

**AGREEMENT FOR PROFESSIONAL DESIGN, FABRICATION AND INSTALLATION SERVICES**

**THIS AGREEMENT FOR PROFESSIONAL DESIGN, FABRICATION AND INSTALLATION SERVICES** (“**Agreement**”) is made and entered into as of the date stated on the City’s signature page below (the “**Effective Date**”) by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado acting on behalf of its Department of Aviation (the “**City**”), and **MYTHOGRAPH, INC.**, a California corporation authorized to do business in the State of Colorado (“**Artist**”) (collectively the “**Parties**”).

**W I T N E S S E T H:**

**WHEREAS**, the City owns, operates, and maintains Denver International Airport (“**DEN**” or “**Airport**”); and

**WHEREAS**, the City desires to obtain professional artwork services for the Public Art CEP Concourse B-East Expansion Site (the “**Work**”); and

**WHEREAS**, the City has undertaken a competitive process to solicit and receive proposals for such services via an open “Call for Entry”; and

**WHEREAS**, Artist will work with the DEN Public Art Team (“**DEN Arts**”) and DEN Design Review Committee (“**DRC**”) on these Public Art Design Fabrication and Services (the “**Project**”), which will yield artwork at the Airport; and

**WHEREAS**, the Parties wish to reasonably promote and maintain the integrity and clarity of Artist’s ideas and statements as represented by the Work; and

**WHEREAS**, Artist is qualified, willing, and able to perform the services, as set forth in this Agreement in a timely, efficient, and economical manner; and

**NOW, THEREFORE**, for and in consideration of the premises and other good and valuable consideration, the Parties agree as follows:

**1. LINE OF AUTHORITY:**

The Chief Executive Officer of the Department of Aviation or their designee or successor in function (the “**CEO**”), authorizes and directs all work performed under this Agreement. Until otherwise notified in writing by the CEO, the CEO has delegated the authority granted herein to the DEN Arts and Events division. The Director of Arts and Events (the “**Director**”) will designate a Public Art Program Administrator (“**Project Manager**”) to coordinate professional services under this Agreement. Reports, memoranda, correspondence, and other submittals required of Artist hereunder shall be processed in accordance with the Project Manager’s directions.

**2. SCOPE OF WORK AND ARTIST RESPONSIBILITIES:**

**A. Scope of Work.** Artist shall provide professional services and deliverables for the City as designated by the CEO, from time to time and as described in the attached ***Exhibit A***

(“**Scope of Work**”), in accordance with the schedules and budgets set by the City. The City may, through an authorization issued by the CEO, and signed by Artist, and without requiring amendment to this Agreement, make minor changes, additions, or deletions to the Scope of Work without change to the Maximum Contract Amount.

(i) As used in this Agreement, unless the context otherwise requires: “Work” means the design for a work of art as ultimately conceived, proposed, and designed by Artist from concept to final design. Artist shall be responsible for Project completion from the design phase, to fabrication and installation, including the final acceptance of the artwork.

(ii) Artist shall perform all services and furnish all supplies, material, and equipment as necessary for the conception and design of the Work, including but not limited to, payments for all necessary taxes, permits, insurance, small tools, any subconsultants, rental equipment, and all other items incidental to producing a complete and acceptable Work. The Work includes all design of the complete artwork including but not limited to associated foundations, landscaping material and hardscape, bases, or mounting brackets or devices, electronic components, video components and all other miscellaneous components necessary to complete the fabrication and installation of the artwork.

(iii) Artist shall determine the artistic expression, scope, design, color, size, material and texture of the Work, subject to review and acceptance by the City as set forth in this Agreement.

(iv) Artist shall provide a plaque at the designed site, according to the specifications set forth by DEN Arts. Plaque specifications will be determined during the Final Design phase.

(v) If Artist and team choose to travel to DEN for design purposes, the travel costs must be budgeted from the overall Maximum Contract Amount, as defined below. Artist may undertake travel to the Airport and visit proposed site(s) for the installation of artwork designed and submitted as part of the Work.

(vi) Artist shall, if applicable, comply with all the City and County of Denver Department of Transportation and Infrastructure, Standard Specifications for Construction (“**Yellow Book**”), incorporated herein by reference.

## **B. Phasing.**

(i) Phase I Notice to Proceed (“NTP”). Upon execution of this Agreement, the City shall issue a NTP to Artist. Once the NTP has been issued, Artist may begin the next phase of the agreement.

(ii) Phase II Site and Design Research. Sixty (60) days following the NTP, Artist shall undertake site and design research. Artist shall review all design items, including but not limited to BIM Models, architectural drawings, engineering documents,

site plans and design specifications of the site, and coordinate any necessary meetings with DEN Arts or other stakeholders to develop the Work design. Upon Artist's request, the City shall furnish all readily available information about the location(s) of any potential site and aid in contacting stakeholders to facilitate meetings. Once the site is selected and agreed upon between Artist and DEN Arts, the Preliminary Design phase can begin.

