

AGREEMENT

THIS AGREEMENT ("Agreement"), is made and entered into as of the date set forth on the City's signature page below, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized and existing pursuant to Article XX of the *Constitution of the State of Colorado* (the "City"), and **DAN STEINBERG PRESENTS LLC**, a Washington limited liability company, whose address is 31004 133rd Avenue SE, Auburn, Washington 98092 ("Steinberg").

RECITALS

A. The City, through Arts & Venues Denver, operates the following entertainment facilities: Red Rocks Amphitheatre ("Red Rocks"), the Denver Coliseum (the "Coliseum"), the Buell Theatre, the Ellie Caulkins Opera House (the "ECOH"), and the Boettcher Concert Hall.

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

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

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

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

A. Red Rocks. The City will pay as a commission to Steinberg a percentage as set forth below of the amount paid to the City by Steinberg as rent for each Qualifying Event at Red Rocks. With regard to Red Rocks, a "Qualifying Event" shall mean any commercial event at Red Rocks during 2014 for which Steinberg and the City have executed a City booking agreement and to which 2,000 or more tickets are sold to the public. Where a single booking agreement covers multiple concerts or live events, each concert or live event to which 2,000 or more tickets are sold shall constitute a Qualifying Event (move in or move out days shall not). Concerts or events covered by a booking agreement to which any entity other than Steinberg is a party shall not be Qualifying Events. To be eligible for a commission in 2014 from booking at Red Rocks, Steinberg must book not less than five (5) 2014 Qualifying Events. The commission percentage will increase as the number of Qualifying Events increases, as follows: (i) for each Qualifying Event up to and including 30 events, the commission shall be forty percent (40%) of the rental paid (subject to the 5 event minimum); (ii) for Qualifying Events 31 through and including 40, the commission shall be fifty percent (50%) of the rental paid; and (iii) for Qualifying Events 41 and above, the commission shall be sixty percent (60%) of the rental paid. On or before a date thirty (30) days following the final Qualifying Event in 2014, the City shall send to Steinberg, at the address set forth in section 11.E below, a list of the 2014 Qualifying

Events, the rent paid to the City by Steinberg for each such event, and a warrant in the amount of the resulting promoter commission for 2014.

B. DPAC Facilities. The City will pay as a commission to Steinberg twenty-five percent (25%) of the amount paid to the City by Steinberg as rent for each Qualifying Event at the Buell Theatre, the Ellie Caulkins Opera House (the "ECOH"), or the Boettcher Concert Hall (each, a "DPAC Facility" and, collectively, the "DPAC Facilities"). With regard to the DPAC Facilities, a "Qualifying Event" shall mean any commercial event at a DPAC Facility during 2014 for which Steinberg and the City have executed a City booking agreement and to which 750 or more tickets are sold to the public. Where a single booking agreement covers multiple concerts or live events, each concert or live event to which 750 or more tickets are sold shall constitute a Qualifying Event (move in or move out days shall not). Concerts or events covered by a booking agreement to which any entity other than Steinberg is a party shall not be Qualifying Events. To be eligible for a commission in 2014, Steinberg must book not less than five (5) 2014 Qualifying Events at the DPAC Facilities (in the aggregate). On or before a date thirty (30) days following the final Qualifying Event in 2014, the City shall send to Steinberg, at the address set forth in section 11.E below, a list of the 2014 Qualifying Events, the rent paid to the City by Steinberg for each such event, and a warrant in the amount of the resulting promoter commission for 2014.

C. The Coliseum. The City will pay as a commission to Steinberg fifty percent (50%) of the amount paid to the City by Steinberg as rent for each Qualifying Event at the Coliseum. With regard to the Coliseum, a "Qualifying Event" shall mean any commercial event at the Coliseum during 2014 for which Steinberg and the City have executed a City booking agreement and to which 2,000 or more tickets are sold to the public. Where a single booking agreement covers multiple concerts or live events, each concert or live event to which 2,000 or more tickets are sold shall constitute a Qualifying Event (move in or move out days shall not). Concerts or events covered by a booking agreement to which any entity other than Steinberg is a party shall not be Qualifying Events. On or before a date thirty (30) days following the final Qualifying Event in 2014, the City shall send to Steinberg, at the address set forth in section 11.E below, a list of the 2014 Qualifying Event(s), the rent paid to the City by Steinberg for each such event, and a warrant in the amount of the resulting promoter commission for 2014.

SECTION 2: ADDITIONAL TERMS.

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

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

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

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

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

SECTION 4: TERM. The term of this Agreement shall commence on January 1, 2014 and end at midnight on December 31, 2014.

