

AGREEMENT

THIS AGREEMENT ("**Agreement**") is made and entered into this 1<sup>st</sup> day of April 2023, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized and existing pursuant to Article XX of the Constitution of the State of Colorado, hereinafter referred to as the "**City**", and **DENVER FILM SOCIETY**, a Colorado non-profit corporation, whose address 1510 York St. 3RD FL, DENVER, Colorado 80206, hereinafter referred to as "**DFS**".

WITNESSETH:

WHEREAS, the City is the owner of the Red Rocks Amphitheatre ("**Red Rocks**"), which is located in Jefferson County, Colorado, and is operated by the City's Division of Arts & Venues ("**DAV**");

WHEREAS, DFS is engaged in the business of promoting film as an artistic and cultural expression; and

WHEREAS, the City has developed and annually presented the "*Film on the Rocks*" series (hereinafter "**FOTR**"), a popular film and music series that runs throughout the summer, offering the Denver community an affordable Red Rocks experience; and

WHEREAS, the City introduced "Film on the Rocks – Drive-in" in 2020 to provide FOTR programming during the Covid-19 pandemic; and

WHEREAS, the City desires DFS to continue to provide film screenings and management services for FOTR at Red Rocks Amphitheatre, on the terms and conditions contained here.

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

SECTION 1: FORM OF AGREEMENT/COORDINATION. This Agreement shall consist of the terms and conditions contained in the following numbered paragraphs together with any exhibits attached or otherwise by reference made a part hereof. In the event of any conflict between or among the terms and conditions contained in such numbered paragraphs of this document and any such exhibits which conflict cannot be resolved so as to give full effect to both or all provisions, then the provisions contained in this document shall be deemed to be controlling over the exhibits. The Executive Director (the "**Director**") of DAV or the Director's designee, including the Venue Director of Red Rocks Amphitheatre, is the official City representative and directs all services, performed under this Agreement. Communication between the City and DFS shall be directed through the Director, or such other designee and DFS agrees that during the term of this Agreement it shall fully coordinate all services hereunder with the Director or her or his designee.

SECTION 2: DEFINITIONS. Unless otherwise specifically indicated in this Agreement, the following words and phrases shall be defined as follows:

"Approved DFS Expenses" shall mean the following expenses approved by the Director or the Director's designee and paid by DFS to third parties relating to FOTR, if applicable: (1) snack pack expense paid to the City's concession vendor; (2) fees paid to the production company providing sound, lights, and video screens; (3) police services; (4) licenses for the use of movies, films, musical works, videos, and other matters protected by intellectual property rights; (5) costs for physical media used to display the film (e.g., blu ray); (6) insurance; (7) marketing fees; (8) fees paid to musicians and similar pre-film entertainment;

(9) catering; and (10) other direct expenses paid by DFS to third parties relating to FOTR and approved by the City.

“Approved Operating Budget” shall mean any budget submitted by DFS and approved by the City pursuant to Section 6 hereof.

“Approved Budgeted” shall mean included in any Approved Budget.

“Fiscal Year” shall mean a calendar year beginning January 1 and ending December 31.

“Operating Revenues” shall mean (1) all revenue received by DFS from Net Ticket Sales and (2) DFS advertising and sponsorship revenue as provided in Section 3.5 below.

“Operating Surplus” shall mean, with respect to a Fiscal Year, the excess, if any, of Operating Revenues after the deduction of Approved DFS Expenses.

“Operating Deficit” shall mean, with respect to a Fiscal Year, the deficit, if any, of Operating Revenues after the deduction of DFS’ fees as specified in 5.1 below and direct expenses paid by DFS to third parties relating to FOTR.

“Net Ticket Sales” shall mean the total revenue generated from tickets sold to FOTR events less Ticketing Fees.

“Ticketing Fees” shall mean any applicable ticketing fees, taxes, credit card fees, or other add-ons such as pre-paid food and beverage options.