(iii) Phase III Preliminary Design. Artist shall develop and submit a minimum of one (1) and maximum of three (3) Preliminary Designs, which may be accepted or rejected in City's sole discretion. Artist shall prepare and submit to DEN Arts detailed working drawings of the Work, including site specific information, initial preliminary costs and other materials as reasonably requested by the City. Following initial review, the Director may request up to two (2) material revisions to the proposed Preliminary Design, which shall be updated and re-submitted for approval as the Final Design. The City may request revisions for other practical, safety and or nonaesthetic reasons. DEN DRC and DEN Arts must approve the Preliminary Design before Artist proceeds to the next phase of the Agreement.

(iv) Phase IV Final Design. Artist shall have sixty (60) days following City's approval of the Preliminary Design to submit a Final Design for review and approval by the City. The Final Design shall have a stamped approval of structural integrity by a professional engineer – or another relevant expert – certified or licensed to practice in Colorado. The Final Design shall include a definition of the type of materials and equipment to be used, a full set of design documents, – including the plaque design created according to the specifications outlined in *Exhibit D* – a budget related to the Work and a tentative fabrication and installation schedule.

Artist shall include all estimated costs for design, execution, fabrication, insurance, permitting, contingencies, consultant fees, and any other costs associated with the Work to be approved by the City. The Final Design shall also include a written statement detailing anticipated regular and routine maintenance, in accordance with Section 5.A. The total budget for completion of the Project, including the work under this Agreement and the work in the forthcoming Successor Contract shall not exceed Two Million Five Hundred Thousand Dollars and No Cents (\$2,5000,000.00).

Upon review, the Director may request material changes to the Work, such as scope, design, color, size, material, or texture. If such changes are required, Artist shall have sixty (60) days to submit an amended Final Design. Upon final acceptance by the City, the Final Design cannot be materially changed. The City shall, in its sole discretion, determine whether material changes exist. The Final Design shall be incorporated herein as *Exhibit E*.

(v) Phase V Project Installation and Safety Plan. Artist shall provide an Installation and Safety Plan (“**Plan**”) to the City for the Work. This Plan must include:

- a. How Artist will integrate the work into the agreed upon site;
- b. Timeline of fabrication and installation sequencing;

- c. Budget breakdown of sequencing; and
- d. Progress reports schedule.

Artist shall work with DEN Art Team, DEN Architecture, Operations, Ground Transportation, Transportation Security Administration (“TSA”), Federal Aviation Administration (“FAA”) and any other necessary stakeholders in development of the Plan. The approved Plan shall be incorporated herein as **Exhibit F** (“**Installation and Safety Plan with Progress Reports**”) and may be amended in writing and upon mutual agreement between the City and Artist.

(vi) Phase VI Fabrication. Artist shall begin the fabrication process per the approved sequencing schedule within **Exhibit F**. The City shall have the right to review the Work at reasonable times during the fabrication hereof. Artist shall submit to the City progress reports acceptable to the City. Artist shall complete the fabrication of the Work in conformity with the approved Final Design. For any mid-point fabrication requirements, Artist shall notify the City, in writing, of the progress and in accordance with **Exhibit F**. Any significant changes in scope, design, color, size, materials or texture of the Work must be presented to the City in writing for further review and approval. The City shall in its sole discretion determine whether a significant change exists.

(vii) Phase VIII Delivery and Installation. Artist shall notify the City in writing when the fabrication of the Work is completed and begin coordination with DEN Arts, Operations, Ground Transportation, Airline partners, FAA, TSA, and any other necessary stakeholders for the installation process. The completed Work shall be delivered to the site in compliance with an installation plan coordinated and approved by DEN Arts. Artist shall provide a plaque at the Site, according to **Exhibit D** (“**Plaque Specifications**”).

(viii) Phase IX Final Acceptance. Within thirty (30) days after installation of the Work, Artist at his sole expense shall furnish the City with full copies of any photographic or video documentation in digital format of the completed installed Work. At a minimum, Artist shall provide thirteen (13) digital photographs:

- a. Ten (10) images taken from different viewpoints and distances. At least three (3) of these images should be suitable for reproduction and print use of the Work installed. Utilizing uncompressed .tiff tiles of 300 dpi or higher resolution.
- b. Three (3) images taken of the Site prior to the installation of the Work.

Artist shall, prior to Final Acceptance of the Work by the City, provide the City with lien and/or claim releases from contractor, subcontractors, and suppliers on the Project and shall otherwise comply with the provisions of C.R.S. §38-26-107. Having overseen the installation of the Work, Artist must officially approve the work done, and the City must also give final approval of the Work in writing, which will be incorporated as **Exhibit H** (“**Acceptance Letter**”).

