

**COOPERATIVE AGREEMENT**

**BETWEEN**

**THE CITY AND COUNTY OF DENVER, COLORADO**

**AND**

**RINO ART DISTRICT**

**REGARDING BUILDINGS LOCATED AT 1900 and 1950 35<sup>TH</sup> STREET, DENVER,  
COLORADO 80216**

## COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (“**Agreement**” or “**Cooperative Agreement**”) is made and entered into as of the date of execution by the last party hereto, by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the state of Colorado (the “**City**”), and RINO ART DISTRICT, a Colorado nonprofit corporation (“**Art District**”), with an address of 3501 Wazee Street, Suite 109, Denver, Colorado 80216 (City and Art District may each be referred to herein as a “**Party**” and collectively as the “**Parties**”).

### RECITALS:

A. The City owns certain real property generally located at the intersection of Arkins Court and 35<sup>th</sup> Street, City and County of Denver, State of Colorado (the “**Property**”) which Property is more particularly described and depicted on the site plan (the “**Site Plan**”) attached hereto as **Exhibit A** and incorporated herein by this reference, and which Property is located adjacent to the City’s new public park informally referred to as Arkins Park (hereinafter “the “**Park**”).

B. Art District was organized and incorporated as a nonprofit corporation for the purpose of providing services and programming with various partners, including the City, throughout the River North area and the City.

C. The City intends to renovate, or cause the Art District to renovate, as provided herein, certain buildings adjacent to the Park, which buildings are more particularly described as an approximately 2,304 square foot building, and approximately 3,204 square feet after construction, with an address of 1900 35<sup>th</sup> Street, and an approximately 7,024 square foot building, and approximately 10,127 square feet after construction, with an address of 1950 35<sup>th</sup> Street (each being referred to as a “**Building**,” and collectively, the “**Buildings**” or “**Park Buildings**”). The Buildings were formerly part of one building commonly known as 1900 35<sup>th</sup> Street, Denver, Colorado 80216, which the City has recently renovated by removing the center portion thereof, thereby creating east and west “halves” thereof, which constitute the “Buildings” under this Agreement.

D. The City, through its Department of Parks and Recreation, issued a Request for Statement of Interest seeking potential assistance or partnering for the renovation, reconstruction and operation of the Buildings.

E. After review of submissions in response to the Request for Statement of Interest, the City selected the Art District with which to begin negotiation for agreements or other arrangements for the renovation, reconstruction and operation of the Buildings.

F. After selection, Art District performed certain design at its own cost with the intent of performing the renovation and improvements to the Buildings.

G. The Parties have agreed by a previously executed Assignment Agreement (hereinafter defined in Section 5), that after design, construction, renovation and improvement to the Buildings is completed to the City’s satisfaction and approval, Art District will occupy, lease,

operate and manage the Buildings for the benefit of the City, the Art District and the general public, as further set forth herein.

H. In accordance with Article II, Part 4, Section 2.4.4(F) of the Charter of the City and County of Denver, the Manager of the Denver Department of Parks and Recreation (referred to as the “**Executive Director**”), subject to approval by City ordinance, is authorized to conduct negotiations for cooperative agreements with private agencies for the development of park and recreational facilities, programs and activities, and to delegate the Executive Director’s authority and responsibility with respect thereto.

I. Art District is willing and has the present capacity to operate the Buildings, which shall include the Art District’s right to sublease to third parties portions of the Buildings for operation, as set forth in this Cooperative Agreement, for the use and benefit of the citizens of the City and County of Denver and the general public.

J. It is in the best interest of Art District, the City and the general public that a Cooperative Agreement should be entered into between Art District and the City, and the City and Art District wish to enter into this Cooperative Agreement, to provide for the development and use of the Buildings for the enjoyment and education of the citizens of the City and County of Denver and the general public, in the furtherance of Art District’s mission as further set forth herein.

K. It is acknowledged and agreed that the Art District is currently in discussions with third party partners and other City agencies, departments or commissions regarding the use and occupancy of space within the Buildings. Any subsequent agreement between the Art District and another City agency, department or commission shall not supersede any provisions or terms contained herein.

**NOW, THEREFORE**, in consideration of the above recitals, hereby incorporated into the substantive provisions of this Agreement by this reference, and the mutual promises contained herein, for the purpose of setting forth the relationship between Art District and the City with respect to the Buildings and any related operations and activities, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, it is mutually agreed by the City and Art District as follows:

**1. KEY DEFINITIONS.** As used in this Agreement:

(a) The term “**Park**” is intended to refer to the City’s newly constructed Arkins Park, or portions thereof, and shall mean the area depicted on the Site Plan. For the purposes of this Agreement, the Buildings that are the subject of this Cooperative Agreement are situated adjacent to, and not within, the Park, as shown on the Site Plan. The personal property, operations, programs, and activities of Art District may not be installed, kept, stored, presented, conducted, or extended into the Park, except as expressly provided in this Agreement.

(b) The term “**Buildings**” shall have the meanings given them in Recital C above, as depicted on the Site Plan attached hereto.

(c) The term “**Plaza**” shall mean that area generally depicted on **Exhibit A**, the Site Plan, attached hereto.

(d) The term “**Facilities**” shall mean all permanent improvements and Fixtures (hereinafter defined) presently existing, or as may be constructed, installed or renovated in the future, on or within the Buildings, and various other installations.

(e) The term “**Fixtures**” shall be defined as those improvements or installations attached to Buildings, whether interior or exterior, or other structural portions or components of the buildings, including mechanical systems and electrical systems, and that cannot be removed without altering the Buildings or structural components.

(f) The term “**City**” shall mean the City and County of Denver and those officials and employees with authority to act on behalf of the City.

(g) The term “**Executive Director**” shall mean the Executive Director of the Denver Department of Parks and Recreation (“**Parks and Recreation**” or “**DPR**”) or the Executive Director’s designated representative. The Parties agree that to the extent the Charter refers to “Manager,” and consistent with Executive Order 140, that term shall also mean the “Executive Director” for the purposes of this Agreement. The Parties are not denying, disclaiming or disavowing any authority vested in the Executive Director by using a term other than Manager.

(h) The term “**RiNo Art District**” or “**Art District**” shall mean the nonprofit corporate entity and those directors and officers with authority to act on behalf of Art District.

(i) The phrase “**Applicable Law**” shall mean all federal, state, and local laws applicable in the context of the specific matter addressed in this Agreement, including but not limited to: 1) the constitutions, laws, and rules and regulations of the United States of America and the State of Colorado; 2) the City Charter and the Denver Revised Municipal Code (“**DRMC**”), as either may be amended from time to time; 3) rules and regulations promulgated by Parks and Recreation governing the public’s utilization of City parks (unless expressly modified or waived in this Agreement); 4) any rules and regulations promulgated by other City departments and agencies and applicable to Art District actions and activities under this Agreement; 5) executive orders issued by the Mayor; 6) any court order, judgment, or decree or any appellate decision; and 7) any federal, state, or local administrative decision applicable to this Agreement, the Park or the specific Building or Facilities.

(j) The phrase “**Capital Improvements**” shall mean the construction or installation of any new Facilities to or within the Buildings; additions to, significant renovations of, or replacement of existing Facilities; and repairs, replacements or corrections of Facilities for defects, deterioration or damages thereto which exceed Seven Thousand Five Hundred and 00/100 Dollars (\$7,500.00) per project, related to any of the following: structural elements; foundations, roof or roof support, exterior walls and interior structural walls, brick facades, ceiling and floor structural elements and exterior decks.

(k) The phrase “**Hardware & Equipment**” shall mean 1) windows and window frames; 2) doors and door frames; 3) handles and locks; 4) cabinets, counters, and bars; 5) carpet, floor tiles, and other flooring; 6) paints and stains; 7) non-structural walls, woodwork, wall paneling and tiles, drywall, and plastering; 8) sinks, toilets, urinals, garbage disposals, and dishwashers; 9) light switches, plugs, and lighting; 10) ceiling tiles, drywall, or plaster; 11) built-in or attached electrical fans, stove or grill venting systems, and kitchen hood fire suppression



systems (including recharging); 12) refrigerators or refrigeration units; 13) stoves, ovens, cooktops, ranges and grills; 14) drinking fountains; 15) telephones, televisions, and other communication devices; 16) perimeter and other fences; 17) furnishings and furniture; 18) systems: mechanical, electrical, utility, plumbing, HVAC, fire protection, communication and elevator, including associated tubes, ducts, pipes, lines, mains, wires, conduits, boxes, grates, valves, vents, meters, panels, and related equipment and appurtenances; and 19) items of similar character or use to any of the foregoing. Repair, replacement, and/or corrections of Hardware & Equipment shall be consistent with Section 10(b), below.

## 2. ENGAGEMENT.

(a) Engagement. The City hereby engages and retains Art District, a non-profit organization, to lease, occupy, maintain, administer, manage, operate, develop, and control the Buildings, Facilities, improvements, grounds (excluding the Park), programs, operations, and personal property located within, immediately connected or adjacent to, or used in connection with the Buildings, for the enjoyment, benefit and service of the public. Art District hereby accepts such engagement on the terms and conditions set forth herein. Art District is hereby granted the right to lease, occupy, possess, manage, control and operate the Buildings and Plaza and the programming provided therein. Notwithstanding anything to the contrary in this Agreement, the rights herein granted to Art District are not, and shall not be construed as, a permanent lease, easement, or other interest in real property which extends beyond the term of this Agreement.

(b) Public Purpose; City Charter. The public purpose of this Agreement is to provide for the maintenance of the Buildings and any related operations and activities, for the use and benefit of the people of the City and the general public through public or private cooperation between the City and the private, non-profit Art District in conformance with Article II, Part 4, Section 2.4.4(F) of the Charter of the City and County of Denver (“**City Charter**”). The City Charter grants DPR the authority to negotiate cooperative agreements with public and private agencies for the development of park and recreational facilities, programs and activities. This Cooperative Agreement shall not confer powers or duties on the Executive Director, nor does it confer any obligations on other City agencies, departments or commissions, not otherwise set forth in the City Charter.

