

## ART WORK DONATION, LICENSE, AND MAINTENANCE AGREEMENT

**THIS AGREEMENT** is made by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, hereinafter referred to as the “City”, and **MUSEUM OF CONTEMPORARY ART DENVER**, with an address 1485 Delgany Street, Denver, Co 80202 hereinafter referred to as the “Donor”.

### WITNESSETH:

**WHEREAS**, the City desires to accept the donation from the Donor of an original work of art (the “Work”) as described in Exhibit A, attached hereto and incorporated herein by reference, for the purpose of public display of the Work on City property, at a location as described in Exhibit B, attached hereto and incorporated herein by reference; and

**WHEREAS**, the City believes that the donation of the Work is appropriate and serves a public purpose, and wishes to accept such donation on the conditions specified herein; and

**WHEREAS**, the parties recognize that the Work will be placed on the said property prior to the property’s conveyance to the City, pursuant to an agreement between the Donor and the grantor of the property;

**NOW THEREFORE**, in consideration of the mutual agreements herein contained, and subject to the terms and conditions herein stated, the parties hereto as follows:

1. **ACCEPTANCE OF DONATED WORK:** With the expressed consent of the Manager of General Services, the Donor shall fully coordinate all services under the Agreement with the Director of Denver Arts and Venues, (“Director”) or, the Director’s Designee. The Donor shall, in cooperation with the Director and other appropriate liaison personnel, donate to the City the Work as described herein in accordance with the terms and conditions of this Agreement. The City shall accept the donated Work subject to the terms and conditions set out herein.

2. **OWNERSHIP AND DONATION OF WORK:** The Donor has acquired ownership of the Work entitled *Anemotive Tower*, by artist Robert Mangold, originally dedicated pursuant to an oral request to honor Betty Emmanuel. The Work is further described in Exhibit A, and Donor agrees to donate the Work permanently to the City for placement on City property. The Donor represents and warrants to the City, as a condition for the entry into this Agreement by the City, that the Donor possesses all rights in the Work, including but not limited to any and all rights in the Work set out in or otherwise granted by the Visual Artists Rights Act of 1990

("VARA"), 17 U.S.C. §101, et seq., as amended, including but not limited to §106A(a) or §113(d), or otherwise in the nature of "Droit Moral" under which artists claim an interest in their work, that the Work is solely the result of the artistic effort of artist Robert Mangold, that the Work is unique and original and does not infringe upon any copyright and that the Work is free and clear of any liens or claims from any source whatsoever.

a. Revocable License by City: It is understood and agreed that the donated Work is to be located on City property at the location described in Exhibit B hereto. The City agrees to grant a revocable license to the Donor to place such Work, together with necessary ancillary facilities as are approved by the City in its sole discretion, at such selected location.

b. Construction of Base or Supports for Work: The Donor will cause to be constructed bases or supports for the Work adequate to support and maintain the Work and satisfactory to the City. Such base or supports shall be approved for their purpose by a registered engineer of the State of Colorado. Selection of the base contractor will be by the Donor with the City's approval, and such base contractor's work will be at the sole expense of the Donor or third party donors. The base contractor's activities will be subject to Article 2.3.3 (A) of the City Charter and Chapter 49 of the Revised Municipal Code. The base contractor's activities shall also comply with all City, State and federal licensing, insurance and bonding requirements. The Donor will be solely responsible for the construction of the base or supports for the Work.

c. Transportation of Work: The Donor will cause the Work to be transported from its current location to the selected location in a careful, safe, and prudent manner, at the Donor's sole expense, having due regard for highways, streets, and state and local City limitations as well as the condition of the Work. The transportation contractor shall be selected by the Donor with the City's approval, and such contractor's work will be at the sole expense of the Donor or third party donors. The transportation contractor's activities will be subject to Article 2.3.3 (A) of the City Charter and Chapter 49 of the Revised Municipal Code. The contractor undertaking such transportation shall also comply with all City, State and federal licensing, insurance and bonding requirements. The Donor will be solely responsible for the Work during such transportation to the selected location.

d. Installation of Work: The Donor will cause the Work to be installed at the selected location by a properly bonded, licensed, and insured contractor in cooperation with the City. The installation contractor shall likewise be selected by the Donor with the City's approval,

and such contractor's work will be at the sole expense of the Donor or third party donors. The installation contractor's activities will be subject to Article 2.3.3 (A) of the City Charter and Chapter 49 of the Revised Municipal Code. The contractor undertaking such installation shall also comply with all City, State and federal licensing, insurance and bonding requirements. The Donor will be solely responsible for the Work during such installation. Following completion of installation of the Work, the City and Donor shall inspect the Work and shall prepare a condition report noting all preexisting damage, wear, blemishes, scratches, and the like, to the Work. Each party shall sign and maintain a copy of such report.

e. Dedication of Work: The Donor agrees to make Donor representatives, and if requested by the City, the artist Robert Mangold, available at the request of the City to attend, and participate in ceremonies marking the dedication on City property of the Work, on or about August 15, 2013 .