(ix) Public Appearance. The lead Artist or designee shall make at least one public appearance in Denver, on behalf of the Project as a means of promoting the Project

and the studio's work. This could take the form of a public presentation, a panel discussion, a series of outreach events, or other similar type of event as agreed upon by the Parties to this Agreement. The City shall endeavor to arrange for publicity for the completed Work art publications and otherwise as may be determined between the City and Artist as soon as practicable.

**C. Ownership of Work Products.** The City, at its option, or in the event that this Agreement is terminated, may retain all plans, drawings, slides, photographs, submittals, studies, designs, maquettes and models, and other documents, including Preliminary and Final Designs, submitted to the City by Artist. These items, when submitted, become and are the property of the City, and the City may, without restriction, make use of such documents for educational, public relations, arts promotional and other non-commercial purposes. Artist shall not be liable for any damage which may result from any use of said documents for purposes other than those described in this Agreement.

**D. Standard of Performance.** Artist shall faithfully perform the work required under this Agreement in accordance with the standard of care, skill, efficiency, knowledge, training, and judgment provided by highly competent professionals who perform work of a similar nature to the work described in this Agreement.

**E. Time is of the Essence.** Artist acknowledges that time is of the essence in its performance of all work and obligations under this Agreement. Artist shall perform all work under this Agreement in a timely and diligent manner.

**F. Subcontractors.**

(i) In order to retain, hire, and/or contract with an outside subcontractor that is not identified in this Agreement for work under this Agreement, Artist must obtain the prior written consent from DEN Arts. Artist shall request approval in writing and shall include a description of the nature and extent of the services to be provided; the name, address and professional experience of the proposed subcontractor; and any other information requested by the City.

(ii) DEN Arts shall have the right to reject any proposed outside subcontractor deemed by the DEN Arts to be unqualified or unsuitable for any reason to perform the proposed services. DEN Arts shall have the right to limit the number of outside subcontractors and/or to limit the percentage of work to be performed by them.

(iii) Any final agreement or contract with an approved subcontractor must contain a valid and binding provision whereby the subcontractor waives any and all rights to make any claim of payment against the City or to file or claim any lien or encumbrance against any City property arising out of the performance or non-performance of this Agreement and/or the subcontract.

(iv) Artist is subject to Denver Revised Municipal Code (“**D.R.M.C.**”) § 20-112, wherein Artist shall pay its subcontractors in a timely fashion. A payment is timely if it is mailed to the subcontractor no later than seven (7) days after receipt of any payment

from the City. Any late payments are subject to a late payment penalty as provided in the Denver Prompt Payment Ordinance (D.R.M.C. §§ 20-107 through 20-118).

(v) This Section, or any other provision of this Agreement, shall not create any contractual relationship between the City and any subcontractor. The City's approval of a subcontractor shall not create in that subcontractor a right to any subcontract. The City's approval of a subcontractor does not relieve Artist of its responsibilities under this Agreement, including the work to be performed by the subcontractor.

### **G. Personnel Assignments.**

(i) Artist or its subcontractor(s) shall assign all key personnel identified in this Agreement to perform work under this Agreement ("**Key Personnel**"). Only Key Personnel shall perform work under this Agreement, unless otherwise approved in writing by DEN Arts or their authorized representative. In the event that replacement of Key Personnel is necessary, the City in its sole discretion shall approve or reject the replacement, if any, or shall determine that no replacement is necessary.

(ii) It is the intent of the Parties that all Key Personnel perform their specialty for all such services required by this Agreement. Artist and its subcontractor(s) shall retain Key Personnel for the entire Term of this Agreement to the extent practicable and to the extent that such services maximize the quality of work performed.

(iii) If, during the Term of this Agreement, the Director determines that the performance of any Key Personnel or other personnel, whether of Artist or its subcontractor(s), is not acceptable or that any such personnel is no longer needed for performance of any work under this Agreement, the Director shall notify Artist and may give Artist notice of the period of time which the Director considers reasonable to correct such performance or remove the personnel, as applicable.

(iv) If Artist fails to correct such performance, then the City may revoke its approval of the Key Personnel or other personnel in question and notify Artist that such Key Personnel or other personnel will not be retained on this Project. Within ten (10) days of receiving this notice, Artist shall use its best efforts to obtain adequate substitute personnel who must be approved in writing by DEN Arts. Artist's failure to obtain approval shall be grounds for Termination for Cause in accordance with this Agreement.