## 3. STATUS AND AUTHORITY OF THE ART DISTRICT.

(a) Status. Art District and the City acknowledge and agree that the status of Art District shall be that of a private, nonprofit corporation cooperatively working with the City as an independent entity solely for the purposes set forth in this Agreement.

(b) Authority. The scope of authority Art District may exercise shall be as expressly delegated, assigned, or allowed under, or necessarily implied in this Agreement. Art District 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. This Agreement is not intended, nor shall this Agreement be construed, to establish or constitute a joint venture between the City and Art District.

(c) Contracts. The authority delegated under this Agreement shall not be construed to grant Art District the right or power to bind, or to impose any liability upon, the City

through any contracts or agreements Art District may make, unless the prior, written approval of the Executive Director is obtained, which approval shall not be unreasonably withheld, and the contract or agreement is in accordance with all applicable City ordinances and regulatory requirements. This Agreement shall allow the Art District to sublease space or grant permission or licenses to use space in the Buildings or use the Plaza subject to Section 12 and the terms of this Agreement. All contracts or agreements made by Art District shall be in its own name and not in the name of the City. Likewise, the City shall have no authority to bind, or to impose liability upon, Art District through any contracts or agreements the City may make, unless the prior written approval of Art District is obtained.

(d) Nonprofit Status. Art District shall at all times while this Agreement is in effect take such actions as may be necessary to maintain and preserve, and shall refrain from taking such actions as may be detrimental to, its status as a nonprofit corporation that qualifies as a tax-exempt entity under section 501(c)(6) of the Internal Revenue Codes (or any successor provision).

4. TERM. This Agreement shall commence as of the Effective Date and shall expire on the date (the “**Expiration Date**”) which is ten (10) years after the date upon which a certificate of occupancy has been issued for the Buildings (the “**COO Date**”), plus a partial calendar month, if any, for the portion of the calendar month following the COO Date, if the COO Date is a day other than the first day of a calendar month, unless otherwise terminated or extended as provided herein. The term of this Agreement shall automatically and without further action be extended for one additional ten (10) year period, unless and until either Art District or the City, at its discretion, gives written notice to the other of its election that the automatic extension shall not take effect. Such notice shall be sent to the other Party no later than six (6) months prior to the Expiration Date. Any other change to the terms and conditions of this Agreement, other than the one automatic term extension must be approved and executed by the Parties in the same manner as this Agreement.

5. IMPROVEMENTS TO BUILDINGS. The Parties acknowledge and agree that the City has heretofore performed certain design, construction and installation of improvements with respect to the Buildings and the Park, including bringing certain utilities to the Buildings, (collectively, the “**City’s Work**”). As a condition of City’s obligations under this Cooperative Agreement and the Art District’s rights and privileges under this Cooperative Agreement, Art District has agreed to complete construction and renovation of the Buildings in substantial accordance with the plans and specifications previously submitted to and approved by the City and the budget mutually approved by the City and the Art District in writing, including fully funding the improvements and meeting all requirements of the Assignment Agreement, executed on August 24, 2020 (the “**Assignment Agreement**”). Consistent with Paragraph 5(c) of the Assignment Agreement, if Art District fails to meet the requirements under the Assignment Agreement or otherwise fails to complete the improvements subject to City’s reasonable approval and as contemplated in this Agreement, the City shall have no obligations to Art District under this Cooperative Agreement.

## 6. PERSONNEL.

(a) Art District Employees. All personnel and contractors hired or engaged by Art District or a related entity to work at the Buildings shall be employees or independent contractors, as applicable, of Art District and not of the City (“**Art District Employees**”). Art

District shall have the sole authority to hire, engage, fix the compensation and benefits of, supervise, train, evaluate, discipline and discharge all Art District Employees, in conformance with all laws governing private employers and independent contractors. Under no circumstances shall Art District Employees be regarded as employees or contractors of the City; however, all Art District Employees are expected to comply with the terms and conditions of this Agreement.

(b) Prevailing Wages; Minimum Wages. Art District shall comply with provisions of Section 20-76 of the Denver Revised Municipal Code regarding the payment of applicable prevailing wages (“**Prevailing Wages**”); and provisions of Sections 20-82 through 20-84 of the Denver Revised Municipal Code regarding the payment of applicable minimum wages (“**Minimum Wages**”), as either may be amended from time to time.

(c) Personnel Policy. If Art District maintains a written personnel policy governing the conduct and rights of Art District Employees, then Art District shall provide the Executive Director a copy of the personnel policy or rules and regulations and code of ethics (whichever applies). Art District shall provide changes to the policy, if any made, in its Annual Report, in accordance with Section 20(a)(ii).

(d) Diversity. Art District herewith endorses the policy of actively encouraging diversity within employees, personnel and leadership, at all levels, and it shall continually strive to achieve diversity among said personnel throughout the term of this Agreement.

## **7. REAL AND PERSONAL PROPERTY.**

(a) Real Property. Subject to the terms of this Agreement, and subject to the rights of Subtenants of the Buildings, Art District hereby donates, gives, grants, conveys, and assigns to the City, for the use and benefit of the people of the City, all of its right, title, and interest in and to any Facilities or other permanent improvements to, on and within the Buildings, including those improvements, installations or construction that Art District is obligated to complete under the Assignment Agreement and under Section 5 of this Agreement, which Art District owns or acquires during the design, construction and installation of improvements to the Buildings; and which Art District may own or acquire in the future and during the term of this Agreement; provided, however, that all such Facilities and improvements shall be available for use by Art District and the Subtenants and occupants of the Buildings during the Term of this Agreement. Art District shall not permanently construct, install, attach, or affix anything in any location on or in the Building that does not thereby become the property of the City pursuant to this Section 7(a). Art District shall have no authority to sell, lease, mortgage, encumber, hypothecate, or otherwise create or assign a property or financial or other security interest in the Buildings or any part of the Park, provided, however, that the foregoing shall not prohibit Art District from leasing space or granting permission or licenses to use space in the Buildings or the Plaza. Art District shall have exclusive control, responsibility, and discretion over the creation, naming, and placement of all acknowledgments or memorials located in the Buildings consistent with DPR Naming and Corporate Sponsorship Policy, and except as otherwise provided in this Agreement.

(b) Personal Property. Any equipment, furnishings, supplies or other personal property now owned or acquired in the future by Art District for use in connection with Art District’s use and occupancy of the Buildings, including subleases to third parties, and pursuant to this Agreement, by gift or with funds, shall be held in legal ownership by Art District during the

term of this Agreement and any extension thereto (“**Art District Personal Property**”). In the interest of faithfully conforming to the terms and spirit of this Agreement and Art District’s purpose and mission, and subject to any restrictions imposed on any gifts, Art District may, from time to time (as Art District determines to be prudent and warranted), replace, lend or dispose of Art District Personal Property, through sale, purchase, trade or loan. Art District, at its discretion, may cooperate with any City department willing and authorized to participate in the exchange, sharing, or loan of equipment, supplies or other personal property or in the joint purchase of equipment, supplies or other personal property, subject to all applicable Charter or ordinance requirements.

## **8. GENERAL MAINTENANCE AND REPAIR.**

(a) Art District Services. Except as otherwise expressly provided and subject to the limitations set forth in this Agreement, Art District shall maintain the Buildings and the Facilities, Fixtures and the Plaza (but not the Park) in safe condition and good repair, including, without limitation, driveways, walkways, and landscape on the immediately adjacent grounds, in all public and non-public areas within the Buildings. Subject to the limitations set forth in this Agreement, Art District shall, at its own expense, maintain, repair, and replace all damaged, broken, or worn out Hardware & Equipment, as defined in Section 1(k). Art District must immediately report to the City’s Risk Management Office damage to the Buildings covered by City insurance. In the event that Art District performs Capital Improvements or makes any repairs to any items of the City’s Work, Art District shall provide sufficient advance notice to the City to allow the City to determine whether any warranties apply to the work, or decide the extent to which warranties may apply.

(b) Contracting. All work or service which Art District is obligated to perform under this Agreement may be contracted and shall, unless specific waiver is granted in writing by the City, be subject by the contract terms to each and every provision of this Agreement that would apply to such work or service had it been performed by Art District. Any such service or work contract shall also be subject to Applicable Law (as defined herein), including competitive selection of service providers, Prevailing Wages, Minimum Wages, and the provision of bond or other surety, to the extent applicable. Compliance with the terms and restrictions of this Section 8(b) is the responsibility of Art District. Art District shall, upon request, provide the City a copy of any written contract or agreement for work or services provided.

(c) Competitive Selection. Art District shall develop procedures for the competitive selection of service providers, which shall specifically address the duration and types of services. Art District shall provide a copy of the procedures in its initial Annual Report, and shall provide copies of amendments to the procedures, if any are made, in subsequent Annual Reports. If no amendments were made to the procedures for any given year, Art District shall indicate such in its Annual Report. Selection shall comply with the City’s Charter, ordinances, Executive Orders, rules, regulations and policies with regard to competitive selection, Prevailing Wage requirements, Minimum Wage requirements, and contracting procedures.

## **9. COMMUNITY BENEFIT/PARK PURPOSE.**

(a) Art District shall use all reasonable efforts to conduct certain activities and make the Buildings available for public use and enjoyment, whether by Art District’s operation of

the Buildings, or by entering into subagreements with third-parties, which shall be charged a reasonable rate consistent with the purposes of this Section 9 and this Agreement, for operation of space within the Buildings, all for the purpose of public and community benefit, including but not limited to publicly accessible workshops, classes, activities or seminars regarding education, equity, culture, arts and crafts, youth support and empowerment, local affairs, inclusiveness and diversity, and other activities for public benefit; and to secure contributions of funding, sponsorships and support consistent with Art District's operation of the Buildings.