### SECTION 3: SCOPE OF SERVICES.

3.1 Scope of Services. DFS hereby agrees to perform and furnish such services and systems as are needed to operate, manage, maintain, and promote FOTR, in a manner consistent with the operations of other similar first-class outdoor film venues and facilities, and in accordance with the terms and conditions of this Agreement. DFS agrees to follow the policies and guidelines of the City now in existence and from time to time hereafter established or modified by the City. DFS will endeavor to produce at least five (5) FOTR events per year at the City’s discretion.

3.2 Specific Services. Without limiting the generality of the foregoing, DFS shall:

A. Procure films for FOTR, together with all rights necessary and incident to the screenings of such film.

B. Subject to section 3.5 below, engage in such advertising, solicitation, and promotional activities as may be calculated to develop the full potential of FOTR. In such advertising, DFS is permitted to use the terms “Red Rocks”, “City and County of Denver” or “Denver” and logos for such entities, subject to the review and approval of the director.

C. Coordinate the sales of tickets through the City’s designated ticketing contractor in accordance with all applicable City policies and procedures.

D. Provide for any live talent associated with the screening event for FOTR.

E. Provide, in coordination with the City, any and all required services for FOTR, including but not limited to audio & video, lighting, projectionist, stage management, catering, and ticket and sponsorship revenue collection.

F. Pay promptly when due all Operating Expenses, applicable taxes incurred directly by DFS in support of FOTR.

G. Provide day-to-day administrative services in support of its management of FOTR pursuant to the Approved Operating Budget and annual plans provided herein, including, but not limited to, the acquisition of services, equipment, supplies and facilities; internal budgeting and accounting;

maintenance and property management; personnel management; record keeping; collections and billing, and similar services.

H. DFS agrees to make every reasonable effort to increase FOTR revenues and expand FOTR activities by aggressive and appropriate marketing analysis and advertising activities primarily directed at bookings at Red Rocks. In this regard, DFS agrees to avoid actual or potential conflicts of interests, as set out in Section 13.1 below, between its services on behalf of Red Rocks and any other potentially competitive interests, including other business activities of DFS.

3.3 Use of Premises. DFS shall use and occupy Red Rocks for the purpose of producing FOTR, consistent with the terms and conditions of this Agreement. DFS shall use and occupy Red Rocks solely for the business and purpose described herein and for no other business or purpose whatsoever.

3.4 Bookings. DFS shall receive prior approval from the Director in writing for each date for FOTR, prior to making any announcement or incurring any obligation whatsoever regarding such date. The City will endeavor to schedule a minimum of 5 dates per year for FOTR, either in the amphitheatre or in a designated parking lot as a Drive-In.

3.5 Advertising/Sponsorship. In general, all corporate or product advertising or sponsorship sales relating to Red Rocks are the responsibility of the City and not DFS. However, DFS is encouraged to assist in the sale of FOTR sponsorships. Except as provided below, for any FOTR sponsorships sold by DFS, DFS shall be entitled to retain fifty percent (50%) of the revenue from the sponsorship. All revenue received by DFS on account of FOTR sponsorships shall be included in Operating Revenue, and the fifty percent (50%) retained by DFS shall be an Approved DFS Expense. As used herein, "FOTR Sponsorships" means sponsorship arrangements where the benefits to the sponsor are only derived from FOTR events. FOTR sponsorships that are "third party" or "media" sponsorships, resulting in media exposure for FOTR, may be brokered by DFS. There will be no commission payable to DFS on account of such sponsorships; all revenue received by DFS on account of such sponsorships shall be included in Operating Revenue. DFS shall consult with the Director or her/his designee prior to the sale of any FOTR sponsorships to ensure that the proposed sponsorship is acceptable to the City and does not conflict with any City sponsorship agreement. DFS will be permitted to promote its own organization in two ways during the actual FOTR events:

A. DFS may have an on-site table or booth that promotes its organization and its programs. DFS may distribute pamphlets and flyers that promote DFS. DFS may have its year-round sponsors and partners listed on their materials but may not have separate materials that are strictly sponsor or FOTR-related.