SECTION 5: FUNDING. Payments to Steinberg hereunder shall be made only after revenue from Qualifying Events is received as provided in section 1 above, and shall not in any event exceed **Fifty-Thousand and No/100 Dollars (\$50,000.00)**, unless this Agreement is modified to increase said amount by a duly authorized and written amendment to this Agreement executed by the parties in the same manner as this Agreement. It is expressly understood and agreed that the obligation of the City to make any other payments hereunder shall only extend to monies appropriated by the Denver City Council, paid into the Treasury of the City, and encumbered for the purposes of this Agreement. Steinberg acknowledges that (i) the City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. The City shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by the City's Revised Municipal Code.

SECTION 6: EXAMINATION OF RECORDS. Steinberg agrees that any duly authorized representative of City, including the City Auditor or his or her representative, shall for three (3) years after the termination of this Agreement, during reasonable business hours and upon prior written notice, have access to and the right to examine any directly pertinent books, documents, papers and records of Steinberg, involving transactions related to the commission payable pursuant to this Agreement.

SECTION 7: INDEMNIFICATION. Steinberg shall defend, release, indemnify and save and hold harmless the City, including its officers and employees acting in their official capacity and/or in the scope of their employment, against any and all damages to property or injuries to or death of any person or persons, including property and employees or agents of the City, and shall defend, release, indemnify, and save and hold harmless the City, including its officers and employees acting in their official capacity and/or in the scope of their employment, from any and all claims, demands, suits, actions, liabilities, causes of action or legal or equitable proceedings of any kind or nature, including workers' compensation claims, of or by anyone whomsoever, in any way resulting from or arising out of and to the extent caused by the City's entering into this Agreement or the errors, omissions or other wrongful acts of any of the

officers, employees, representatives, suppliers, licensees, subconsultants, subcontractors, or agents of Steinberg in their performance under this Agreement, provided, however, that Steinberg need not defend, release, indemnify and save and hold harmless the City, its officers, agents, and employees from damages proximately resulting from the sole negligence of the City's officers, agents and employees. These indemnification obligations shall survive the termination of this Agreement by expiration of the term hereof or otherwise. This indemnity clause shall not cover the City's defense costs in the event that the City, in its sole discretion, elects to provide its own defense. If the City elects to control its defense, it shall provide written notice to Steinberg, in which event Steinberg shall be relieved of any further obligation to defend the City with respect to such claim; provided, however, the City shall not settle any claim for which it is entitled to an indemnity from Steinberg without Steinberg's prior written consent. In the event Steinberg desires to settle any claim for which it has agreed to indemnify the City, and the City, by its City Attorney, objects to same, Steinberg shall not be liable for any costs of settlement in excess of those for which it asked the City to settle, and in the event the actual liability of the City is greater than the settlement amount proposed by Steinberg, for any costs of defense of the City after the time of such proposed settlement. The provisions of this indemnity obligation shall not be deemed to extend to individual event obligations contained in the City's rental agreements, which have separate indemnity requirements.

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

SECTION 9: NO DISCRIMINATION IN EMPLOYMENT. In connection with the performance of work under this Agreement, Steinberg agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, gender, age, national origin, military status, sexual orientation, gender variance, marital status or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.

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

SECTION 11: MISCELLANEOUS.

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

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

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

D. Interpretation.

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

(2) Governing Law; Venue.

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

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

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

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

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

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

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

E. Notices.

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

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

With a copy to:

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

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

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

Dan Steinberg Presents LLC
Attn: Dan Steinberg
31004 133rd Avenue SE
Auburn, WA 98092

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

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

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

H. Representations and Warranties of Steinberg. All required approvals have been obtained, and Steinberg has full legal right, power and authority to enter into and perform its obligations hereunder, and this Agreement has been duly executed and delivered by Steinberg,

and constitutes a valid and binding obligation, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally, by law or by general equitable principles.

I. Compliance with Laws. Steinberg and their officers, agents, servants, employees, and any other persons over which they have control or right of control shall comply with all present and future laws, charter provisions, ordinances, orders, directives, rules and regulations of the United States of America, State of Colorado, and the City and County of Denver applicable to or affecting directly or indirectly their operations and activities on or in connection herewith.

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

K. Most Favored Nation Clause. In the event that City enters into a multi-event agreement for City venues similar in scope and essential considerations to this Agreement with an unrelated third party on more favorable financial terms than those offered to Steinberg hereunder, City shall promptly notify Steinberg of same and will adjust the terms of this Agreement in writing to match the terms of such other agreement. Furthermore, the parties acknowledge that the intent of this Agreement is not to exclude other entities from presenting events at City venues. However, the City agrees that it will not provide another commercial promoter with rental and/or expense terms more favorable than what Steinberg would enjoy for the same event / artist during the same season.

L. Electronic Signatures and Electronic Records. Steinberg consents to the use of electronic signatures by the City. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The parties agree not to object to the admissibility of this Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

[SIGNATURE PAGE TO FOLLOW]