(b) Art District Planning and Use. The Parties hereby agree and acknowledge that Art District's planned use and activities regarding the Buildings, including third-party subagreements for related use, have been reviewed and approved by the Executive Director. Art District's proposed use and use by Art District's third-party partners shall begin upon completion of the improvements under Section 5. Any material change in any accepted and approved use, including any material changes to related agreements or subagreements, shall be reviewed and approved by the Executive Director. Review and approval by the Executive Director shall be subject to this Agreement and consistent with DPR rules, regulations and policy, including whether the Executive Director determines that a public process shall be utilized. Art District shall cooperate with the Executive Director in conducting the public process and address questions and concerns raised by the public regarding any proposed use.

(c) Approval Process; Material Change. For any proposed material changes to existing use or activities regarding the Buildings, the City and Art District shall confer and develop an approval process including but not limited to review and approval time periods and discussions regarding a public process. A "material change" to existing use shall mean modifications to or expansion of one or more material aspects of previously approved or existing use. Decisions made and actions taken by Art District in the normal course of and for the day-to-day maintenance, management, operation, and control of the Building, or in implementing or conducting existing use shall not be deemed a "material change". Art District's annual planning and budgeting process, including matters reported in accordance with Section 20, shall not be deemed to be a "material change" except to the extent that such planning and budgeting results in an action, strategy, or decision directly contrary to or inconsistent with an existing use of programming.

(d) Implementation and Compliance. Art District compliance with Section 9 is a material requirement of this Agreement. However, the Parties acknowledge and agree that Art District shall not be obligated to implement any particular proposed use of the Buildings, or any particular change in use of the Buildings, but shall not take any actions to make material changes to or pursue programmatic strategies contrary to or inconsistent with the provisions of Section 9.

(e) Use by Other City Agencies. If Art District opts to perform programming with a City agency, department or commission, or partners with a City agency, department or commission for use of the Buildings, then such use is subject to the Executive Director's prior approval. Art District's requirements shall not conflict with the ordinances, laws, rules, regulations or policies of the City or the partner City agency, department or commission. If such use is approved, and consistent with Section 2(b), this Agreement does not create any power or authority in DPR over other City agencies, departments or commissions, and does not create any obligation in other City agencies, department or commissions to DPR, that is not otherwise set forth in the City Charter.

## 10. CAPITAL IMPROVEMENTS AND HARDWARE & EQUIPMENT.

(a) Capital Improvements. The Parties understand and agree that Art District is under no obligation to make or pay for any Capital Improvements, as defined in Section 1(j). In the event that the City or Art District, jointly or individually, should determine Capital Improvements are needed with respect to the Buildings and the Facilities, the City and Art District may, at their respective discretion and subject to City appropriation and the provisions set forth in this Agreement, cooperate and coordinate in an effort to develop plans to evaluate the Capital Improvement needs and their respective costs, and to develop a strategy and plans for procuring funds necessary to complete the Capital Improvements in a timely and efficient manner, subject to the terms and conditions of this Agreement. If Art District opts to perform Capital Improvements, City shall assign, in its discretion, authority to Art District to perform, at Art District's sole cost, the work in accordance with Section 10(f). Subject to City appropriation and the provisions set forth in this Agreement, the City shall in its discretion perform repair or replacement work constituting a Capital Improvement.

(b) Hardware & Equipment. Subject to the requirements of this Section 10, Art District shall have the authority to make, or contract for, at its own cost and expense, the design, planning, installation, removal, repair, or replacement of Hardware & Equipment, as defined in Section 1(k). Subject to City appropriation and the provisions set forth in this Agreement, the City shall in its discretion perform repair or replacement of Hardware & Equipment in excess of \$7,500.

(c) Plan Approval. Art District may not make any Capital Improvements without the prior written approval of the Executive Director of the plans and specifications therefor, in the event that any such Capital Improvement would materially affect any of the building systems, roof or structural integrity of a Building, or otherwise causes a visual impact to one or both of the Buildings when viewed from the exterior; provided, however, that no such approval is required for any Capital Improvement which would otherwise meet the foregoing criteria, if such Capital Improvement is either (i) included in the Approved Plans; or (ii) is a repair or replacement of any existing Capital Improvement to its previous condition (as opposed to installation of a new Capital Improvement). In the event that approval of plans and specifications for a Capital Improvement is required under this Section 10(c), Art District shall submit the plans and specifications for the proposed Capital Improvement project to the Executive Director for approval prior to initiation of design work, which approval shall not be unreasonably withheld, conditioned or delayed. Any design development or work undertaken without prior City approval is performed at Art District's sole risk, and the City is not obligated to approve such work. The Executive Director will approve or disapprove, in writing, the plans and specifications, either in whole or in part, stating any reason(s) for any disapproval, within sixty (60) calendar days of submittal, unless otherwise provided or agreed. Any deficiencies in said plans and specifications shall be remedied, to the satisfaction of the Executive Director, by Art District prior to continuation of design work or initiation of work. All reviews of plans and specifications by the City shall be conducted at the City's cost. Review and approval may be performed in coordination and consultation with, and provided by, the City's Department of Transportation and Infrastructure, the City's Community Planning and Development Department, or other agency that holds authority over planning, design and construction of City facilities. Any such coordination may be conducted by DPR.

(d) Emergency. In the event of an existing or imminent emergency where the Buildings and the Facilities or public safety are at substantial risk, or neighboring property or residents are at substantial risk, due to unsafe or unhealthy conditions of the Buildings, either Party is authorized, without notice to the other Party, to take such prompt and prudent measures as necessary to secure, protect, and preserve the Buildings and the Facilities, neighboring property, and public health and safety, including any necessary Capital Improvement work. Notice shall be provided as soon as reasonably possible to the other Party as to reasons for the emergency work, the time, place, and manner of the emergency work, and the costs incurred due to the emergency work. Art District shall be responsible for its own costs and expenses of abating the emergency. Any resultant Capital Improvements shall be performed and paid for in accordance with Section 10(a) above.

(e) Conformance with Applicable Law. Art District shall be solely responsible for assuring that any project initiated under this Section 10 is contracted and performed in accordance with this Agreement, all necessary permits and licenses are obtained and maintained, sufficient bonds or other appropriate surety assuring performance and payment are obtained and enforced, and that the work is performed and materials used, all in conformance with Applicable Law that govern the performance of such work.

(f) Delegation of Authority. Upon written request by Art District, Art District may be assigned by the City, as agent for the City, the responsibility for the design, planning, construction, reconstruction, expansion and remodeling of Capital Improvements or other permanent improvements consistent with the following requirements:

(i) The design and construction approval by the City will be in accordance with the requirements and conditions of this Section 10.

(ii) All costs incident to the work shall be borne solely by Art District, unless otherwise agreed, other than the costs incurred through work of City employees incidental to the project.

(iii) Art District shall ensure right-of-entry upon prior notice at all reasonable hours 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 plans and specifications and in compliance with all Applicable Law that govern the performance of such work. If it is determined that the work is not being so performed, the City may order the cessation of all work until there is satisfactory evidence that the work conforms to all legal requirements. All inspections by the City shall be conducted at the City's cost. Art District and its contractors and subcontractors, in the performance of the work, shall observe and comply with the provisions of the Denver Revised Municipal Code pertaining to competitive selection of contractors, to the payment of Prevailing Wages, Minimum Wages, minority and women business enterprise participation, and non-discrimination and equal employment opportunity, as such provisions may be amended or recodified from time to time. In addition, Art District and its contractors and subcontractors shall observe and comply with the provisions of the City's Building Code, Fire Code, Environmental Public Health Policy, and other applicable health and safety requirements and shall obtain, and pay for, any licenses and permits required by law. To the extent applicable, Art District shall conform with the requirements of the

federal Americans with Disabilities Act (“**ADA**”) and any other federal or state laws requiring access for the disabled to public accommodations.

(iv) Art District and its contractors and subcontractors shall pay all applicable sales and use taxes levied by the State and the City on any tangible personal 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, and the dates of payment, shall be furnished to the City.

(v) Art District shall obtain, or require its contractors to obtain, a bond or other guarantee acceptable to the City Attorney, conditioned that Art District or its contractor shall promptly make payment of all amounts lawfully due to all contractors, subcontractors, and persons furnishing labor or materials or labor and materials used or performed in the prosecution of the work, and shall indemnify the City to the extent of all payments in connection with performing the work. Art District shall provide copies of such documents upon City’s reasonable request.

(vi) When applicable and required by the City, Builder’s risk insurance coverage, acceptable to the City’s Risk Management Office (“**Risk Management**”), must be arranged and provided by the contractor prior to the start of any Capital Improvement construction work on site. All projects shall ensure applicable aspects of property loss prevention, including any recommendations from the property insurance carrier, are appropriately and fully addressed prior to final document preparation issued for bidding. Risk Management may approve, in its reasonable discretion, exceptions to insurer recommendations.

(vii) Art District shall observe and abide by all other requirements of this Agreement applicable to construction projects, including but not limited to the provisions related to audits, indemnification, liens, non-discrimination, and subcontracting.

(viii) A Temporary Construction Access Permit (“**TCAP**”) shall not be required for Art District or its contractors for work performed at the Building under this Section 10 so long as Art District meets all applicable requirements of this Agreement or any Assignment Agreement.

(ix) Art District shall provide as-builts at the conclusion of each project.

(g) Periodic Meeting. Art District and DPR shall meet periodically, subject to mutual coordination and agreement, to discuss the status of ongoing projects and proposed projects.

## **11. GENERAL OPERATIONAL REQUIREMENTS.**

(a) Days and Hours of Operation. The Buildings, exclusive of administrative, service, storage, and work areas and other rights of tenants and occupants under lease and occupancy agreements, shall be open to the general public on those days and hours designated by Art District. Art District shall submit its schedule of days and hours of operation upon commencement of Building operations or some agreed upon reasonable time, and shall submit its



schedule of hours and days of operation as a part of the Annual Report, in accordance with subsection 20(a)(v).