3. **THE WORK:**

a. Rights in the Work: Donor represents to the City that it possesses all rights in the Work as set out above, provided that the Donor will grant to the City the right to make visual impressions of the Work through photography 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 Art Program or the Work. It is understood that the City will not offer such visual impressions for sale to any third party.

b. Maintenance of and Security for Work: Donor is not required to provide any maintenance for the Work. The City will undertake to provide the preparation and posting of such signs as the City may deem appropriate in its sole discretion to warn members of the public not to damage or to misuse the Work; however, the City does not undertake to provide continual on-site security for the Work and does not warrant or guarantee the Work against loss or damage from strikes, riots, floods, storms, fire, power failures, traffic accidents, vandalism, graffiti, acts of God and other causes beyond the City's control, including without limitation, the activities of third parties.

4. **TERM OF AGREEMENT**: The term of the Agreement shall commence on the date of installation of the Work and shall not terminate.

5. **APPROPRIATION**: Consideration for the donation of the Work shall consist of the aesthetic advantage to the City and the opportunity for exposure and public awareness of the

Work and the Donor. It is understood and agreed however, that any payment or performance obligation of the City hereunder, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council for the purpose of this Agreement, encumbered for the purpose of this Agreement and paid into the Treasury of the City. The Donor 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.

6. **STATUS OF PARTIES:** It is understood and agreed by and between the parties that the status of the Donor and the City shall be that of independent contractors and it is not intended, nor shall it be construed, that either party, or any employee or subcontractor of such party, is an employee, officer, or agent of the other party for purposes of unemployment compensation, workers' compensation, or for any purpose whatsoever.

7. **TERMINATION OF AGREEMENT:** The City may terminate this Agreement at any time on ten (10) days' notice if the Donor's services are not being satisfactorily performed in accordance with this Agreement or if the underlying project or activity is canceled. The City may also by written Notice of Default to Donor terminate the whole or part of this Agreement in the event Donor 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 Donor's business. The City may otherwise terminate the Agreement without cause, for its convenience, upon thirty (30) days' notice to the Donor.

8. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event shall any payment by the City hereunder constitute or be construed to be a waiver by the City of any breach of term, covenant, or condition or any default which may then exist on the part of the Donor, and the making of any such payment when any such breach or default shall exist shall not impair or prejudice any right or remedy available to the City with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more terms, covenants, or conditions of the Agreement shall be construed as a waiver of any succeeding or other breach.

9. **EXAMINATION OF RECORDS:** The Donor agrees that any duly authorized representative of the City, including the City Auditor or his representative, shall, until the expiration

of three (3) years after the termination of this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of the Donor, involving transactions related to this Agreement.

10. **VENUE, GOVERNING LAW:** Each and every term, condition, or covenant herein is subject to and shall be construed in accordance with the provisions of Colorado law, any applicable federal law, the Charter of the City and County of Denver and the ordinances, regulations, and Executive Orders enacted and/or promulgated pursuant thereto. Such applicable law, together with the Charter, Revised Municipal Code, regulations and Executive Orders of the City and County of Denver, as the same may be amended from time to time, is hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any action arising hereunder shall be in the Denver County or Denver District Court in the City and County of Denver, Colorado.

11. **USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** The Donor, its officers, agents, and employees shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto 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 the City's barring the Donor from City facilities or participating in City operations.

12. **ASSIGNMENT AND SUBCONTRACTING:** The City is not obligated or liable under this Agreement to any party other than the Donor named herein. The Donor understands and agrees that it shall not assign or subcontract with respect to any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City, which consent or approval may be withheld in the absolute discretion of the City; and in the event any such assignment or subcontracting shall occur, such action shall not be construed to create any contractual relationship between the City and such assignee or subcontractor, and the Donor shall remain fully responsible to the City according to the terms of this Agreement.

13. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Agreement, the Donor 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, age, military status, sexual orientation, marital status, or physical or mental disability; and the Donor further agrees to insert the foregoing provision in all subcontracts hereunder.

14. **INSURANCE**: As of the date of acceptance of the Work by the City, the City will add the Work to its fine arts policy and will be responsible for risk associated with ownership of the Work.