B. DFS may show a promotional "spot" for DFS prior to the start of the feature film and that spot may mention year-round DFS sponsors and partners.

3.6 Food and Beverage Concession. Concession rights to serve food and beverages at Red Rocks are reserved to and shall be the responsibility of the City and not DFS.

3.7 Right of Entry Reserved. Representatives of the City, designated in writing by the Director, shall have the right to enter all portions of Red Rocks to inspect same; to observe the performance of DFS of its obligations under this Agreement; to install, remove, adjust, repair, replace or otherwise handle any equipment, utility lines, or other matters in, on, or about the premises; or to do any act or thing which the City may be obligated or have the right to do under this Agreement or otherwise. Nothing contained in this Section is intended or shall be construed to limit any other rights of the City under this Agreement. The City shall not interfere with any activities of DFS hereunder and the City's actions shall be conducted such that disruption of DFS's work shall be kept to a minimum.

Nothing in this Agreement shall impose or be construed to impose upon the City any independent obligation to construct or maintain or make repairs replacements, alterations, additions, or improvement or create any independent liability for any failure to do so.

SECTION 4: TERM. The Term of this Agreement shall commence on April 1, 2023, and end at midnight on December 31, 2024, unless earlier terminate pursuant to the provision of this Agreement.

SECTION 5: DFS' COMPENSATION.

5.1 Programming Fee/Percentage Fee. The City shall pay DFS a programming fee of \$200 for each FOTR event.

The City shall pay DFS a percentage fee relating to FOTR ticket sales equal to 15% of ticket sales revenue less all Ticketing Fees.

The programming and percentage fees shall be retained by DFS from the Net Ticket Sales that they receive from the City's designated ticketing contractor.

5.2 Operating Surplus. Any Operating Surplus remaining after completion of all FOTR events for a Fiscal Year will be retained by the City.

5.3 Excess Expenses. In the event Approved DFS Expenses exceed Operating Revenue for the applicable Fiscal Year, the City shall pay the amount of such excess expenses. DFS shall provide a detailed invoice and backup documentation satisfactory to the Director in support of any expenses paid by DFS for the operation of FOTR, not later than thirty (30) days after the last event of the FOTR for the applicable Fiscal Year.

The maximum amount payable by the City under this Agreement shall not exceed ONE HUNDRED THOUSAND DOLLARS AND NO/CENTS (\$100,000.00) in any one Fiscal Year, or TWO HUNDRED FIFTY THOUSAND DOLLARS AND NO/CENTS (\$250,000.00) over the entire term of this Agreement. It is expressly understood and agreed that the obligation of the City to make payments to DFS shall only extend to monies appropriated by the Denver City Council, paid into the Treasury of the City, and encumbered for the purposes of this Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. The City shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by the City's Revised Municipal Code.

SECTION 6: BUDGETS: BANK ACCOUNTS.

6.1 Operating Budget. Each Fiscal Year of this Agreement, DFS will prepare an Operating Budget for that year's FOTR, with assistance and advice from the Director to meet the scope of services and objectives under this Agreement. The budget shall be prepared on forms approved by the Director and meet the budgeting and fiscal requirements of the City. The budget shall contain appropriate line items for Operating Revenues and Approved DFS Expenses and any Operating Surplus or loss. Expenditures under this Agreement by DFS shall be authorized if such expenditures are included in the Operating Budget submitted and approved as provided herein or as otherwise approved by the Director. The annual budget shall include all revenues, costs and expenses related to the operations of FOTR, including expenses and costs under this Agreement. Modification to the Operating Budget during the applicable Fiscal Year shall be subject to prior written approval of the Director. Any expenditures which are not included in the approved budget shall be the financial responsibility of DFS unless approved by the City.

6.2 Ticket Sales. Ticket sales revenues shall be managed by the City's designated ticketing contractor, and disbursed by such contractor to DFS, in accordance with all applicable City policies and procedures. Ticket sales revenues, less any Ticketing Fees, shall be included in Operating Revenues.