(b) Community Cooperation. To the extent possible and consistent with Art District programs, Art District shall reasonably cooperate with community, charitable, educational and other organizations, institutions, and other entities in the Denver metropolitan area and DPR with respect to common interests in community programs and activities, at no additional substantial cost to Art District. Subject to the rights of Subtenants under subleases, Art District shall afford access to the Buildings to the extent its resources may permit and as may be compatible with programs and the proper administration of the Buildings and the interests of the general public. At all times Art District may operate the Buildings and conduct programs in accordance with its business practices and mission and is not required to supplant those practices for the purposes of this Section 11(b).

(c) Political Activity. No City funds, including payments made by other City agencies, departments or commissions for use of space, shall be used by Art District in connection with any activities of a political nature, including, but not limited to, any activity to further the appointment, election, defeat, or removal of any applicant, incumbent, or candidate for public office or any activity undertaken to influence the passage, defeat, or final content of any legislation or ballot proposal. A strict accounting of all other funds associated with this Agreement used by Art District for political activity, if any, shall be maintained and available for public review upon request.

(d) Security and Safety. Art District shall use reasonable efforts to ensure that the occupants of the Buildings shall develop and implement safety policies and programs for the Buildings to help assure the safety of Art District Employees, Subtenants and subusers, volunteers, and the general public and shall, upon request, provide a copy of the safety policies and programs, if any, and any amendments thereto, to the Executive Director.

(e) Governance. Art District shall be governed by its bylaws (“**Bylaws**”). Art District shall provide a copy of its Bylaws, and any modification or amendments thereto, to the City upon request.

(f) Cooperative Statement. Art District and the City acknowledge that the following is an accurate summary of the basis for this Agreement:

The Park Buildings are operated and maintained by The RiNo Art District, a Colorado non-profit corporation, for the people of the City and County of Denver and for the general public in cooperation with the Denver Parks and Recreation Department.

Art District shall include the foregoing statement (or such modification thereof as the Executive Director shall approve or disapprove within fifteen (15) calendar days of receipt, which approval shall not unreasonably be withheld so long as the essence of the statement is incorporated) in postings and signs at the Buildings and documentation prepared for the Buildings and programs where it is appropriate to acknowledge the nature of the relationship, including letterhead, annual or institutional reports, websites, newsletters, Program materials, periodicals, grant applications, and other materials distributed generally by Art District and Art District Program partners and

other partners to community and other organizations, institutions, and the public. It is understood Art District may, from time to time, be expected or obligated to include other statements of support and cooperation (e.g., by specific donors) and Art District may combine the above statement with such other statements of support and cooperation. For purposes of letterhead and fundraising materials, it is understood the following shorter version of the cooperative statement may be used in lieu of that set forth above:

In Cooperation with the City and County of Denver.

Postings shall conform, in graphic design and quality, to uniform standards established by Art District and approved by the Executive Director. The Executive Director shall approve or disapprove Art District's uniform standards by no later than thirty (30) calendar days after receipt. The Executive Director may, in the Executive Director's sole discretion, waive all or any of the requirements of this Section 11(f), subject to such terms or conditions as the Executive Director may specify.

(g) City Access. The Mayor, members of the City Council, the Executive Director, and other representatives of appropriate City departments including City agency partners shall, at all reasonable times and upon reasonable notice, have access to the Buildings for the purposes of visitation and inspection.

## **12. SUBTENANCIES; CONCESSIONS; ART DISTRICT EVENTS AND FUNDRAISERS; PERMITTING.**

### (a) Subtenancies; Subagreements.

(i) For purposes of this Agreement, and in accordance with Art District's purposes and programs, Art District shall have the right to enter into separate agreements for the sublease and occupancy of space within the Buildings by third-party contractors, vendors, service providers, or other entities ("**Subtenants**"). Art District may set the rates, charges, programming requirements and other obligations of the Subtenants; however, any such agreement shall be subject to DPR and City approval, including approval of rates and charges, and consistent with this Cooperative Agreement. The Subtenant agreements under this Section 12(a) shall be subject to review and approval by the City, which approval shall not be unreasonably withheld, conditioned or delayed. Subtenant agreements or other subagreements shall contain a provision that the Executive Director may require Art District to terminate the Subtenant agreement or other subagreement if it is determined by the Executive Director that the Subtenant or other user has (1) failed to comply with applicable health and safety laws (local, state, and federal); (2) failed to pay applicable taxes, fees, fines, or charges (local, state, and federal); or (3) failed to substantially conform with other Applicable Law. City shall in no case unreasonably interfere with Art District's and Subtenant's operation or use of the Buildings, programs and concessions or other sales. Notwithstanding the foregoing, the Executive Director may not require Art District to terminate any Subtenant agreement or subagreement without first allowing Art District to provide the subtenant prior written notice and at least thirty (30) days Art District, Subtenant, or both, to cure such failure (or, such longer period of time, if the nature of such failure is such that the same cannot reasonably be cured within 30-day period). Art District shall provide copies of concessions contracts or any other related documents upon reasonable request.

(ii) Art District may enter into separate or additional agreements with the City for the use and programming of space in the Buildings by other City agencies, departments or commissions, and such City agencies, departments or commissions shall be free to negotiate the rates, charges, programming requirements and other obligations with Art District at their discretion. Any separate or additional agreement shall be subject to City review and approval including, when applicable, approval by City Council. Notwithstanding Section 12(a)(i), the City agency, department or commission entering into an agreement with Art District for use or programming of space in the Buildings shall not be subject to the Executive Director's right to require Art District to terminate that agreement. Art District and the City agency, department or commission may set the terms and conditions of termination by separate agreement.

(b) Concessions. The Subtenant agreements under Section 12(a) may provide for concessions and other similar services for sale to the general public. Art District shall have the right to provide by Subtenant agreement(s) between Art District and a qualified concessionaire(s) for the operation of long-term or seasonal concessions for selling food, drink, merchandise, and such other services, products, and uses which Art District, in its reasonable discretion, determines to be consistent with this Agreement and programs adopted in accordance with Section 9. General liability and other insurance appropriate for the concession or other sales shall be required as a condition to operate a concession, and evidence of that insurance, including liquor liability insurance if alcohol beverages are served or sold, must be provided to the Executive Director prior to the commencement of concession sales. Any other evidence of insurance shall be provided upon reasonable request.

(c) Exhibition and Sale of Art.

(i) Art District shall have the right to display original works of art ("Works") within the Buildings for exhibition and for sale. As a condition of this Agreement and the right to exhibit Works, Art District shall ensure that (1) Art District is legally authorized by the owners of the Works to exhibit the Works on City property; (2) Art District possesses the right to negotiate copyrights with respect to the Works; (3) the Works are solely the result of the artistic effort of the artist; (4) the Works are original and do not infringe upon any known copyright; and (5) the Works are free and clear of any liens or claims from any source whatsoever.

(ii) Art District may allow the sale of Works including the collection of applicable sales taxes as required.

(iii) Unless otherwise authorized by the City, any Works exhibited on City property shall be temporarily exhibited. No permanent works of art; works of art intended for a particular space on City property; or works of art wherein the artist intends to retain a personal right preventing the alteration or modification of the work, or removal of the artist's name from the work, shall be installed or exhibited unless otherwise allowed by agreement with the City formally executed in accordance with the City Charter. Any such agreement shall require the artist's waiver of their rights under the Visual Artists Rights Act ("VARA"), 17 U.S.C. § 106A(a), as amended. The artist otherwise retains all other right, title and interest in their work including all copyrights, but expressly excluding any rights in the work under VARA, including but not limited to §106A(a) and §113, or otherwise in the nature of "Droit Moral" under which artists claim a continuing interest in their products and in the maintenance or modification of their products.

(iv) City Rights in Works. For purposes of this Agreement and the display of Works in or at the Buildings, Art District grants to the City, or if requested shall assist the City in securing, the right to make visual impressions of the Works through photography, digital images, or otherwise, and to utilize such visual impressions in brochures, documents, or other publications that the City may elect to create or commission regarding the City's Public Art Program or the Works. It is understood that the City will not offer such visual impressions for sale to any third party. The City shall comply with all applicable laws, rules and regulation concerning, and be solely responsible for, the City's use of any such visual impressions.

(v) Shipment and Storage of Works. If needed for specific Works, and unless otherwise agreed, Art District will cause, at its sole liability and expense, for the Works to be shipped to or from the Buildings. Art District will be solely responsible for all risk of damage to or loss of the Works during such shipment. Upon delivery of the Works to the Buildings by Art District, the City and Art District shall inspect the Works and prepare a condition report noting all preexisting damage, wear, blemishes, scratches, and the like, to the Works. Each Party shall sign and maintain a copy of such report, and a copy shall be provided upon request by the City. Upon the expiration or earlier termination of this Agreement, Art District will cause such Works to be shipped from the Buildings at Art District's sole liability and expense. Art District will be solely responsible for and bear all risk of damage to or loss of the Works during such shipment. Art District shall be responsible for the storage of the Works if storage becomes necessary.

(vi) Maintenance and Security of the Works. Art District shall provide, at its sole expense or that of third-parties, adequate and appropriate maintenance of the Works while on City property. The City will make reasonable efforts to notify the Art District of any damage or maintenance issues observed. Notwithstanding the foregoing, the City does not warrant or guarantee the Works against loss or damage including but not limited to the activities of third parties. The City reserves the right to remove the Works if the Works or portions of the Works create any immediate safety or maintenance issues to the public. As a condition of and prior to exhibition of Works on City property, Art District shall secure the agreement regarding the waivers and indemnification requirements under subsection 12(c)(vii) from the creators of the Works.