### **3. OWNERSHIP AND DELIVERABLES:**

Upon payment to Artist, all records, data, deliverables, and any other work product prepared by Artist or any custom development work performed by Artist for the purpose of performing this Agreement on or before the day of the payment, whether periodic or final payment, shall become the sole property of the City. Upon request by the City, or based on any schedule agreed to by Artist and the City, Artist shall provide the City with copies of the data/files that have been uploaded to any database maintained by or on behalf of Artist or otherwise saved or maintained by Artist as part of the services provided to the City under this Agreement. All such data/files shall be provided to the City electronically in a format agreed to by the Parties. Artist

also agrees to allow the City to review any of the procedures Artist uses in performing any work or other obligations under this Agreement, and to make available for inspection any and all notes, documents, materials, and devices used in the preparation for or performance of any of the scope of work, for up to three (3) years after termination of this Agreement. Upon written request from the City, Artist shall deliver any information requested pursuant to this Section within ten (10) business days in the event a schedule or otherwise agreed-upon timeframe does not exist.

#### **4. OWNERSHIP AND REPRODUCTION RIGHTS:**

**A. Title.** Title to the Work shall pass to the City upon final acceptance.

**B. Waiver of Rights under Visual Artists Rights Act of 1990 (“VARA”).** Artist understands and agrees that, as to his or her rights in the Work, the provisions of this Agreement shall supersede the provisions of the Visual Artists Rights Act of 1990 (“VARA”), 17 U.S.C. §101 et. seq., as amended, including but not limited to §106A(a) and §113, as to the Work, and that execution of this Agreement by Artist shall constitute a waiver by Artist, as permitted in 17 U.S.C. §106A(e), as amended, of any and all rights or protections in the Work, and any uses of the Work whatsoever, set out in or otherwise granted by 17 U.S.C. §101, et seq., as amended, including but not limited to §106A(a) or §113, or otherwise in the nature of "Droit Moral" under which artists claim an interest in their work. Artist understands that, despite the City’s commitment not to intentionally damage, alter, or modify the Work without the prior written approval of Artist, removal of the Work from the Site may subject the Work to destruction, distortion, mutilation, or other modification, by reason of its removal.

**C. Artist’s Remaining Rights in the Work.** Artist therefore retains: (i) all other right, title and interest in the Work, including all copyrights, but expressly excluding any rights in the Work under the Visual Artists Rights Act of 1990 (“VARA”), 17 U.S.C. §101 et. seq., as amended, including but not limited to §106A(a) and §113, or otherwise in the nature of "Droit Moral" under which artists claim a continuing interest in their products and in the maintenance or modification of their products; and (ii) all rights expressly granted in this Agreement. Artist’s waived rights as described above are, insofar as such rights are transferable, assigned to the City.

In view of the intention that the Work in its final dimension shall be unique, Artist shall not make any additional exact duplicate, two or three-dimensional reproductions of the final Work, including but not limited to miniatures or jewelry applications, nor shall Artist grant permission to others to do so except with the written permission of the City. The City is unable to grant permission of any kind for political use of the Work. The restriction for duplication or reproduction shall not apply to Artist’s use of photographic reproductions of the Work in portfolio or in critical and scholarly writings. Artist grants to the City and its assigns an irrevocable license to make two-dimensional reproductions of the Work for non-commercial purposes, in the sole discretion of the City and its assigns, including but not limited to reproductions used in advertising brochures, media publicity, and catalogues or other similar publications. Artist further grants to the City and its assigns an irrevocable license to make two-dimensional reproductions of the Work for commercial purposes, which shall include reproductions used on calendars, postcards, posters, or similar items. Any additional commercial uses of the Work will need to be negotiated in a separate agreement by the Parties to this Contract.

**D. Notice.** All reproductions by the City shall contain a credit to Artist and a copyright notice substantially in the following form: Artist's/Studio name, date of completion.

**E. Credit to the City.** Artist shall give a credit reading substantially, "an original work commissioned by the City and County of Denver," in any public showing under Artist's control of reproduction of the Work.

**F. Registration.** Artist shall, at their expense, register a copyright of the Work in Artist's name with the United States Register of Copyrights.

**G. Display Period.** The City may at its discretion not display the Work and will store the Work in a proper manner during these times. For operational reasons the city may turn off any lights on the Work. At the end of this display period, the City shall notify Artist of any future actions taken with the Work including but not limited to those outlined in Section 5.D. The City shall make every reasonable effort to engage with Artist for recommendations at the end of the display period.

**H. Third-Party Infringement.** The City is not responsible for any third-party infringement of Artist's copyrights, and is not responsible for protecting the intellectual property rights of Artist.

**I. Filming of Artwork.** Artist understands and acknowledges that the City pursuant to applicable Denver International Airport Rules and Regulations ("**DEN Rules and Regulations**") often issues film permits to persons and entities wishing to film at the airport, whether still, motion picture, or otherwise. Notwithstanding any other provision any other provision of this Contract, Artist recognizes and permits the City to issue such permits to persons and entities, to include the Work and surrounding Site, and Artist holds the City harmless. Artist will not hold or seek to hold the City liable in any way for the acts of any person or entity utilizing such a film permit, or their filming or use of the Work.

