings, shall expressly exclude, and not encumber, property title, rights and interests held by the City from such debt or financial security contained in such financial instruments. The terms and conditions of this Agreement must be expressly recognized in any such financial instrument(s), which must specifically acknowledge and affirm that any financial interests created by the financial instrument(s) are subordinate to this Agreement.

D. City Appropriation. Notwithstanding any provision of this Agreement to the contrary, Museum agrees that the rights and obligations of the City under this Agreement are contingent upon all funds necessary for work or expenditures contemplated under this Agreement being budgeted, appropriated and otherwise made available by the City. Museum acknowledges that this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City, except to the extent that capital improvement funds that are lawfully appropriated can be lawfully carried over to subsequent years.

E. Non-waiver. No party shall be excused from complying with any provision of this Agreement by the failure of the other party to insist upon or to seek compliance. No assent expressed or implied, to any failure by a party to comply with a provision of this Agreement shall be deemed or taken to be a waiver of any other failure to comply by said party.

F. Examination of Records and Audit. 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 Museum's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this

Agreement. Museum 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 Museum to make disclosures in violation of state or federal privacy laws. Museum shall at all times comply with D.R.M.C. 20-276.

G. Applicable Law/Exercise of Authority. The parties agree to comply with all applicable Federal, State and local statutes, charter provisions, ordinances, resolutions, rules, regulations, policies, and standards in existence as of the Effective Date of this Agreement or as may be subsequently enacted or adopted and become applicable; provided, however, the City agrees that it shall not enact or adopt any ordinance, resolution, rule, regulation, policy or standard (other than those necessary to comply with a lawful citizen initiative or referendum) which would substantially interfere with or diminish the obligations and rights under this Agreement or result in effectively nullifying this Agreement, in whole or part, but otherwise this paragraph shall not limit the powers and authority of the City.

H. No Discrimination in Employment. In connection with the performance of work under this Agreement, Museum 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, gender expression or gender variance, age, military status, sexual orientation, marital status, or physical or mental disability; and Museum further agrees to insert the foregoing provision in all approved contracts and subcontracts hereunder.

I. Conflict of Interest. Museum agrees that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein, and Museum further agrees not to hire or contract for services any official, officer or employee of the City or any other person which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.9 and 1.2.12.

J. Force Majeure. Museum shall not be liable for delay or failure to perform hereunder, despite best efforts to perform, if such delay or failure is the result of *force majeure*, and any time limit expressed in this Agreement shall be extended for the period of any delay resulting from any *force majeure*. Timely notices of the occurrence and the end of such delay shall be provided by Museum when asserting *force majeure* to the City. “*Force majeure*” shall mean causes beyond the reasonable control of Museum such as, but not limited to, adverse weather conditions, acts of God or the public enemy, strikes, work stoppages, unavailability of or delay in receiving labor or materials, faults by contractors, subcontractors, utility companies or third parties, fire or other casualty, or regulatory action of a government authority.

K. Further Assurances. From time to time, upon the request of a party, the other party agrees to make, execute and deliver or cause to be made, executed and delivered to the requesting party any and all further instruments, certificates and documents consistent with the provisions of this Agreement as may, in the reasonable opinion of the requesting party, be necessary or desirable in order to effectuate, complete or perfect the rights of said party under this Agreement, provided said requesting party is currently in full compliance with the provisions of this Agreement and has tendered or offered to tender any reciprocal instruments, certificates and documents to which the other party is entitled under the Agreement.

L. Contracting or Subcontracting.

(1) Limits on Contracting Authority. The authority delegated under this Agreement shall not be construed to grant Museum the right or power to bind, or to impose any liability upon, the City through any contracts or agreements Museum may make, unless the prior, written approval of the Executive Director is obtained, and the contract or agreement is in accordance with Applicable Law. Likewise, the City shall have no authority to bind, or to impose liability upon, Museum through any contracts or agreements the City may make, unless the prior, written approval of Museum is obtained.

(2) Contracts Subject to this Agreement. Any work that is allowed to be contracted or subcontracted under this Agreement shall be subject, by the terms of the contract or subcontract, to every provision of this Agreement. Compliance with this provision shall be the responsibility of the party who arranged the contract or authorized the subcontract. The City shall not be liable nor have a financial obligation to or for any contractor, subcontractor, supplier, or other person or entity with which Museum contracts or has a contractual arrangement.



M. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the United States, the State of Colorado, and the applicable provisions of the Charter and Revised Municipal Code of the City and County of Denver. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver.