(vii) Patent, Trademark and Copyright. Art District agrees that Works under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the United States. Art District further agrees that it will not allow the exhibit of any Works unless Art District has obtained proper permission and all releases and other necessary documents.

(viii) Defense and Indemnification Regarding Works. Pursuant to Section 17, Art District hereby expressly waives any and all claims for compensation for any and all loss or damage sustained to the Works by reason of causes under subsection 12(c)(v), and Art District agrees to release, indemnify, defend, and save harmless the City, its officers, agents and employees from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind or nature whatsoever in any way resulting from, or arising out of, directly or indirectly, any and all loss or damage sustained to the Works. Art District agrees to release, indemnify, defend, and save harmless the City, its officers, agents and employees from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind or nature whatsoever, of or by anyone whomsoever, including the owners of the Works, in any way resulting from, or arising out of, directly

or indirectly, Works under this Agreement which infringes upon any patent, trademark or copyright protected by law.

(ix) Art District Assignment of Rights and Obligations. Art District may allow third-parties occupying or operating space in the Buildings to display Works to the same extent set forth in this Section 12(c). In such case, Art District shall assign the rights and obligations to the third-party by separate written agreement containing the requirements of Section 12(c)(i) through (viii), above. Any City agency, department or commission occupying and using space in the Building that opts to display works of art shall, in its discretion, negotiate and enter into a separate agreement for the display.

(d) Art District Events & Fundraisers. Subject to applicable requirements, Art District shall have the right to organize and stage its own events, including fundraising events for the benefit of Art District and the Buildings, and including presentation of artistic or cultural displays, performances or events in the Buildings, on the directly adjacent grounds and, with City approval, which shall not be unreasonably withheld, conditioned or delayed, within limited portions of the Park; provided that the events held by Art District are consistent with park purposes, Art District purposes, and other events permitted by the City in the City's other parks and park facilities.

(i) Art District Events in the Park. Art District events held in any portion of the Park shall require a permit issued by DPR to the Art District. Art District may request use of portions of the Park or the entire Park for Art District events subject to DPR permitting rules and policies, including the DPR Public Events Rules, Regulations and Policies; blackout dates established by the DPR Permitting Office; and priority use by other permittees. Art District shall be entitled to five (5) right-of-first-refusal dates for use of the Park or portions thereof.

(ii) Art District Events in the Plaza. Art District events held on the immediately adjacent grounds ("Plaza") shall not require a DPR permit. Use of the Plaza for Art District shall be subject to the requirements of this Agreement. Art District shall at all times during an Art District event in the Plaza maintain public access to the Park. Art District is entitled to no more than ten (10) private or closed events in the Plaza per year. Art District may request additional private or closed events in the Plaza subject to DPR approval, which shall not be unreasonably withheld. DPR shall be entitled to ten (10) free tickets to each Art District event. After each Art District event in the Plaza, Art District shall at its own cost return the Plaza to its original condition consistent with or exceeding DPR standards, including power washing and performance of any repair of damage or replacement of facilities.

(e) Programs and Activities Charges. Art District and its Subtenants shall have the right to establish a schedule of reasonable fees and charges for public participation in programs and activities conducted by Art District or on behalf of Art District by its Subtenants.

(f) Third-Party Event Permitting. Art District shall have no authority to issue permits to third-parties for events or other use of the Park. Art District shall have the right to issue permits to third-parties for the use of the Building or the Plaza, or portions thereof, and charge reasonable fees, for short term public and private events subject to the following terms and conditions:

(i) The proposed event is consistent, in use and manner, with other events permitted by the City in its other parks and park facilities;

(ii) The proposed event is limited in scale and activities to that which is appropriate for the Buildings and immediately adjacent grounds in consideration of the Buildings' and the immediately adjacent ground's size and character;

(iii) An event involving the sale or service of alcohol beverages or requiring the payment of admission charge or other consideration to the organizer or sponsor of the event shall not be allowed unless expressly authorized in the issued permit;

(iv) General liability and other insurance appropriate for the proposed event shall be required of the permit applicant as a condition of the issue of the permit, and evidence of that insurance, including liquor liability insurance if alcohol beverages are served or sold, must be provided to Art District prior to the event;

(v) Any fees and charges specified by City ordinance or adopted by Art District and approved by the Executive Director, and as approved by City Council, including but not limited to the Facilities Development Admission Tax, or any charges required by the Executive Director, must be assessed and collected;

(vi) Art District may collect and retain separate charges set by Art District for the use and benefit of the Building; and

(vii) Art District may issue no more than eight (8) permits per year to third-parties for events in the Plaza.

(g) Use of Funds. All funds received by Art District from charges, fees, or rentals of the Plaza shall be solely for the benefit and operation of the Buildings and for programs under this Agreement. All other funds received by Art District from charges, fees, rentals or concessions shall be available for use as specified in Section 14.

### **13. GIFTS; SPONSORSHIPS; AND GRANTS.**

(a) Gifts and Sponsorships. Art District shall have the right to accept and utilize, for the benefit and use of the Buildings and Art District, gifts, donations, and contributions of money and personal property (“**Gifts**”) and money and personal property provided by for-profit and nonprofit entities that may include certain benefits, recognition, or naming rights (as limited by this Agreement) being a condition of providing the money or personal property (“**Sponsorships**”). The term or length of any Sponsorship agreement or arrangement may not exceed the Term of this Cooperative Agreement. Art District may, in its discretion, refuse to accept any Gift or Sponsorship if Art District determines that such Gift or Sponsorship would not be in the best interests of the Buildings or Art District. Art District shall follow DPR's Gifts, Naming and Corporate Sponsorship Policies, or develop policies regarding the solicitation and use of Gifts and Sponsorships, acceptability of and compliance with any terms and conditions on Gifts or Sponsorship, and any formal recognition or acknowledgments associated with Gifts or Sponsorships as appropriate for the Buildings. Separate policies developed by Art District must be

submitted to and approved by the Executive Director or designee, and in conformance with the terms and conditions of this Agreement and with City laws, rules and regulations.

(b) Grants. Art District shall have the right to apply for, accept and utilize, for the benefit and use for the Buildings, grants and other governmental or private financial assistance (“**Grants**”). Art District and the City may collaborate and support each other’s efforts to obtain Grants for the improvement of the Buildings and the support and enhancement of programs and activities conducted by Art District at the Buildings. Any matching fund requirement of a Grant shall be the responsibility of Art District unless the City has approved the matching fund requirement in accordance with City ordinance and appropriated its share of the matching funds. Any Grant which requires certain covenants or other restrictions be imposed on the Buildings, in whole or part, as a condition of obtaining the Grant must be approved by the City through the City’s established contract process.

(c) Compliance. For all Gifts, Sponsorships, and Grants accepted and utilized by Art District, including any donations of money and grant money received by the City for the Buildings and turned over to Art District, Art District shall be responsible for complying with the terms and conditions of those Gifts, Sponsorships, and Grants.

(d) Use of Funds. All funds received by Art District from gifts, sponsorships, and grants shall be available for use as specified in Section 14.

**14. FUNDING.** In order for Art District to achieve and continue the public purpose of this Agreement, funding shall be provided or permitted from the following sources to be expended for the purposes stated in this Agreement:

(a) Appropriations made annually at the discretion of the City shall be made available in such amounts as the City determines, in its reasonable discretion, to be necessary or desirable to pay costs and expenses for the management, operation, maintenance, modification, and improvement of the Facilities. Unless otherwise provided in the bill for ordinance making the appropriation, the City will remit the entire annual amount so approved at the beginning of the fiscal year for which the funds were budgeted.

(b) Other appropriations may be authorized from time to time by the City in its discretion, such as Capital Improvement project funds, and shall be applied by the City in the manner specified in the appropriation.

(c) Fees and charges for use of the Buildings or Plaza, programs, and activity participation fees and charges shall be collected and deposited by Art District in its accounts.

(d) Revenues from Subtenant agreements, concessions, or permitting fees for the Buildings, Plaza and programs shall be received and deposited by Art District in its accounts.

(e) Funds accepted by Art District for Gifts, Sponsorships, and Grants, income earned by Art District on its investments, and all other operating net revenues received by Art District shall be retained and deposited by Art District in its accounts.

(f) Funds contributed to the Art District by cooperating local governmental entities including, without limitation, the RiNo Business Improvement District and the RiNo Denver General Improvement District (collectively and as may be further identified, “Improvement Districts”), to support the Art District’s maintenance, management, operation, and/or control of the Buildings and/or Facilities, all in accordance with the Art District’s separate agreement(s) with such Improvement Districts, as applicable. Nothing contained in such agreement(s) with any Improvement Districts shall diminish or eliminate any or all of the City’s rights or interests, or be considered as a waiver thereof, that the City may have concerning the Building or the Facilities. The Art District shall provide executed copies of any and all such agreement(s) to the City upon reasonable request. All funds provided by any Improvement District to the Art District for the purposes described herein shall be subject to annual budget approval and appropriation by the respective board of directors of such Improvement District.

(g) Donations of money or grants made to the City for the use and benefit of the Buildings and programs shall be transferred to the control of Art District unless the donor or grantee has provided to the contrary. Any such donation or grant not transferred to the control of Art District shall be set aside in a fund established by the City’s Manager of Finance for the use and benefit of the Building and programs.

(h) Bond funds may be authorized by the people and issued by the City in the amounts and for the purposes stated in the authorization ordinance.

It is understood that neither the City nor Art District is hereby obligated to provide any specific level of funding for the purposes set forth in this Agreement, and if any Party for any reason reduces any funding previously provided, no other Party shall be obligated to increase its funding as a result thereof.