SECTION 7: PERSONNEL. DFS shall furnish all necessary qualified supervision for the performance of management, maintenance, operation, and marketing of FOTR. Personnel supplied by DFS shall be deemed to be employees of DFS and shall not for any purpose be considered to be employees of the City. DFS assumes full responsibility for the actions of such personnel while performing services pursuant to this Agreement to the extent DFS is legally responsible therefor, and shall be solely responsible for their supervision, daily direction and control, and remuneration, taxes, withholding, insurance and Social Security. DFS agrees to abide by the provisions of the Immigration Reform and Control Act of 1986 and represents to the City that DFS, its officers, employees, agents and subcontractors, are lawfully permitted to pursue employment in the United State under applicable federal immigration laws. DFS agree that it will hold the City harmless as to any fines or other penalties levied against the City for DFS' violation of such immigration.

SECTION 8: TERMINATION.

8.1 Termination Upon Default. Either party may terminate this Agreement upon a default by the other party hereunder. A party shall be in default hereunder if (i) such party fails to pay any sum payable herein within thirty (30) business days after same is due and payable; or (ii) such party fails to perform or comply with any of the other terms, covenants, agreements or conditions hereof and such failure continues for more than sixty (60) days after written notice thereof from the other party or a lesser period of time if such failure could reasonably have been cured sooner. If a default (other than a default in the payment of money) is not reasonably susceptible to being cured within the sixty (60) day period, the defaulting party shall not be considered in default if it shall within such sixty (60) day period have commenced with due diligence and dispatch to cure such default and thereafter complete with dispatch and due diligence the curing of such default.

8.2 Other Termination. The City may terminate this Agreement if DFS or any of its officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with DFS's business. Termination for the reasons stated in this subparagraph is effective upon receipt of notice.

8.3 Termination by Mutual Agreement. If at any time during the term of this Agreement the Director and DFS agree that FOTR is not mutually beneficial or financially viable, the parties may mutually agree to terminate this Agreement.

8.4 Termination of Convenience. Either party may terminate this Agreement without cause by delivering written notice of termination to the other party, provided that such notice is delivered after the final event of that year's FOTR, and prior to December 1 of that year.

8.5 Effect of Termination. In the event of termination of this Agreement pursuant to this Section, the City will pay DFS for expenses actually incurred by it or the expenses which it is obligated to pay as of the date of termination which were budgeted and approved, and DFS shall pay to the City any Operating Surplus. Upon termination of this Agreement, DFS will not have any claim against the City by reason of, arising out of, incidental or relating to termination, except as provided in this subsection 8.5.

SECTION 9: RECORDS, AUDITS AND REPORTS. 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 DFS' performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. DFS shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under this Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require DFS to make disclosures in violation of state or federal privacy laws. DFS shall at all times comply with D.R.M.C. 20-276.

#### SECTION 10: INDEMINIFICATION AND INSURANCE; BOND.

##### 10.1 Indemnification.

A. DFS hereby agrees to defend, indemnify, reimburse and hold harmless the 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 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 the City for any acts or omissions of DFS or its subcontractors either passive or active, irrespective of fault, including the City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.

B. DFS's duty to defend and indemnify the 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. DFS's duty to defend and indemnify the City shall arise even if the City is the only party sued by claimant and/or claimant alleges that the City's negligence or willful misconduct was the sole cause of claimant's damages.

C. DFS will defend any and all Claims which may be brought or threatened against the City and will pay on behalf of the 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 the City shall be in addition to any other legal remedies available to the City and shall not be considered the City's exclusive remedy.

D. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of DFS under the terms of this indemnification obligation. DFS 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.

##### 10.2 Insurance.

A. General Conditions: DFS agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. DFS shall keep the required insurance coverage in force at all times during the term of this Agreement, including any extension thereof, and during any warranty period. 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 require notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice 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, DFS 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. DFS 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 DFS. DFS 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: DFS may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. DFS certifies that the certificate of insurance attached as **Exhibit A**, preferably an ACORD form, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the certificate of insurance. 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 Agreement shall not act as a waiver of DFS' breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

C. Additional Insureds: For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), DFS and DFS' subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

D. Waiver of Subrogation: For all coverages required under this Agreement, DFS' insurer shall waive subrogation rights against the City.