**J. Risk of Loss.** The risk of loss or damage to the Work shall be borne by Artist until installation of the Work and final acceptance thereof by the City, and Artist shall take such measures as are necessary to protect the Work from loss or damage until such final acceptance. The Parties recognize that the City is self-insured and possesses immunities pursuant to C.R.S. §24-10-101, et seq.

## **5. ARTIST'S RIGHTS:**

Subject to and consistent with the provisions of Article 4 above, Artist understands and agrees that they are, therefore, granted the following rights in the Work pursuant to this Agreement.

**A. Maintenance and Repair.** The City shall have the right to determine, in its sole discretion, after consultation with a professional conservator selected by the City, when and if maintenance, repairs, and restorations to the Work will be made. To the extent practical, Artist (at no cost to the City), during Artist's lifetime, shall be given the opportunity to consult on significant repairs or restorations. All repairs and restorations shall be made in accordance with recognized principles of conservation.



(i) Maintenance Manual. Artist shall provide a Maintenance Manual which will be incorporated herein as **Exhibit G**, with a description of all materials, products, and fabrication methods used in the Work and the required care and upkeep involved, including:

- a. Product data sheets for any material or finish used;
- b. Measures to be taken by Artist to protect and preserve the integrity of the Work, including but not limited to protective coatings;
- c. Names and contact information of relevant manufacturers or producers; and
- d. Copies of manufacturer's warranty, if such warranties exist.

**B. Damage.** Subject to Section 5.D. below, the City agrees that it will not intentionally damage, alter or modify the Work without the prior written approval of Artist.

**C. Notification.** The City shall endeavor to notify Artist of any proposed alteration of the Site or Work that would affect the intended character of the Work and shall endeavor to consult with Artist in the planning and execution of any such alteration and shall make a reasonable effort to maintain the integrity of the Work, subject to DEN operational, security, and maintenance needs.

**D. Removal, Relocation, Sale, Donation or Destruction.** Nothing in this Agreement shall preclude any right of the City, in its sole discretion, (i) to remove the Work from public display, (ii) to move or relocate the Work to another location selected solely by the City for public display, or (iii) to donate or sell the Work to a third person or entity, or (iv) to destroy the Work. In addition, Artist will have the right of final refusal as to any sale of the Work.

Artist understands that due to the dynamic nature of a large international airport the City has the right to move the Work for any reason. If the City decides to donate or sell the Work, the donee or buyer of the Work will assume all of the City's duties toward Artist stated herein, will be obligated to defend and indemnify the City with respect to such duties, and will take the Work subject to all of Artist's rights as stated herein, and the donee or buyer shall be given a copy of this executed Agreement at the time of donation or sale. The City will endeavor to notify Artist of such donation and sale and of the identity of the donee or buyer.

If the City shall at any time decide to destroy the Work, it shall by notice to Artist offer Artist a reasonable opportunity to recover the work at no cost to Artist, except for an obligation of Artist to indemnify and reimburse the City for the amount by which the cost to the City of such recovery exceeds the costs to the City of the proposed destruction as determined solely by the City. Artist agrees that his or her rights in connection with the destruction of the Work are as described in this Section; as set out above, Artist waives any rights which he or she might have in connection with the removal or destruction of the Work under VARA, 17 U.S.C. §101 et. seq., as amended, including but not limited to §106A(a) and §113.

**E. Record.** The City shall maintain on permanent file in the Office of the Denver City Clerk, Ex-Officio Clerk and Recorder, a record of this Agreement and of the location and disposition of the Work.

**F. Artist's Address.** Artist shall notify the City of changes in its address. The failure to do so, if such failure prevents the City from locating Artist, shall be deemed a waiver by Artist of the rights granted to or retained by Artist in this Section 5, the exercise of which requires response by Artist. A mailing of notice by the City by certified mail with return receipt requested to the address of Artist or of its attorney currently on file with the City at the time of such mailing shall be deemed to be an adequate notification effort by the City hereunder.

**G. Surviving Covenants.** The covenants and obligations set forth in this Section 5 shall be binding upon the Parties, their heirs, legatees, executors, administrators, assigns, transferees, and all their successors in interest and the City's covenants do attach and run with the Work and shall be binding to and until twenty (20) years after the death of Artist. However, the obligations imposed upon the City by Sections 5.B through 5.D shall terminate on the death of Artist. Upon death, notifications in Sections 5.B through 5.D shall go to Artist's appointed beneficiary. The City shall give any subsequent owner of the Work notice in writing of the covenants herein providing such owner with an executed copy of this Agreement.