## **15. UTILITIES AND OTHER SERVICES.**

(a) Utilities. The City shall assure access to connection to utilities reasonably needed to operate and maintain the Buildings, including water, sewer, gas, electricity, telephone service, and internet service. Art District shall pay for all utility usage costs, subject to reimbursement by tenants and occupants of the Buildings. Art District shall, consistent with the proper maintenance of the Buildings and the safety of the public, use reasonable efforts to conserve water and energy use at the Buildings consistent with the City’s Greenprint Denver Action Agenda and other conservation policies adopted by the City. Art District shall submit to the Executive Director such reports of its water and energy conservation efforts as the Executive Director may reasonably request.

(b) Other Services. The City may provide to Art District other services supplemental to those of Art District, to the extent agreed upon by the Parties from time to time.

## **16. ART DISTRICT INSURANCE.**

(a) General Conditions. Art District agrees to secure, at or before the time Art District takes actual physical possession of or otherwise commences any work in the Buildings, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Art District shall keep the required insurance coverage in force at all times during the



term of the Agreement, or any extension thereof. 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 above-described 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 and shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless 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, Art District 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) and referencing the City’s contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by Art District. Art District 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 the Art District. Art District 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. Art District shall provide a copy of this Agreement to its insurance agent or broker. Upon City’s request at any time during the term of this Agreement, Art District shall provide a current certificate of insurance evidencing Art District’s compliance with all insurance requirements of this Agreement. The City’s acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Section 16(b) shall not act as a waiver of Art District’s breach of this Agreement or of any of the City’s rights or remedies under this Agreement. Risk Management may require additional proof of insurance, including but not limited to policies and endorsements.

(c) Additional Insureds. For Commercial General Liability, Art District and subcontractor’s or Subtenant’s insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as an additional insured.

(d) Waiver of Subrogation. For all coverages required under this Agreement, Art District’s insurer shall waive subrogation rights against the City.

(e) Subcontractors; Subconsultants; Subtenants. All subcontractors, subconsultants or Subtenants (including independent contractors, suppliers, or other entities providing goods or services required by this Agreement) shall procure and maintain applicable insurance. Art District shall ensure all such Subcontractors and Subconsultants include both Art District and the City and County of Denver as an Additional Insured on their policies (with the exception of Workers’ Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Subcontractors, Subconsultants and Subtenants agree to provide proof of insurance upon request by the City.

(f) Workers’ Compensation/Employer’s Liability Insurance. Art District shall maintain coverage as required by statute 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.

(g) Commercial General Liability: Art District 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.

(h) Business Automobile Liability: Art District shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in association with this Agreement.

(i) Personal Property Insurance. Art District shall maintain insurance, on a replacement cost basis, for contents and personal property owned by the Art District.

(j) Additional Provisions:

(i) For Commercial General Liability, the policy must provide the following:

- 1) That the Agreement is an Insured Contract under the policy;
- 2) Defense costs are outside of the limits of liability;
- 3) A severability of interests, separation of insureds or cross liability provision; and
- 4) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City and County of Denver.

(ii) 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 to the City, whichever is earlier.

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

(k) Other: To the extent reasonable to protect City rights or property, the insurance requirements set forth in this Section 16 shall survive the expiration or earlier termination of this Agreement. If it is determined Art District insurance is insufficient for purposes of this Agreement, the City shall provide reasonable notice to Art District and an opportunity to cure the deficiency. The City shall be entitled reimbursement of its reasonable costs if the City deems it necessary to remedy Art District's deficiency.

## **17. DEFENSE AND INDEMNIFICATION.**

(a) Art District hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all

liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed by the Art District, its employees, contractors and agents, under this Agreement (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Art District or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

(b) Art District’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Art District’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.

(c) Art District will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City’s exclusive remedy.

(d) Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of Art District under the terms of this indemnification obligation. Art District shall obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.

(e) This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

**18. IMMUNITY AND CLAIMS.**

(a) Immunity. The Parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations (presently \$150,000 per person, \$600,000 per occurrence) and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, *et seq.*, C.R.S., and any other applicable law.

(b) Claims. In the event that any claim, demand, suit or other action is made or brought in writing by any person, firm, corporation or other entity against Art District related in any way to this Agreement or the operation of the Buildings and its Facilities, Art District shall give written notice thereof to the City within five (5) working days after being notified of such claim, demand, suit or other action. Such notice shall state the date and hour of notification and shall include a copy of any such claim, demand, suit, or other action received by Art District. Such written notice shall be submitted, as provided in this Agreement, to the Executive Director and the City Attorney, 1437 Bannock Street, Room 353, Denver, Colorado 80202.

**19. TAXES; LICENSES; LIENS, AND DEBTS.**

(a) Taxes. Art District shall collect and remit all sales taxes and other taxes as required by law (local, state, or federal), shall promptly pay all taxes and excise and license fees of whatever nature applicable to this Agreement including but not limited to possessory interest taxes, and shall not permit any of said taxes and excise and license fees to become delinquent.

(b) Licenses. Art District shall obtain, keep current, and comply with all licenses, permits, or other authorizations (local, state, or federal) required for the performance of this Agreement. The Executive Director will endeavor to facilitate Art District's effort to obtain any such license, permit, or other authorization.

(c) Liens. Art District shall not permit any mechanic's or materialman's lien or any other lien to be imposed upon the property of the City and remain for more than ninety (90) days after notice to Art District, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any person, partnership, association, company, corporation, or other entity to or for Art District, either pursuant to C.R.S. § 38-26-107, as amended, or by other authority; provided, however, that if any such lien should, at any time, be filed, Art District shall not be in violation of this subsection (c) if Art District causes the same to be discharged of record or posts a bond and commences contest of the same within the foregoing 90-day period.

(d) Debts. Art District shall promptly pay, when due, all bills, debts, and obligations incurred in connection with its management or administration of the Facilities and shall not permit the same to become delinquent. Art District shall suffer no lien, mortgage, judgment, execution, or adjudication of bankruptcy that would, in any way, impair the rights of the City under this Agreement or its rights to the Facilities.

(e) Final Adjudication. Art District may, diligently and in good faith, challenge, disclaim or contest the application or imposition of any such tax, fee, lien, debt, or obligation, in which case the City shall not be considered due, owing or imposed for the purposes of this Agreement until final adjudication of validity. Art District may likewise, diligently and in good faith, appeal any judgment, execution, or adjudication of bankruptcy, in which case the same shall not be regarded as impairing the City's rights until final adjudication.

## **20. REPORTS; AUDITS AND BUDGETS.**

(a) Art District shall, on an annual basis no later than April 1, provide to the Executive Director a comprehensive written report of its activities from the preceding year (the "Annual Report"). The Annual Report shall contain the following:

(i) A financial report prepared by an independent Certified Public Accountant of all prior year receipts and expenditures of public and private funds associated with the Buildings, including but not limited to all revenue and funds received from Subtenants; all fees, rents or other charges for access to or use of the Buildings and Plaza from events, participation in programs or other activities; concession receipts; and Gifts, Sponsorships, and Grants;

(ii) Changes, proposed changes, or a statement of no changes, to the Personnel Policy (Section 6);

(iii) Statement of any updates to programs, or a statement of no updates;

(iv) List and description of assets (Hardware, Equipment, and Capital Improvements) acquired or transferred to the City in the preceding year, or assets intended to be transferred in the upcoming year, or a statement of no transfer or statement of no intent to transfer;

(v) Current hours and days of operation (Section 11);

(vi) Amendments or modifications to governance and operational documents, or a statement of no amendments or modifications (Section 11(e));

(vii) Proposed changes in schedule of fees, charges or rental rates, or a statement of no proposed changes (Section 12);

(viii) Schedule of proposed or planned events for the upcoming year, or a statement of no proposed or planned events;

(ix) Competitive selection procedures for services or concessionaires, or amendments, or a statement of no amendments (Section 8(c));

(x) List and description of completed construction and maintenance projects over \$7,500, or a statement of no projects or no completed projects;

(xi) Documents resulting from any Assignments made in accordance with Section 25(c), or a statement of no Assignments;

(xii) Gifts and Sponsorships Policy if applicable, modifications to Gifts and Sponsorships Policy, or a statement of no policy developed or modifications (Section 13(a));

(xiii) A copy of Art District's institutional report (if any).

(b) If any item required in Section 20(a) was omitted from the Annual Report for the reasons set forth herein, then Art District shall so state in the Annual Report.

(c) Art District shall, on an annual basis no later than December 15, provide to the Executive Director a finalized budget for the upcoming year (unless it is impractical to submit by December 15, in which case Art District and the Executive Director shall agree on a practical date).

(d) 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 Art District's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement upon at least five (5) business days prior written notice to Art District at the office of the Art District. Art District 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 one (1) year after the final payment or delivery of final obligations 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 section shall require Art District to make disclosures in violation of state or federal privacy laws. Art District shall at all times comply with D.R.M.C. 20-276.

(e) Other Records; Budget. Upon request, Art District shall also provide, or request its contractors or Subtenants to provide, adequate documentation of expenditures, including invoices and payroll, with respect to activities at the Building or performed for or on behalf of Art District.

**21. NON-DISCRIMINATION.** Art District agrees to comply with all applicable laws concerning non-discrimination against persons because of their race, color, religion, national origin, gender, gender identity or gender expression, age, military status, sexual orientation, marital status, or physical or mental disability in connection with membership on Art District board, access to the Building, and participation in any public program at the Building. In connection with the performance under this Agreement, Art District 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 identity or gender expression, age, military status, sexual orientation, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all contracts, subcontracts, or agreements it may enter.

**22. ALCOHOL & DRUGS POLICY; SMOKING POLICY.**

(a) Art District, its directors, officers, agents, and employees shall cooperate with the provisions of Executive Order No. 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Refusal to cooperate with implementation of the policy can result in the City barring Art District from City facilities or participating in City operations. Art District, as an employer, shall adhere to the federal, state, and local laws regarding alcohol and drug abuse. Art District shall, through its personnel rules and regulations, or otherwise, maintain a policy against the possession, use or sale of illegal drugs or the unauthorized use by employees of alcohol in the workplace in order to promote safe, healthful, and efficient operations. Art District agrees not to use any funds received from the City under this Agreement for the purchase, acquisition, or receipt of consumable alcohol.

