

SECOND AMENDATORY AGREEMENT

THIS SECOND AMENDATORY AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City") and **SOCIAL SPACE LLC** whose address is 41 E. Main St., Canton, NY, 13617 hereinafter referred to as the "Artist." (the "Artist").

WITNESSETH:

WHEREAS, the City and the Artist previously entered into an Agreement dated August 2, 2021 and amended on May 25, 2023 (collectively, the "Agreement") to design, execute, fabricate, deliver and install a work of art consisting of a mural (the "Work"), such Work to be integrated into National Western Center (the "Site"), after consultation with Denver Arts and Venues (DAV), Site designers, Site designers, Department of Transportation and Infrastructure and National Western Center personnel; and

WHEREAS, unforeseen site changes have led to adjustments to labor and equipment costs since the contract was amended so additional funds are needed to accomplish installation; and

WHEREAS, additional time will be needed to complete the revised work;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and obligations herein set forth, the parties agree as follows:

1. The revised Scope of Work is attached hereto and incorporated herein as **Exhibit A-2** and all references to "Exhibit A-1" are hereby amended to read "**Exhibit A-2**"

2. Subparagraph 1.4(b) of Article 1 of the Agreement entitled "Work to Be Performed" is amended to read:

b. The submission shall also include a budget, not to exceed Nine Hundred Seventeen Thousand Seven Hundred Fifty Two Dollars (\$917,752.00), as described herein that includes all costs for design, engineering, execution, fabrication, transportation, delivery, installation, insurance, contingencies, consultant fees, fees and permits, and any other costs associated with the Work, and the Artist's fee.

2. Subparagraph 3.1 of the Agreement, entitled "Term," is amended to read as follows:

3.1 Term. The term of the Agreement shall commence on August 2, 2021 (the “Effective Date”) and terminate on completion of the services to be performed by the Artist hereunder, or on December 1, 2026, whichever is earlier.

3. That subparagraph 4.1 of Article 4 of the Agreement entitled “Payment” is amended to read:

4. PAYMENT:

4.1 Fee. The Artist agrees to accept, and the City agrees to pay, as full and complete compensation for completion of all the items of work contained in this Agreement a fixed fee of Nine Hundred Seventeen Thousand Seven Hundred Fifty Two Dollars (\$917,752.00), which shall constitute full compensation for all services and materials whatsoever to be performed and furnished by the Artist under this Agreement. It is agreed that the City has no obligations regarding commission, or any agreements with galleries or agents with whom the Artist may have contracted. **The fee shall be paid in the following installments, subject to receipt by the City of acceptable periodic invoices and supporting documentation from the Artist, each installment to represent full and final payment for all services and materials provided by the Artist prior to the submittal of such periodic invoice for the specific phase of performance:**

| | | |
|----|--------------------------------|---------------------|
| a. | Execution of Contract | \$ 20,000.00 |
| b. | Preliminary Design Review | \$ 40,000.00 |
| c. | Final Design Review | \$450,000.00 |
| d. | Mid-Point Fabrication | \$200,000.00 |
| e. | Installation | \$100,000.00 |
| f. | Post-Installation | \$ 40,000.00 |
| g. | Close Out and Final Acceptance | <u>\$ 67,752.00</u> |

\$917,752.00

The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of all travel by the Artist and the Artist’s agents and employees necessary for the proper performance of the services required under this Agreement and for all other miscellaneous charges hereunder. Nothing contained in this Agreement shall entitle the Artist to retain funds paid by the City hereunder in the event that the Artist fails to fabricate, transport and install a satisfactory Work in accordance with this Agreement, and nothing contained in this Agreement shall prevent or prohibit the City from seeking damages or reimbursement from the Artist in the event of the Artist’s breach or default of this Agreement.

4. That subparagraph 4.3 of Article 4 of the Agreement entitled “Payment” is amended to read:

4.3 Maximum Amount Payable. The maximum amount payable by the City under this Agreement shall not exceed Nine Hundred Seventeen Thousand Seven Hundred Fifty Two Dollars (\$917,752.00).

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

Remainder of page left intentionally blank.

Contract Control Number:
Contractor Name:

THTRS-202578790-02/THTRS-202157859-02
SOCIAL SPACE LLC

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:

Attorney for the City and County of Denver

By: _____

REGISTERED AND COUNTERSIGNED:

By: _____

By: _____

Contract Control Number:
Contractor Name:

THTRS-202578790-02/THTRS-202157859-02
SOCIAL SPACE LLC

By: _____

DocuSigned by:

Matthew Mazzotta

FA3F90C79D0543A...

Name: _____

Matthew Mazzotta

(please print)

Title: _____

Manager

(please print)

ATTEST: [if required]

By: _____

Name: _____

(please print)

Title: _____

(please print)

Exhibit A-2 Scope of Work

Amended Scope of Work for Matthew Mazzotta (Social Space, LLC) Public Artwork for National Western Center Riverfront

Artist Matthew Mazzotta, of Canton, NY, will create an original artwork for the National Western Center Riverfront. The artwork will consist of a roughly 60' x 30' open-air "barnlike" structure. The artwork will include slow-moving swings, lighting and a local artist's mural on the roof. The project will lead viewer along the Riverfront and create an artistic destination for the National Western Center audience and the communities across the South Platte River. The project is meant to be a flexible gathering space for everyone and several programmatic plans are under way. Matthew Mazzotta will work with Public Art, National Western Center, Parks and Rec and City Public Works staff in creating the preliminary design and all the final designs will be stamped by a CO licensed engineer.

The following scope adjustments account for additional costs and time incurred due to unforeseen site changes requested by the City.

1. Fencing and Erosion Control Adjustments
2. Electrical and Utility Adjustments
3. Concrete Sidewalk Patching: Necessary for electrical trenching.
4. Electrical Trenching for Utilities: Required for infrastructure not installed by the City.
5. Additional Time and Equipment Costs
6. Lighting Adjustments

Changes to Lights and Clips: Modifications will be made per the City's request.

This scope of work reflects necessary adjustments and additional services performed due to project conditions beyond the original agreement.

Financial Information

Paid from PRJ-10000205

New Total Contract Amount: \$917,752.00 Project Additions and Adjustments Due to External Factors