**H. Event of Artist's Death or Incapacity.**

(i) An event of Artist's death or incapacity will not be deemed a breach of this Agreement or an event of default. Artist has the right to appoint a successor artist to complete the Work in the event of his incapacity or death. The successor artist is subject to approval of the City at the time of the signing of the contract and shall be bound to complete the Work under the same terms and budget. However, the successor artist shall be automatically given a sixty-day extension to complete the Work. Artist shall be paid only for that portion of work or services satisfactorily completed at the time of incapacity or death with remaining payments to be made to the successor artist. The Work shall pass to the City and all copyrights described under this Agreement shall remain with Artist. Artist shall provide a copy of this Agreement to the successor artist and the successor artist shall provide a written acknowledgement to the City of the successor artist's agreement to abide by the terms of this Agreement.

(ii) In the event of Artist's death or incapacity, where no successor artist has been appointed or where an appointed successor artist does not complete the Work, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by Artist under this Agreement shall become the City's property, except for copyrights which shall remain with Artist. If the Work was at mid-point of fabrication or beyond at the time of death or incapacity, the City retains the rights to select a successor artist to finish the Work at the City's expense. If the Work was not at mid-point of fabrication or beyond at the time of death or incapacity, the City retains possessory rights to the Work as then in existence and to exhibit the Work with the designation that it is "unfinished." Artist, or their estate, shall be paid only for that portion of Work or services satisfactorily completed at the time of incapacity or death.

## 6. TERM AND TERMINATION:

**A. Term.** The Term of this Agreement shall commence on the Effective Date and shall expire three (3) years from the Effective Date, unless terminated in accordance with the terms stated herein (the “**Expiration Date**”). The Term of this Agreement may be extended for two (2) additional, one-year periods, on the same terms and conditions, by written notice from the CEO to Artist. However, no extension of the Term shall increase the Maximum Contract Amount stated below.

**B.** If the Term expires prior to Artist completing the work under this Agreement, subject to the prior written approval of the CEO, this Agreement shall remain in full force and effect until the completion of any services commenced prior to the Expiration Date. Artist has no right to compensation for services performed after the Expiration Date without such express approval from the CEO.

### **C. Suspension and Termination.**

(i) Suspension. The City may suspend performance of this Agreement at any time with or without cause. Upon receipt of notice from the Director, Artist shall, as directed in the notice, stop work, and submit an invoice for any work performed but not yet billed. Any milestones or other deadlines contained in this Agreement shall be extended by the period of suspension unless otherwise agreed to by the City and Artist. The Expiration Date shall not be extended as a result of a suspension.

(ii) Termination for Convenience. The City may terminate this Agreement upon thirty (30) days-notice without cause upon written notice to Artist.

(iii) Termination for Cause. In the event Artist fails to perform any provision of this Agreement, the City may either:

- a. Terminate this Agreement for cause with ten (10) days prior written notice to Artist; or
- b. Provide Artist with written notice of the breach and allow Artist an Opportunity to Cure.

(iv) Event of Artist’s Default. The City may, by written Notice of Default to Artist, terminate the whole or part of this Agreement in the event that Artist or any of Artist’s 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 Artist’s business. In the event of default, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by Artist under this Agreement shall become the City’s property, at its sole option, including the right to fabricate or execute the Work.

(v) Opportunity to Cure. Upon receiving the City's notice of breach pursuant to Section 6(C)(iii)(b), Artist shall have five (5) days to commence remedying its defective performance. If Artist diligently cures its defective performance to the City's satisfaction within a reasonable time as determined by the City, then this Agreement shall not terminate and shall remain in full force and effect. If Artist fails to cure the breach to the City's satisfaction, then the City may terminate this Agreement pursuant to Section 6(C)(iii)(a).

(vi) Compensation for Services Performed Prior to Suspension or Termination Notice. If this Agreement is suspended or terminated, the City shall pay Artist the reasonable cost of only those services performed to the satisfaction of the CEO prior to the notice of suspension or termination. Artist shall submit a final invoice for these costs within thirty (30) days of the date of the notice. Artist has no right to compensation for services performed after the notice unless directed to perform those services by the City as part of the suspension or termination process or as provided in Section 6(C)(vii) below.

(vii) Reimbursement for Cost of Orderly Termination. In the event of Termination for Convenience of this Agreement pursuant to Section 6(C)(ii), Artist may request reimbursement from the City of the reasonable costs of orderly termination associated with the Termination for Convenience as part of its submittal of costs pursuant to Section 6(C)(vi). In no event shall the total sums paid by the City pursuant to this Agreement, including Sections 6(C)(vi) and this Section (C)(vii), exceed the Maximum Contract Amount.

(viii) Event of Artist's Death or Incapacity. An event of Artist's death or incapacity will not be deemed a breach of this Agreement or an event of default. However, Artist shall be paid only for that portion of work or services satisfactorily completed at the time of incapacity or death.