(b) Art District agrees comply to with Executive Order No. 99 and any rules, regulations, or policies adopted by the Executive Director and generally applicable to specified facilities under the auspices of Parks and Recreation.

**23. ENVIRONMENTAL COMPLIANCE.** Art District shall obtain all federal, state, and local environmental permits necessary for work and shall comply with all applicable federal, state, and local environmental permit requirements. Art District shall comply with all applicable local, state, and federal environmental guidelines, rules, regulations, statutes, laws, and orders (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-containing 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, any Colorado statutes serving a similar purpose for environmental regulation, and any guidelines issued and rules or regulations promulgated pursuant to such statutes or any other applicable federal or state statute. Notwithstanding the preceding provisions of this Section 23, Art District is not responsible for curing any environmental hazard which existed on or prior to the Effective Date of this Agreement, unless Art District discharges Hazardous Materials.

**24. TERMINATION.** Other than as provided in Section 4, this Agreement may be terminated only as follows:

(a) Art District Default. In the event that Art District shall default or breach, on its part, in the performance or fulfillment of one or more material term(s), promise(s), or condition(s) of this Agreement (“**Art District Default**”) and shall failure to cure such Art District Default within ninety (90) days following delivery of written notice from the Executive Director specifying Art District Default and the date on which the City may exercise its right to terminate the Agreement if such Art District Default is not cured, the City may, in its reasonable discretion, terminate this Agreement and may exercise any remedy available to it under this Agreement including Section 24(d) and available at law or in equity.

(b) City Default. In the event the City shall default or breach, on its part, in the performance or fulfillment of one or more material term(s), promise(s), or condition(s) of this Agreement (“**City Default**”) and shall fail to cure such City Default within ninety (90) days following delivery of written notice from Art District specifying the City Default and the date on which Art District may exercise its right to terminate the Agreement if such City Default is not cured, and Art District may exercise any remedy available under this Agreement or otherwise at law or in equity.

(c) Other. Upon mutual agreement of the Parties, the time to cure any Art District 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 Section 24 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 Facilities, or neighboring property or any existing or imminent threat to public health and safety.

(d) Effect of Termination. Upon termination of this Agreement, including termination or expiration of this Agreement as provided in Section 4, the Buildings and the Facilities and all other permanent improvements contained therein or upon any other City-owned property which belong to Art District (but excluding any of the foregoing which belong to tenants and occupants of the Buildings) shall remain the property of the City, and all Art District Personal Property as identified in Section 7(b), shall immediately become the property of the City if it cannot be removed from City land within one hundred twenty (120) days. Upon request, Art District shall execute and timely deliver bills of sale to the City for the transfer of Art District Personal Property. Art District shall take all reasonable measures to turn over the Facilities and

any other City-owned property to the City in a timely manner and in reasonably good operating condition. Any City funds that have not been used by Art District under this Agreement and not needed to cover Art District's remaining obligations incurred in performing its duties under this Agreement shall be promptly returned to the City. All remaining funds (including, without limitation, funds held by Art District as endowment) and other personal property held by Art District (not otherwise conveyed to the City under this Section 24(d)) shall be used or distributed by Art District consistent with the duties and obligations of Art District towards the donors of any such funds or of any personal property and in accordance with Art District's articles of incorporation and Bylaws.

## **25. GENERAL PROVISIONS.**

(a) Appropriation. Notwithstanding any provision of this Agreement to the contrary, financial obligations of the City, if any, under this Agreement are contingent upon all funds necessary for performance under this Agreement being budgeted, appropriated and otherwise made available, and any commitments by the City to provide services is contingent upon the necessary funds being budgeted, appropriated, and otherwise made available and the necessary discretionary actions being taken by the City Council and the Mayor. The Parties acknowledge that this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

(b) Good Faith. The City and Art District agree to work diligently and in good faith to perform and fulfill the duties and obligations and achieve the purposes of this Agreement and to resolve any unforeseen issues or disputes under this Agreement as quickly and fairly as possible.

(c) Assignment. Except as provided in Section 12 regarding agreements with Subtenants, Art District shall not assign, encumber, or otherwise transfer any rights or interests granted by this Agreement, in whole or in part, without the prior written consent of the City, and unless the assignee or transferee (1) shall agree to assume, and can reasonably demonstrate the ability to perform, the obligations of Art District under this Agreement and (2) shall agree to be bound by the terms, covenants, and conditions contained in this Agreement to be performed or satisfied by Art District with the like force and effect as though such assignee or transferee had been originally named hereunder. No assignment, encumbrance, or transfer of any kind shall be permitted that would extend or be effective beyond the term of this Agreement. Any assignment, encumbrance, or transfer must be approved and executed in the same manner as this Agreement.

(d) Contracting or Subcontracting. Any work that is allowed to be contracted or subcontracted under this Agreement, including agreements with Subtenants, 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. Art District shall, upon request, provide to the Executive Director a copy of any written contract or subcontract entered by Art District for work or services covered by this Agreement.

(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) Applicable Law. The Parties agree to comply with all Applicable Law in existence as of the Effective Date of this Agreement or as may be subsequently enacted or adopted and applicable to this Agreement. The Executive Director agrees to provide Art District with reasonable notice of and an opportunity to review and comment on any changes proposed by the Executive Director in City ordinances and Parks and Recreation rules, regulations, and policies applicable to the Building before such changes are enacted or adopted. It is understood that the Executive Director will not, in any event, propose any changes in laws, rules, or regulations applicable to the Facilities as a means to depart from the express terms of this Agreement; provided, however, this provision shall not restrict any authority of the City to adopt reasonable ordinances or rules and regulations which are of general application throughout the City, including the Building.

(g) 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.

(h) 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 services or property described herein, and Art District 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.

(i) No Personal Liability. No official, officer, director, agent, or employee of either Party shall be charged personally or held contractually liable to the other Party or its officials, officers, agents, or employees under any term or condition of this Agreement or for any breach, default, or violation under this Agreement.

(j) Force Majeure. No Party shall 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*. Notices of the occurrence and the end of such delay shall be provided by the Party asserting *force majeure* to the other party. "*Force majeure*" shall mean causes beyond the reasonable control of a Party such as, but not limited to, extreme weather conditions, unforeseen or unpredictable natural forces or disasters or the public enemy, public health or safety emergencies declared by local, state or federal government, pandemics or epidemics, 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 action of government authorities. Written notice of any claim of inability to perform or comply due to *force majeure* must be promptly given.

(k) No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties; 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 the Parties that any person or entity other than the Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

(l) Notices. All notices, demands or consents required or permitted under this Agreement shall be in writing and shall be deemed delivered upon receipt, if delivered personally or by facsimile transmission (receipt verified by telephone) or electronic mail, or upon the third day following posting by certified mail, return receipt requested, to the following addresses:

If to Art District:

RiNo Art District  
3525 Walnut Street, Suite 40  
Denver, CO 80205  
Attn: John Deffenbaugh  
Email: john@rinoartdistrict.org

With copy to:

Spencer Fane LLP  
1700 Lincoln Street, Suite 2000  
Denver, CO 80203  
Attn: Tom George  
Email: TGeorge@spencerfane.com

If to the City or the Executive Director:

Executive Director of Parks and Recreation  
City and County of Denver  
201 West Colfax Avenue, Dept. 601  
Denver, Colorado 80202  
cc: Denver City Attorney

The address for any Party set forth above may be changed at any time by written notice in the manner provided herein to all other Parties.

(m) Entire Agreement. This Agreement, including the exhibits which are hereby incorporated into this Agreement by reference, constitutes the entire Agreement of the Parties. 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.

(n) Amendment. Except as expressly provided in this Agreement, this Agreement must 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.

(o) 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 proceed with

due diligence to draft a term or condition that will legally achieve the original intent and purposes of the Parties hereunder.

(p) Confirmation of Lawful Employment:

1) This 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) Art District certifies that:

(A) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

(B) It will participate in either the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., or the employment verification program established by the Colorado Department of Labor and Employment under § 8-17.5-102(5)(c), C.R.S. (the “**Department Program**”), to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

3) Art District also agrees and represents:

(A) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(B) It shall not enter into a contract with a contractor or subcontractor that fails to certify to Art District that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(C) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in either the E-Verify Program or the Department Program.

(D) It is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement.

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

(F) 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.

(G) Art District is liable for any violations as provided in the Certification Ordinance. If Art District violates any provision of this paragraph or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, Art District shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this paragraph or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Art District from submitting bids or proposals for future contracts with the City.

(q) No Construction against Drafting Party. The Parties acknowledge that each of them and their respective counsel have had the opportunity to review this Agreement and that this Agreement shall not be construed against any Party merely because this Agreement or any of its provisions have been prepared by a particular Party.

(r) 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.

(s) Authority. Each Party represents and warrants that it has taken all actions necessary or 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.

(t) Execution of Agreement. This Agreement shall not be or become effective or binding until it has been approved by ordinance and it has been fully executed by all signatories of the Parties.

(u) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one Agreement.

(v) Electronic Signatures and Electronic Records. The Parties consent to the use of electronic signatures by the Parties. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the Parties in the manner specified by the Parties. 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.