E. Subcontractors and Subconsultants: DFS shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) procure and maintain coverage as approved by DFS and appropriate to their respective primary business risks considering the nature and scope of services provided.

F. Workers' Compensation/Employer's Liability Insurance: DFS shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

G. Commercial General Liability: DFS shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate.

H. Business Automobile Liability: DFS shall maintain Automobile Liability with minimum limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

10.3 Fidelity Bond. DFS shall provide to the City a Fidelity Bond covering all of DFS' personnel under this Agreement in the amount of \$50,000.00 for each loss, to reimburse the City for losses experienced due to the dishonest acts of DFS' employees.

10.4 Letter of Credit. DFS shall furnish to the City an irrevocable letter of credit from a Denver bank, in the amount of \$50,000.00, guaranteeing performance of all the provisions of this Agreement, including the payment of any amounts owed to the City or third parties by DFS on account of FOTR, and payment of all claims for injuries to persons or property arising from DFS' activities hereunder. The letter of credit must be in a form acceptable to the Director and be capable of being drawn for a minimum of

ninety (90) days following the date of termination of the Agreement. Said letter of credit shall be delivered to the Director at least ten (10) days prior to the opening date of the first year's FOTR and shall be renewed or extended as necessary on or before January 1 of each year for the next year's FOTR. Should DFS fail to satisfy and pay any debts accounts, and amounts owing and due under the terms of this Agreement, then the City may draw upon the letter of credit in settlement thereof.

10.5 Patent, Trademark and Copyright Indemnification. DFS agrees to secure and maintain, or to require users to secure and maintain, licenses for the use of movies, films, musical works, videos, and other matters protected by intellectual property rights including without limitation performance rights royalties which are used in FOTR prior to any screening or event of FOTR involving such media. DFS agrees to protect, defend, indemnify and hold harmless the City, its officers and employees against any and all claims or lawsuits based on the violation of any intellectual property right which arise out of FOTR.

SECTION 11: ASSIGNMENT. This Agreement, and each of the rights, duties and obligations hereunder, including the right to receive the management fees, sell tickets and collect payments, shall not be assigned, pledged, transferred, sublet or otherwise disposed of, in whole or in part by DFS without the express written approval of the Director and consent by the City acting by ordinance.

SECTION 12: LAWS AND PERMITS.

12.1 Permits, Licenses, Taxes and Liens. DFS shall procure any permits and licenses required and pay all charges and fees, necessary for the business to be conducted by it hereunder. The City agrees to cooperate with DFS in applying for such permits and licenses. DFS shall deliver copies of all such permits or licenses to the Director. DFS agrees to pay promptly all taxes, excise, license fees and permit fees of whatever nature applicable to its management of FOTR and to take out and keep current all licenses, municipal, state or federal, required for the conduct of its business hereunder and further agrees not to permit any of said taxes, excise or license fees to become delinquent. DFS covenants and agrees, subject to the availability of funds from receipts and from City appropriations, to pay promptly when due all bills, debts and obligations incurred by it in connection with its operation of said business on or in the premises, and not to permit the same to become delinquent and to suffer no lien, mortgage judgement or execution to be filed against said premises or improvements thereon which will be any way impair the rights of the City.

12.2 Governmental Compliance.

A. DFS, its officers, agents, servants, employees, and any other persons over which DFS has control or right of control shall comply with all present and future laws, charter provisions, ordinances, executive orders, directives, rules and regulations of the United States of America, State of Colorado, and the City and County of Denver applicable to or affecting directly or indirectly DFS or its operations and activities on or in connection with the FOTR. DFS, its agents, and its invitees shall strictly comply at all times with any and all relevant public health orders issued by the United States, the State of Colorado or the City, and shall comply with any and all City policies and guidance regulating activities on City property. Failure of DFS, its agents, or invitees to strictly comply with any public health order or City directive shall result in immediate suspension of DFS' rights pursuant to this Agreement and may result in an event being suspended or cancelled until DFS fully complies with all orders and/or directives to Director's satisfaction.