N. 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 Museum and the City; 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. It is the express intention of Museum and the City that any person or entity other than Museum and the City receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

O. Claims. In the event that any claim, demand, suit, or action is made or brought in writing by any person or entity against one of the parties related in any way to this Agreement, the party in receipt of same shall promptly notify and provide a copy of said claim, demand, suit, or action to the other party.

P. Notice. All notices, demands or consents required or permitted under this Agreement shall be in writing and delivered personally or sent by certified mail, return receipt requested, to the following:

To Museum: Jacqueline Altreuter  
Colorado Museum of Natural History  
2001 Colorado Blvd  
Denver, Colorado 80205

To the City: Executive Director of Parks and Recreation  
City and County of Denver  
201 West Colfax, Department 601  
Denver, Colorado 80202

City Attorney  
City and County of Denver  
1437 Bannock Street, Room 353  
Denver, Colorado 80202

The persons or addresses set forth above may be changed at any time by written notice in the manner provided herein. Any communications between the Executive Director's Representative

and the Museum's Representative as provided under this Agreement may be made by email.

Q. Entire Agreement. This Agreement, including the exhibits which are hereby incorporated into this Agreement by reference, constitutes the entire agreement of the parties regarding the Project. The parties agree there have been no representations, oral or written, other than those contained herein and that the various promises and covenants contained herein are mutually agreed upon and are in consideration for one another.

R. Amendment. Except as otherwise expressly provided in this Agreement, this Agreement may be amended, modified, or changed, in whole or in part, only by written agreement executed by the parties in the same manner as this Agreement.

S. No Assignment. No party shall assign its rights or delegate its duties hereunder, with the exception of contracting and subcontracting as provided in this Agreement, without the prior written consent of the other party.

T. Severability. Should any one or more provisions of this Agreement be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the parties shall forthwith enter into good faith negotiations and due diligence to draft a legal term or condition that will achieve the original intent and purposes of the parties hereunder.

U. Headings for Convenience. Headings and titles contained herein are intended for the convenience and reference of the parties only and are not intended to combine, limit, or describe the scope or intent of any provision of this Agreement.

V. Authority. Each party represents and warrants that it has taken all actions that are necessary or that are required by its applicable law to legally authorize the undersigned signatories to execute this Agreement on behalf of the party and to bind the party to its terms. The person(s) executing this Agreement on behalf of each party warrants that he/she/they have full authorization to execute this Agreement.

W. Execution of Agreement. This Agreement shall not be or become effective or binding, and shall not be dated, until it has been fully executed by all signatories of the City and Museum.

X. Electronic Signatures and Electronic Records. Museum 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.

**Contract Control Number:**  
**Contractor Name:**

PARKS-202056989-00  
THE COLORADO MUSEUM OF NATURAL HISTORY d/b/a  
DENVER MUSEUM OF NATURE AND SCIENCE

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:**

PARKS-202056989-00  
THE COLORADO MUSEUM OF NATURAL HISTORY d/b/a  
DENVER MUSEUM OF NATURE AND SCIENCE

**vendor signature on following page**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

ATTEST: [if required]

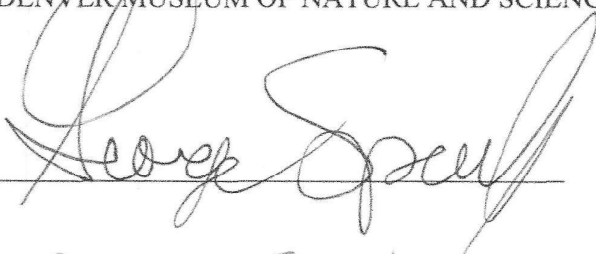
By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

**Contract Control Number:**  
**Contractor Name:**

PARKS-202056989-00  
THE COLORADO MUSEUM OF NATURAL HISTORY d/b/a  
DENVER MUSEUM OF NATURE AND SCIENCE

By: 

Name: George Sparks  
(please print)

Title: President & CEO  
(please print)

By: 

Name: Kristin Richardson  
(please print)

Title: Board Chair - DMNS  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

## EXHIBIT A

### 1. STATEMENT OF THE WORK:

Denver Parks and Recreation is collaborating with the Denver Museum of Nature & Science to create a natural play experience in the southeast corner of City Park. The project will restore portions of the historic DeBoer Waterway as a sustainable creek-bed with water and flow that acts as the connective tissue for natural play experiences in the space, based on Colorado's eight ecosystems represented in the Museum's Explore Colorado Diorama Hall.

The nature play project will build upon inspiration from the community provided throughout the Concept Phase in 2019 and the 2018 City Park Master Plan Update and Design Guidelines, and will continue gathering community input and feedback throughout the Design Phase in 2020. The project will tap into the notion that our natural world is a bridge to science by creating multi-sensory, highly physical learning experiences designed for exploration and play that is self-directed, multi-cultural, and intergenerational.