**[Remainder of Page Left Intentionally Blank; Signature Page Follows]**

**Contract Control Number:** PARKS-202056822-00  
**Contractor Name:** RINO ART DISTRICT

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-202056822-00  
RINO ART DISTRICT

By:  \_\_\_\_\_  
4E1878590885429

Name: Tracy weil  
(please print)

Title: Executive Director  
(please print)

ATTEST: [if required]

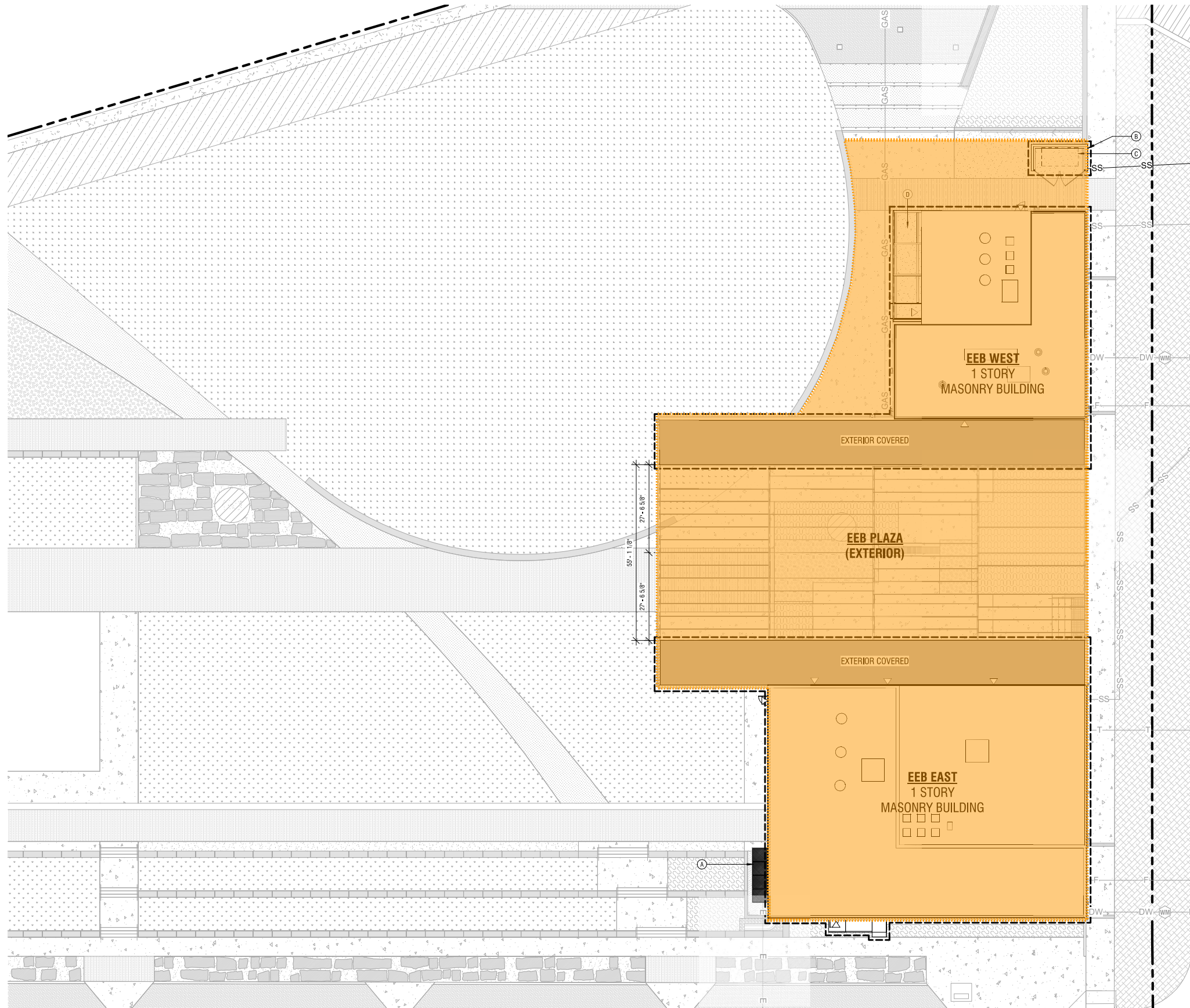
By: \_\_\_\_\_

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

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

# EXHIBIT A SITE PLAN

NOTE: SCOPE OF WORK IS LIMITED TO EEB NORTHWEST AND SOUTHEAST AS SHOWN BELOW.



FESTIVAL ST.

EXTENT OF RINO LEASE AREA

**1** SITE PLAN  
SCALE: 1/16" = 1'-0"



## KEYNOTE LEGEND

## SHEET NOTES A-100

TAG	NOTE
A	(E) ELECTRICAL POINT OF CONNECTION CABINETS & PARK LIGHTING PANEL
B	(N) CMU TRASH ENCLOSURE
C	GREASE INTERCEPTOR BELOW RE: PLUMBING
D	(N) EXTERIOR CONCRETE, RE: SLAB PLAN
D	(N) EXTERIOR CONCRETE, RE: STRUCT.

## PLAN NOTES

**LEGAL DESCRIPTION:**  
NORTHEAST QUARTER OF SECTION 27,  
TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE  
SIXTH PRINCIPAL MERIDIAN

**LANDSCAPING & EXTERIOR AREAS:**  
RIVER NORTH PARK LANDSCAPE  
CONSTRUCTION DOCUMENTS (DPW PROJECT  
CONTROL NO. 2016-PROJMSR-0000124)  
TAKE PRECEDENCE OVER LANDSCAPE  
INFORMATION, WRITTEN OR DRAWN,  
CONTAINED HEREIN. INCLUSION OF EXTERIOR  
GRADING, SURFACING AND PLANTING  
INFORMATION IN THESE DOCUMENTS IS FOR  
REFERENCE ONLY AND NOT INTENDED FOR  
CONSTRUCTION OR BIDDING. THE DRAWINGS  
CONTAINED IN THIS SET ARE FOR BUILDING  
DEMOLITION AND CONSTRUCTION AND ARE  
VALID ONLY TO THE EXTENTS OF THE BUILDING  
ENVELOPE, HARDSCAPE, LANDSCAPE,  
PLANTING, UTILITIES AND OTHER EXTERIOR  
IMPROVEMENTS TO BE EXECUTED UNDER PARK  
CONSTRUCTION DOCUMENTS AND SCOPE. SITE  
DEMOLITION RE: DM1.1 & 1.2

**UTILITIES**  
REFER TO CIVIL ENGINEER'S DRAWINGS FOR  
SIZING, MAIN LOCATIONS & ADDITIONAL INFO.

## SITE PLAN LEGEND

BUILDING ACCESS (MAN DOOR)



WATER METER



PROPERTY LINE



SCOPE OF WORK



UNDERGROUND DOMESTIC WATER LINE



UNDERGROUND SANITARY SEWER



UNDERGROUND GAS LINE



UNDERGROUND POWER



UNDERGROUND TELECOM



UNDERGROUND FIRE LINE



EXISTING UNDERGROUND UTILITY



WATER FLOW DIRECTION



Project:  
**RINO ARTPARK  
COMMUNITY HUB**  
1930 35TH ST. DENVER, CO  
Client Contact:  
RINO Art District  
JOHN DEFFENBAUGH  
JOHN@RINOARTDISTRICT.ORG

Architect:  
**tres birds workshop**  
3821 Steele Street, Unit B  
Denver, CO 80205  
303-442-3790 (Main)

Project Team:  
**PRINCIPAL**  
MIKE M MOORE  
(303) 324-3622  
MMM@TRESBIRDS.COM

**PROJECT ARCHITECT**  
SHAWN MATHER  
(720) 635-6468  
SM@TRESBIRDS.COM

**PROJECT MANAGER**  
GREALING ALTHEIMER  
GA@TRESBIRDS.COM

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design, is prohibited without express  
written consent.

Consultants:  
**STRUCTURAL ENGINEER**  
GEBALL INC.  
PAUL GALLAGHER  
(303) 444-8545  
PAUL@GEBALL.COM

**MEP ENGINEER**  
KLOK GROUP  
DAMIAN SMITH  
(303) 906-8099  
DAMIAN@KLOGROUP.COM

**KITCHEN CONSULTANT**  
W WEST EQUIPMENT &  
FURNISHINGS  
9355 NORTHFIELD BLVD.  
DENVER CO. 80238  
MMCDERMOTT@WWESTEQUIPME  
NT.COM



Issue:  
**BID SET**

Date Printed:  
06/01/20

Revisions:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SITE PLAN**

**A-100**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
08/29/2019

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

<b>PRODUCER</b> JACK V DOWNING INSURANCE AGENCY INC 1600 STOUT STREET SUITE 270 DENVER, CO 80202	<b>CONTACT NAME:</b> JACK V DOWNING <b>PHONE (A/C, No, Ext):</b> 303-825-6633 <b>FAX (A/C, No):</b> 303-825-6836 <b>E-MAIL ADDRESS:</b> JACK@JACKVDOWNING.COM
<b>INSURER(S) AFFORDING COVERAGE</b>	
INSURER A : State Farm Fire and Casualty Company	
<b>NAIC #</b>	
25143	
<b>INSURED</b> RINO ART DISTRICT 3525 WALNUT STREET DENVER, CO 80216	<b>INSURER B :</b> <b>INSURER C :</b> <b>INSURER D :</b> <b>INSURER E :</b> <b>INSURER F :</b>

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<b>96-B5-F146-8</b>	<b>07/15/2020</b>	<b>07/15/2021</b>	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	<input type="checkbox"/>	<input type="checkbox"/>	<b>96-B5-F146-8</b>	<b>07/15/2020</b>	<b>07/15/2021</b>	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$	<input type="checkbox"/>	<input type="checkbox"/>				EACH OCCURRENCE \$ AGGREGATE \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICE/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>	<b>96-C3-K551-9</b>	<b>03/15/2020</b>	<b>03/15/2021</b>	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)**

THE CITY AND COUNTY OF DENVER, ITS ELECTED AND APPOINTED OFFICIALS, EMPLOYEES AND VOLUNTEERS ARE INCLUDED AS ADDITIONAL INSURED

**CERTIFICATE HOLDER**

CITY AND COUNTY OF DENVER  
 201 W COLFAX AVE  
 DENVER, CO 80202

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

*Jack V Downing*

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