(ix) No Claims. Upon termination of this Agreement, Artist shall have no claim of any kind against the City by reason of such termination or by reason of any act incidental thereto. Artist shall not be entitled to loss of anticipated profits or any other consequential damages as a result of termination.

(x) Disqualification. Any termination of this Agreement may also, at the discretion of the City, constitute grounds for disqualifying Artist from submitting bids or proposals for future contracts with the City.

**D. Remedies.** In the event Artist performs services under this Agreement in violation of any provision herein, Artist shall be liable to the City for all costs of correcting the work without additional compensation, including but not limited to additional costs incurred by the City, its tenants, or its other contractors arising out of Artist's defective work. These remedies are in addition to, and do not limit, the remedies available to the City in law or in equity. These remedies do not amend or limit the requirements of Section 8 and Section 9 otherwise provided for in this Agreement.

## 7. COMPENSATION AND PAYMENT:

**A. Maximum Contract Amount.** Notwithstanding any other provision of this Agreement, the City shall not be liable under any theory for payment for services rendered and expenses incurred by Artist under the terms of this Agreement for any amount in excess of the sum of **Two Million Five Hundred Thousand Dollars and No Cents (\$2,500,000.00)** (“**Maximum Contract Amount**”). Artist shall perform the services and be paid for those services as provided for in this Agreement up to the Maximum Contract Amount.

**B. Limited Obligation of City.** The obligations of the City under this Agreement shall extend only to monies appropriated and encumbered for the purposes of this Agreement. Artist acknowledges and understands 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 is not under any obligation to make any future encumbrances or appropriations for this Agreement nor is the City under any obligation to amend this Agreement to increase the Maximum Contract Amount above.

**C. Payment Source.** For payments required under this Agreement, the City shall make payments to Artist solely from funds of the Airport System Fund and from no other fund or source. The City has no obligation to make payments from any other source.

**D. Basis for Artist’s Fee.** Artist’s fee is based on the time required by its professionals to complete the services under this Agreement. The said rates are set forth in **Exhibit B** (“**Agreement Milestones**”) and vary according to the experience and skill required.

**E. Payment Schedule.** Subject to the Maximum Contract Amount, for payments required under this Agreement, the City shall pay Artist’s fees and expenses in accordance with this Agreement and the Agreement Milestones, as set out in **Exhibit B**. Unless otherwise agreed to in writing, Artist shall invoice the City on a regular basis in arrears and the City shall pay each invoice in accordance with Denver’s Prompt Payment Ordinance, D.R.M.C. § 20-107, et seq., subject to the Maximum Contract Amount.

**F. Invoices.** Artist shall submit to the City a milestone progress invoice for professional services rendered under this Agreement to be audited and approved by the City (“**Invoice**”). Each Invoice shall provide the basis for payments to Artist under this Agreement. In submitting an Invoice, Artist shall comply with all requirements of this Agreement and:

- (i) Include an executive summary and status report(s) that describe the progress of the services and summarize the work performed during the period covered by the Invoice;
- (ii) Include the relevant purchase order (“**PO**”) number related to the Invoice;
- (iii) Ensure that amounts shown on the Invoices comply with and clearly reference the relevant services;
- (iv) Submit an itemized Artist Budget Template, as depicted in **Exhibit A**;

(v) Include the signature of an authorized officer of Artist, along with such officer's certification they have examined the Invoice and found it to be correct; and

(vi) Submit each Invoice via email to [ContractAdminInvoices@flydenver.com](mailto:ContractAdminInvoices@flydenver.com) and [heather.kaufman@flydenver.com](mailto:heather.kaufman@flydenver.com).

(vii) Late Fees. Artist understands and agrees interest and late fees shall be payable by the City only to the extent authorized and provided for in the City's Prompt Payment Ordinance.

(viii) Travel Expenses. Travel and any other expenses are not reimbursable.

**G. Disputed Invoices.** The City reserves the right to reject and not pay any Invoice or part thereof, including any final Invoice resulting from a Termination of this Agreement, where the Director or their authorized representative determines the amount invoiced exceeds the amount owed based upon the work satisfactorily performed. The City shall pay any undisputed items contained in an Invoice. Disputes concerning payments under this provision shall be resolved in accordance with procedures set forth in D.R.M.C. § 5-17.

**H. Carry Over.** If Artist's total fees for any of the services provided under this Agreement are less than the amount budgeted for, the amount remaining in the budget may be used for additional and related services rendered by Artist if the CEO determines such fees are reasonable and appropriate and provides written approval of the expenditure.