The selected design team, will collaborate closely with Denver Parks and Recreation, the Museum team (scientists, informal education, programming, community engagement and exhibits specialists, etc.), and the community to create a programmable, captivating space that encourages curiosity, wonder, learning, exploration and discovery.

The project entails the re-creation of Colorado's ecosystems along the spine of the DeBoer Waterway, as a natural creek bed. The project prioritizes environmental benefits, bringing water back to the DeBoer waterway and satisfying Community Desires.

The project will be designed in consideration with Colorado's distinct habitats, as celebrated in the Explore Colorado Diorama Hall and programs of DMNS. This will be recreated along the spine of the re-imagined DeBoer waterway, to illustrate how they were formed over millennia through their interaction with water as it flowed from our famed mountains. Each play feature will be unique to that habitat, reflecting its distinct environment and recreating the dwelling of the fauna that call that habitat home. These nature based play elements will include like the caves of the Pinyon-Juniper Woodland and the nests of the bald eagles on the Montane Forest. Each Colorado habitat will tell its story through the play experience of the children and families of our community and will be enhanced through programmatic extensions from the Denver Museum of Nature & Science. This will be the ultimate living diorama creating a physical and thematic bridge from our nearby nature to scientific inquiry and exploration. The City Park natural play habitats will build opportunities for connection of the land and people that are unique to Colorado and our community. By embracing immersive and multi-sensory interactions with the natural world right outside the Museum's doors, this living, breathing diorama will encourage creativity and inquiry creating a thematic and physical bridge from nature to science.

Approximate Schedule:

- Design: 2021
- Construction: Q1 2022 – Q4 2022

Agreement to terminate upon issuance of Final Acceptance of construction work.



Legend



Limit of Work





**EXHIBIT B**  
**CONTRACTOR'S INSURANCE REQUIREMENTS**

(1) **General Conditions:** 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 Contractor Agreement. 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 at least three (3) years after the expiration or termination of the Contractor 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 and County of Denver, as and where specified by the City, and to the RiNo Art District ("Art District") (the "Notification Parties") 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 Notification Parties. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal 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 Notification Parties by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s). If any policy is in excess of a deductible or self-insured retention, the Notification Parties must be notified by Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Contractor Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of Contractor. 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 Contractor Agreement.

(2) **Proof of Insurance:** Contractor shall provide a copy of this Contractor Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Contractor Agreement prior to placement of coverages required under this Contractor Agreement. Contractor certifies that the certificate of insurance, preferably an ACORD certificate, complies with all insurance requirements of this Contractor Agreement. The acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Contractor Agreement shall not act as a waiver of Contractor's breach of this Contractor Agreement or of any of the rights or remedies under this Contractor Agreement. Additional proof of insurance, including but not limited to policies and endorsements, may be required.

(3) **Additional Insureds:** For Commercial General Liability, Auto Liability and Contractors Pollution Liability, Contractor and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers and Art District and its officials, officers, employees and volunteers as additional insured.

(4) **Waiver of Subrogation:** For all coverages required under this Contractor Agreement, Contractor's insurer shall waive subrogation rights against the City and County of Denver and Art District

(5) **Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Contractor Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor 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. Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request.

(6) **Workers' Compensation/Employer's Liability Insurance:** 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 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. Contractor expressly represents to the City and County of Denver and Art District, as a material representation upon which the City and Art District are relying, that none of the 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 Contractor Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Contractor Agreement.

(7) **Commercial General Liability:** Contractor 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, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

(8) **Business Automobile Liability:** Contractor shall maintain Business Automobile Liability, or its equivalent, with minimum limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Contractor Agreement. 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.

(9) **Contractors Pollution Liability:** 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. Policy shall include a severability of interest or separation of insured provision (no insured vs. insured exclusion) and a provision that coverage is primary and non-contributory with any other coverage or self-insurance maintained by the City and County of Denver and Art District (Construction Contractor Only)

(10) **Professional Liability (Errors & Omissions):** Contractor shall maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. (Design Professionals Only)

(11) **Builders' Risk or Installation Floater:** 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, Art District, 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 and County of Denver. (Construction Contractor Only)

(12) **Additional Provisions:**

- (a) For Commercial General Liability, the policy must provide the following:
  - (i) That this Contractor Agreement is an Insured Contract under the policy;
  - (ii) Defense costs are outside the limits of liability;
  - (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 and County of Denver or Art District.
- (b) For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services were provided, whichever is earlier.
- (c) Contractor shall advise the Notification Parties in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At its own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.