

AMENDATORY AGREEMENT

This **AMENDATORY AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and 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 is 2510 East Colfax Avenue, Denver, Colorado 80206, hereinafter referred to as “DFS,” jointly “the Parties.”

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**”); and

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 has entered into tax exempt Bond and Certificate financing transactions (collectively “Financings”) to finance various construction and maintenance projects at Red Rocks and, pursuant to the Financings and authorizing ordinances and the tax-exempt status of the Financings, Red Rocks is subject to regulation under the Internal Revenue Code and certain uses require review by Bond Counsel. Bond Counsel means the nationally recognized law firm or firms with expertise in public finance delivering their approving opinions with respect to the excludability from gross income for federal income tax purposes of interest on the Financings. The City Attorney’s Office retains a list of approved Bond Counsel; and

WHEREAS, the Parties entered into an Agreement dated April 12, 2023, (the “**Agreement**”) to perform, and complete all of the services and produce all the deliverables set forth in SECTION 3: SCOPE OF SERVICES., to the City’s satisfaction; and

WHEREAS, the Parties wish to amend the Agreement to extend the term, update Section 9: Records, Audits, and Reports, update Section 14: Payment of City Minimum Wage, and add Section 15: Requirements of the Financings.

NOW THEREFORE, in consideration of the premises and the Parties’ mutual covenants and obligations, the Parties agree as follows:

1. SECTION 4 of the Agreement entitled “TERM.” is hereby deleted in its entirety and replaced with:

“SECTION 4: TERM. The Term of this Agreement shall commence on **April 1, 2023**, and end at midnight on **December 31, 2027**, unless earlier terminate pursuant to the provision of this Agreement. The Term may not be increased without approval of Bond Counsel.”

2. SECTION 9 of the Agreement entitled “RECORDS, AUDITS, AND REPORTS.” is hereby deleted in its entirety and replaced with:

“SECTION 9: EXAMINATION OF RECORDS AND AUDITS. 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’s 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 the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require 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.”

3. SECTION 14 of the Agreement entitled “PAYMENT OF CITY MINIMUM WAGE.” is hereby deleted in its entirety and replaced with:

“SECTION 14: COMPLIANCE WITH DENVER WAGE LAWS. To the extent applicable to DFS’s provision of Services hereunder, DFS shall comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the City’s Minimum Wage and Civil Wage Theft Ordinances, Sections 58-1 through 58-26 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, DFS expressly acknowledges that the DFS is aware of the requirements of the City’s Minimum Wage and Civil Wage Theft Ordinances 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.”

4. SECTION 15 of the Agreement entitled “REQUIREMENTS OF THE FINANCINGS.” is hereby added:

“SECTION 15: REQUIREMENTS OF THE FINANCINGS. The parties agree that due to the Financings of Red Rocks that this Agreement must be and has been approved by Bond Counsel. It is understood that the use of Red Rocks is restricted by the Bond Ordinances, and by all applicable rules, regulations, statutes or ordinances promulgated by any federal, state or municipal agency having jurisdiction over Red Rocks. The parties agree that, the Bond Ordinances permit the terms of the Agreement as written and that Sponsor shall comply with all

IRS regulations and take no action that would jeopardize the tax-exempt status of the Bonds. DFS agrees that in its activities and occupancy hereunder it will comply with all of the terms and conditions of the financings as those requirements are stated in this Agreement and that it will take no action, nor omit to act in any manner, which would cause the City to breach or be in default under the Financings.

The parties to this Agreement intend that this Agreement satisfy all of the safe harbor requirements set forth in Rev. Proc. 2017-13, 2017-06 I.R.B. (or any supplemental or subsequent guidance by the federal Treasury Department as the City determines may apply during the term of this Agreement) (the "Safe Harbor"). This Agreement shall be interpreted consistent with such intent.

DFS agrees that it is not and will not be entitled to and will not take any tax position that is inconsistent with being a service provider to the City with respect to the services provided under this Agreement, including but not limited to the services described in Section 3 of this Agreement. For example, DFS will not claim any depreciation or amortization deduction, investment tax credit or deduction for any payment as rent with respect to Red Rocks.

DFS represents that no directors, officers, shareholders, partners, members or employees of DFS currently serve on the City Council of the City.

DFS agrees to cooperate with the City to make amendments to this Agreement as reasonably necessary in the determination of the City to ensure this Agreement continues to comply with the Safe Harbor throughout the term of this Agreement. DFS further agrees that any agreements permitted to be negotiated by it or permitted to be entered into with third parties hereunder shall comply with the Safe Harbor."

5. As herein amended, the Agreement is affirmed and ratified in each and every particular.

6. This Amendatory 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.

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Contract Control Number: THTRS-202474781-01/THTRS-202265571-01
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-202474781-01/THTRS-202265571-01
DENVER FILM SOCIETY

Signed by:
By: Kevin Smith
D5874537BBF047E...

Name: Kevin Smith
(please print)

Title: CEO
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)