B. ADA – Americans with Disability Act Requirements: The parties recognize that the City is subject to the provisions of Title II of the Americans with Disabilities Act (“**ADA**”) and that DFS is subject to the provisions of Title III of the ADA (including all revised regulations dated September 15, 2010, and effective March 15, 2011). Concerning compliance with the ADA and all regulations thereunder, the City is responsible for the permanent building access requirements; such as wheelchair ramps, elevators,



restrooms, doors, walkways, and accessible seats. DFS is responsible for the non-permanent accessibility standards and requirements, such as, but not limited to, seating accessibility, ticket pricing, sign language interpreters, signage and all other auxiliary aids and services customarily provided by DFS. The City's sole responsibility with respect to sign language interpreters shall be to forward any requests for a sign language interpreter to DFS. DFS shall comply with the ADA and all regulations thereunder.

DFS represents that it has viewed or otherwise apprised itself that such access to Red Rocks and common areas and accepts such access, common areas and other conditions of Red Rocks and common areas as adequate for DFS' responsibilities under the ADA. DFS shall be responsible for ensuring that the space rented by City to DFS complies and continues to comply in all respects with the ADA, including accessibility, usability and configuration insofar as DFS modifies, rearranges or sets up in the facility in order to accommodate the performance produced by DFS. DFS shall be responsible for any violations of the ADA that arise from DFS' reconfiguration of the seating areas or modification of other portions of Red Rocks in order to accommodate DFS' engagement. DFS shall be responsible for: providing auxiliary aids and services that are ancillary to its production, ensuring that the policies, practices and procedures it applies in its production are in compliance with the ADA, and any costs related thereto.

C. The City shall not be liable to DFS for any violation, or non-observance of, or non-compliance with, any of the aforementioned laws, ordinances, orders, directives, rules or regulations by any tenant, concessionaire, or other person at FOTR except to the extent that any such violation was expressly permitted or condoned by the City.

12.3 No discrimination in Employment. In connection with the performance of services under this Agreement, DFS may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. DFS shall insert the foregoing provision in all subcontracts.

12.4 Sound Pressure Levels, End Time Requirements. In order to reduce the sound level impacts on the neighboring residents from concerts being staged at the Permitted Premises, the following limitations on sound pressure levels (measured in decibel (dB) levels), event ending times, and pyrotechnics apply:

A. Sound Pressure Levels – measured at the fixed front of house mix position: A Sound Pressure Level (SPL) monitoring system, provided by the City, will be located at the front-of-house mix position to provide the sound engineer with real time data used to manage sound pressure levels. The following limits apply:

- The A-weighted Leq sound pressure level shall not exceed 106.0 dBA for 1-minute averages.
- The Leq sound pressure levels shall not exceed 119.0 dB for the logarithmic sum of sound pressure level energy in the un-weighted 25, 31.5, 40, 50, 63, and 80 Hz one-third-octave bands for 1-minute averages. These levels will be referred to as dB1 on the house monitoring system.

When a violation occurs, the City retains the right to take corrective action as needed, including cutting power to the production. Individual performers/artists that incur a violation charge may not be permitted to perform at the Permitted Premises during the following or future concert seasons. The Director reserves the right to assess penalties against any act or event that is observed manipulating the monitoring equipment or taking actions to intentionally manipulate the data the equipment reports.

B. Ending Times: Amplified outdoor performances at the Permitted Premises shall conclude no later than the following:

- Weeknights (Monday night - Thursday night): 11:30 PM (according to the venue's atomic clock)
- Weekends (Friday and Saturday night): 12:00 AM (according to the venue's atomic clock)
- Sunday nights (excluding the night before Memorial Day and Labor Day): 11: 00 PM (according to venue's atomic clock)
- Nights before the following holidays: Memorial Day, Fourth of July, Labor Day: 12:00 AM (according to the venue's atomic clock)

When a violation occurs, the City retains the right to take corrective action as needed, including cutting power to the production. Performers/artists that incur a violation charge may not be permitted to perform at the Permitted Premises during the following concert season in any form.