15. **DEFENSE AND INDEMNIFICATION**:

a. Donor 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 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 Donor 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. Donor will further indemnify, defend and hold the City harmless from and against any claims, losses, damages, liabilities or expenses (including reasonable attorneys’ fees and expenses) arising out of or resulting from any third party claim that the Work, when used by City in accordance with this Agreement, infringes, misappropriates or violates any United States patent issued as of the date hereof, copyright, trademark, trade secret or other intellectual or proprietary right of any third party. If an injunction or order is obtained against the City’s use of the Works by reason of a claim of the type described above, or if in Donors opinion, the Work is likely to become the subject of such a claim, Donor shall take all necessary action to correct any such infringement or misappropriation to give the City the right to continue using the Work.

c. Donor’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. Donor’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.

d. Donor 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.

e. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Donor under the terms of this indemnification obligation. The Donor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

f. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

16. **CONFLICT OF INTEREST:**

a. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement; and the Donor 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.

b. The Donor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Donor represents that it has disclosed any and all current or potential conflicts of interest, including transactions, activities or conduct that would affect the judgment, actions or work of the Donor by placing the Donor's own interests, or the interests of any party with whom the Donor 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 the Agreement in the event it determines a conflict exists, after it has given the Donor written notice describing the conflict.

17. **NO THIRD PARTY BENEFICIARY:** 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 City and the Donor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person or entity on such Agreement, including but not limited to the artist Robert Mangold or to third party donors hereunder. It is the express intention of the City and the Donor that any person or entity other than the City or the Donor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

18. **TRADE SECRETS AND CONFIDENTIAL INFORMATION:** The Donor shall not at any time or in any manner, either directly or indirectly, divulge, disclose or communicate to

any person, firm or corporation in any manner whatsoever any information concerning any matters which are not subject to public disclosure, including without limitation the trade secrets of businesses or entities doing business with the City and other privileged or confidential information.

19. **DISPUTES:** All disputes of whatsoever nature between the City and the Donor regarding this Agreement shall be resolved by administrative hearings pursuant to the procedure established by Denver Revised Municipal Code §56-106. For the purposes of that procedure, the City official rendering a final determination shall be the City representative identified in Article 2 hereof.

20. **TAXES, CHARGES AND PENALTIES:** 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.

21. **PARAGRAPH HEADINGS:** The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

22. **SEVERABILITY:** It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement, except for the provisions of the Agreement requiring prior appropriation of funds and limiting the total amount payable by the City, is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

23. **SURVIVAL OF CERTAIN AGREEMENT PROVISIONS:** The parties understand and agree that all terms, conditions and covenants of this Agreement, together with the exhibits and attachments hereto, if any, any or all of which, by reasonable implication, contemplate continued performance or compliance beyond the expiration or termination of this Agreement (by expiration of the term or otherwise), shall survive such expiration or termination and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, the Donor's obligations for the provision of insurance, for indemnity to the City and for preserving confidentiality of information shall survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.



24. **AGREEMENT AS COMPLETE INTEGRATION - AMENDMENTS:** This Agreement is intended as the complete integration of all understandings between the parties as to the subject matter of this Agreement. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other Agreement properly executed by the parties. No oral representation by any officer or employee of the City at variance with the terms and conditions of this Agreement or any written amendment to this Agreement shall have any force or effect or bind the City. Amendments to this Agreement will become effective when approved by both parties and executed in the same manner as this Agreement. This Agreement and any amendments shall be binding upon the parties, their successors and assigns.

25. **LEGAL AUTHORITY:**

A. The Donor assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

B. The person or persons signing and executing this Agreement on behalf of the Donor, do hereby warrant and guarantee that he/she or they have been fully authorized by the Donor to execute this Agreement on behalf of the Donor and to validly and legally bind the Donor to all the terms, performances and provisions herein set forth.

C. The City shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of either the Donor or the person signing the Agreement to enter into this Agreement.

26. **NOTICES:** All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Donor at the address first above written, and if to the City at:

Director of Denver Arts and Venues  
1245 Champa Street, First Floor  
Denver, Colorado 80204

With a copy of any such notice to:

Denver City Attorney's Office

1437 Bannock St., Room 353

Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

27. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** Donor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

28. **CITY EXECUTION OF AGREEMENT:** The Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

29. **COUNTERPARTS OF THE AGREEMENT:** The Agreement may be executed in counterparts, each of which is an original and constitute the same instrument.

(Remainder of page left intentionally blank.)

**Contract Control Number:**

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:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



Contract Control Number: MOACF-201311578-00

Contractor Name: Museum of Contemporary Art Denver

By: 

Name: Adam Lewis  
(please print)

Title: Director + Chief Architect  
(please print)

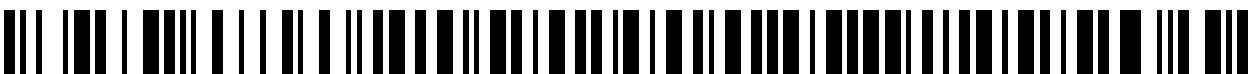
ATTEST: [if required]

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

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

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

.....



**EXHIBIT A  
ARTS & VENUES DENVER  
CONTRACT / AMENDMENT REQUEST**

**Requested by:** Rudi Cerri

**Type of Service Required (e.g. Graphic Design):**

The Museum of Contemporary Art Denver would like to donate the Public Work of Art “Anemotive Tower” artwork by Robert Mangold to the City and County of Denver’s Public Art Project located at Speer Blvd. and Wewatta St. Denver, CO.

**Contract Summary:**

“Anemotive Tower” is a free standing kinetic powder coated polychrome sculpture that is located at Speer Blvd. and Wewatta Street. The City of Denver’s Public Art Manager Michael Chavez has approved that the artwork be added to Denver’s Public Art Collection, and has obtained approval/permission by The Public Art Committee Members (PAC), and (DCCA) Denver’s Commission on Cultural Affairs. The artwork appears to be a low maintenance work of art, and all agree this will be a nice asset to Denver’s Public Art Program Collection.

**Summary of Competitive Process Used to Select the Contractor:**

**THIS SECTION MUST BE COMPLETED**

**No competitive process** for this art donation. The work was presented to Rudi Cerri, via Michael Chavez. Both Public Art Administrator and Public Art Manager both agreed it would be a positive asset to the City of Denver’s Public Art Program.

**Vendor Name / Address:**

The Museum of Contemporary Art Denver  
1485 Delgany Street  
Denver, CO 80202

**Contact Information:**

Name: Nick Silici

Telephone: (720) 236-1822

Fax:

E-mail Address: nicks@mcadenver.org

**Federal Identification Number (FID) – W9 form is required:**

ON FILE

**Contract Term:**

August 15, 2013 (with no end term date)

**Revised Contract Term (Amendment):**

**Proposed Scope of Work:**

**Please use this space for a brief description and attach a separate document detailing the proposed Scope of Work.**

The Museum of Contemporary Art Denver would like to donate the Work of Art “Anemotive Tower” artwork by Robert Mangold to the City and County of Denver’s Public Art Project located at Speer Blvd. and Wewatta St. Denver, CO. “Anemotive Tower” is a free standing kinetic powder coated polychrome sculpture that is located at Speer Blvd. and Wewatta Street. The City of Denver’s Public Art Manager Michael Chavez has approved that the artwork be added to Denver’s Public Art Collection, and has obtained approval/permission by The Public Art Committee Members (PAC), and (DCCA) Denver’s Commission on Cultural Affairs. The artwork appears to be a low maintenance work of art, and all agree this will be a nice asset to Denver’s Public Art Program Collection.

**Roles & Responsibilities:**

**Facility Requirements:**

- (could include venue specific requirements such as utilities, signage, etc.)

**Financial Requirements:**

**Fee Schedule: (see attached)**

**Please attach a separate document of the pricing schedule.**

**NONE - This is a ZERO dollar contract**

**Marketing Requirement:**

**NONE**

**Certificate of Insurance Requirements:**

**NONE –** City and County of Denver will insure artworks after work has been fully accepted into the City’s Public Art Collection

**Project/Grant Information:**

Project/Grant Number =34050  
Project/Grant Contract Number =ZZ40109\_001  
Project/Grant Number =ZZ40109\_001  
Grant/Fund Org =34050/0116102

**Funding Information (to be completed by Finance Dept):**

Fund = 34050  
Org =0116102  
Account =604600  
Program code =X8040

**Vendor Number:**

37654

## CONTRACT DESCRIPTION COMMENTS:

- Name of vendor/contractor – The Museum of Contemporary Art Denver
- Type of services being provided – Public Art Donation “Anemotive Tower” by artist Robert Mangold
- Location – Speer Blvd and Wewatta Street
- Amount - **\$0 ZERO DOLLARS**
- Chartfield –ZZ40109\_001 34050 /0116102 604500
- Who is making request – Mary Valdez



**EXHIBIT B**

(exhibit follows)

- Denver County (Boundary)
- Parks
- mask
- 2012\_Denver.jp2.1r1
- Denver County (Shaded)
- Denver County
- Adams County
- Arapahoe County
- Jefferson County



Map generated 02/26/2015 - The City and County of Denver shall not be liable for omissions of any kind arising out of the use of this information. The information is provided "as is" without warranty of any kind, express or implied, including, but not limited to, its fitness for a particular use. This is not a legal document.