SECTION 13: MISCELLANEOUS.

13.1 Conflicts of Interest. No employee of the City shall have any personal or beneficial interest in the services or property described in this Agreement, and DFS shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the city's Code of Ethics, D.R.M.C. § 2.51, et seq, or the Charter §§ 1.2.8, .1.2.9 and 1.2.12. DFS shall not engage in any transaction, activity or conduct that would result in a conflict of interest under this Agreement. DFS represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgement, actions or work of DFS by placing DFS' own interests, or the interest of any party with whom DFS has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate this Agreement in the event it determines a conflict exists, after it has given DFS written notice describing the conflict.

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

13.3 Entire Agreement. This Agreement, together with the Exhibits, hereto, contains the entire Agreement between the parties and no statements, promises or inducements made by either party or agents for either party not contained in this contract shall be binding or valid.

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

13.5 Interpretation.

A. In General. It is the intention of the parties hereto that the language hereof and all parts of this Agreement shall be in all cases construed simply according to their fair meaning and not strictly for or against either the City or DFS, it is agreed and understood that the Exhibits referred to herein and attached hereto and the rights and obligations contained therein are hereby incorporated into and shall be a part of this Agreement as if contained in the main body of the Agreement.

B. Law Governing Interpretation. DFS and the City agree that any litigation filed by either as a result of any breach of contract or other matter arising out of this Agreement shall be filed exclusively in the District Court in and for the Second Judicial District of the State of Colorado, and that the interpretation of this Agreement shall be in all respects governed by the laws of the State of Colorado and the charter and ordinances of the City.

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

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

E. Time is of the essence hereof and every term, covenant and condition shall be deemed to be of the essence hereof, and any breach by the City or DFS shall be deemed to be of the very substance of this Agreement.

F. Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the City, and to such successors and assigns of DFS as are permitted to succeed DFS' right upon and subject to the terms hereof.

G. Consent or Approval. Whenever under this Agreement "reasonableness" is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards as well as business and economic consideration. In every case wherein consent or approval is required such consent or approval shall be obtained prior to taking the action at issue.

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

I. Severability. The City and DFS agree that if any Section or provision of this Agreement, or any portion of any Section or provision, shall for any reason be held to be void, illegal or otherwise enforceable, all other portions of this Agreement shall nevertheless remain in full force and effect.

### 13.6 Notices.

All notices required to be given by DFS to the City pursuant to this Agreement shall be in writing and sent by registered or certified mail to:

Director, Denver Arts and Venues  
1345 Champa Street  
Denver, CO 80204

(with a copy to:)

Denver City Attorney's Office  
1437 Bannock St., Room 353  
Denver, Colorado 80202

Red Rocks Venue Director  
4600 Humboldt Street  
Denver, CO 80216

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

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

Denver Film  
2510 E Colfax Ave.  
Denver, CO 80206

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

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

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

13.9 Use Possession or Sale of Alcohol or Drugs. DFS shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in contract personnel being barred from City facilities and from participating in City operations.

SECTION 14: PAYMENT OF CITY MINIMUM WAGE. DFS shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City's Minimum Wage Ordinance, Sections 20-82 through 20-84 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, DFS expressly acknowledges that DFS is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by DFS, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

**Contract Control Number:** THTRS-202265571-00  
**Contractor Name:** DENVER FILM SOCIETY

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

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_

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

THTRS-202265571-00  
DENVER FILM SOCIETY

DocuSigned by:  
By:  \_\_\_\_\_  
D5874537BBE047E...

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

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

ATTEST: [if required]

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

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

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

**EXHIBIT A**  
**CERTIFICATE(S) OF INSURANCE**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
01/25/2023

**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 have ADDITIONAL INSURED provisions or 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> The Ahbe Group / Silva Insurance Agency 700 Colorado BLVD, #733 Denver, CO 80206	<b>CONTACT NAME:</b> John Silva <b>PHONE (A/C, No, Ext):</b> 303-332-8803 <b>E-MAIL ADDRESS:</b> John@SilvaInsuranceAdvantage.com <b>FAX (A/C, No):</b>																					
<b>INSURED</b>  Denver Film Society 2510 E Colfax AVE Denver, CO 80206	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="2" style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td style="width: 80%;">INSURER A : Secura Insurance Companies</td> <td colspan="2" style="text-align: center;">22543</td> </tr> <tr> <td>INSURER B : Pinnacol</td> <td colspan="2" style="text-align: center;">41190</td> </tr> <tr> <td>INSURER C :</td> <td colspan="2"></td> </tr> <tr> <td>INSURER D :</td> <td colspan="2"></td> </tr> <tr> <td>INSURER E :</td> <td colspan="2"></td> </tr> <tr> <td>INSURER F :</td> <td colspan="2"></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A : Secura Insurance Companies	22543		INSURER B : Pinnacol	41190		INSURER C :			INSURER D :			INSURER E :			INSURER F :		
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**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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS														
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X		CP3285903	05/05/22	05/05/23	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>EACH OCCURRENCE</td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td style="text-align: right;">\$ 300,000</td></tr> <tr><td>MED EXP (Any one person)</td><td style="text-align: right;">\$ 10,000</td></tr> <tr><td>PERSONAL &amp; ADV INJURY</td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>GENERAL AGGREGATE</td><td style="text-align: right;">\$ 2,000,000</td></tr> <tr><td>PRODUCTS - COMP/OP AGG</td><td style="text-align: right;">\$ 2,000,000</td></tr> <tr><td></td><td style="text-align: right;">\$</td></tr> </table>	EACH OCCURRENCE	\$ 1,000,000	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000	MED EXP (Any one person)	\$ 10,000	PERSONAL & ADV INJURY	\$ 1,000,000	GENERAL AGGREGATE	\$ 2,000,000	PRODUCTS - COMP/OP AGG	\$ 2,000,000		\$
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A	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY	X		CP3285903	05/05/22	05/05/23	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>COMBINED SINGLE LIMIT (Ea accident)</td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>BODILY INJURY (Per person)</td><td style="text-align: right;">\$</td></tr> <tr><td>BODILY INJURY (Per accident)</td><td style="text-align: right;">\$</td></tr> <tr><td>PROPERTY DAMAGE (Per accident)</td><td style="text-align: right;">\$</td></tr> <tr><td></td><td style="text-align: right;">\$</td></tr> </table>	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000	BODILY INJURY (Per person)	\$	BODILY INJURY (Per accident)	\$	PROPERTY DAMAGE (Per accident)	\$		\$				
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B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	2310762	09/01/22	09/01/23	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td><input checked="" type="checkbox"/> PER STATUTE</td> <td><input type="checkbox"/> OTH-ER</td> <td></td> </tr> <tr><td>E.L. EACH ACCIDENT</td><td></td><td style="text-align: right;">\$ 100,000</td></tr> <tr><td>E.L. DISEASE - EA EMPLOYEE</td><td></td><td style="text-align: right;">\$ 100,000</td></tr> <tr><td>E.L. DISEASE - POLICY LIMIT</td><td></td><td style="text-align: right;">\$ 500,000</td></tr> </table>	<input checked="" type="checkbox"/> PER STATUTE	<input type="checkbox"/> OTH-ER		E.L. EACH ACCIDENT		\$ 100,000	E.L. DISEASE - EA EMPLOYEE		\$ 100,000	E.L. DISEASE - POLICY LIMIT		\$ 500,000		
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**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

Contract: THTRS-202265571  
 As required by written contract, the City and County of Denver, its Elected and Appointed Officials, Employees and Volunteers are included as Additional Insured as respects General Liability and Business Auto.

<b>CERTIFICATE HOLDER</b>  City and County of Denver 1345 Champa ST Denver, CO 80204	<b>CANCELLATION</b>  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 
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