## **8. MWBE, WAGES AND PROMPT PAYMENT:**

### **A. Minority/Women Business Enterprise.**

(i) This Project has been reviewed by the Division of Small Business Opportunity ("DSBO") and it has been determined that it is not subject to D.R.M.C., Article III, Divisions 1 and 3 of Chapter 28, designated as §§ 28-31 to 28-40 and 28-51 to 28-90 (the "**MWBE Ordinance**") and any Rules or Regulations promulgated pursuant thereto, and therefore will not have an MWBE goal assigned. While the work performed under this Agreement is not subject to the MWBE Ordinance, the Director of DSBO encourages all participants in City Projects to seek independent partnerships with SBEs, MBEs, WBEs, and other business enterprises in supply chain activities, prime/subcontractor partnerships, and joint ventures for all contracts and purchase orders. The City reserves the right to reevaluate the work under this Agreement and apply the requirements of the MWBE Ordinance to this contract if DSBO determines that the MWBE Ordinance is applicable.

**B. Prevailing Wage.** To the extent required by law, Artist shall comply with, and agrees to be bound by, all requirements, conditions and City determinations regarding the Payment of Prevailing Wages Ordinance, D.R.M.C. §§ 20-76 through 20-79, including, but not limited to, the requirement that every covered worker working on a City owned or leased building or on City-owned land shall be paid no less than the prevailing wages and fringe benefits in effect on the Effective Date of this Agreement.

(i) Prevailing wage and fringe rates will adjust on, and only on, the anniversary of the Effective Date of this Agreement. Unless expressly provided for in this Agreement, Artist will receive no additional compensation for increases in prevailing wages or fringe benefits.

(ii) Artist shall provide the Auditor with a list of all subcontractors providing any services under the Agreement.

(iii) Artist shall provide the Auditor with electronically-certified payroll records for all covered workers employed under this Agreement.

(iv) Artist shall prominently post at the work site the current prevailing wage and fringe benefit rates. The posting must inform workers that any complaints regarding the payment of prevailing wages or fringe benefits may be submitted to the Denver Auditor by calling 720-913-5000 or emailing [auditor@denvergov.org](mailto:auditor@denvergov.org).

(v) If Artist fails to pay workers as required by the Prevailing Wage Ordinance, Artist will not be paid until documentation of payment satisfactory to the Auditor has been provided. The City may, by written notice, suspend or terminate work if Artist fails to pay required wages and fringe benefits.

**C. City Minimum Wage.** To the extent required by law, Artist shall comply with and agrees to be bound by all requirements, conditions, and the City determinations regarding the City's Minimum Wage Ordinance, D.R.M.C. §§ 20-82 through 20-84, 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 City's Minimum Wage Ordinance. By executing this Agreement, Artist expressly acknowledges that Artist is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by Artist, 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.

**D. City Prompt Pay.**

(i) The City will make milestone payments, as identified in *Exhibit B* and Section 7.E, to Artist for all services performed under this Agreement based upon Artist's milestone deliverable invoices or shall make payments as otherwise provided in this Agreement. The City's Prompt Payment Ordinance, D.R.M.C. §§ 20-107 to 20-118 applies to invoicing and payment under this Agreement.

(ii) Final Payment to Artist shall not be made until after the Project is accepted, and all certificates of completion, record drawings and reproducible copies are delivered to the City, and the Agreement is otherwise fully performed by Artist. The City may, at the discretion of the CEO, withhold reasonable amounts from billing and the entirety of the final payment until all such requirements are performed to the satisfaction of the CEO.

**9. INSURANCE REQUIREMENTS:**

**A.** Artist shall obtain and keep in force all of the minimum insurance coverage forms and amounts set forth in *Exhibit C* (“**Insurance Requirements**”) during the entire Term of this Agreement, including any extensions of the Agreement or other extended period stipulations stated in *Exhibit C*. All certificates of insurance and any required endorsements must be received and approved by DEN Risk Management before any airport access or work commences.

**B.** Artist shall ensure and document that all subcontractors performing services or providing goods hereunder procure and maintain insurance coverage that is appropriate to the primary business risks for their respective scopes of performance. At minimum, such insurance must conform to all applicable requirements of DEN Rules and Regulations Part 230 and all other applicable laws and regulations.

**C.** The City in no way warrants or represents the minimum limits contained herein are sufficient to protect Artist from liabilities arising out of the performance of the terms and conditions of this Agreement by Artist, its agents, representatives, employees, or subcontractors. Artist shall assess its own risks and maintain higher limits and/or broader coverage as it deems appropriate and/or prudent. Artist is not relieved of any liability or other obligations assumed or undertaken pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

**D.** In no event shall the City be liable for any of the following: (i) business interruption or other consequential damages sustained by Artist; (ii) damage, theft, or destruction of Artist's inventory, or property of any kind; or (iii) damage, theft, or destruction of an automobile, whether or not insured.

**E.** The Parties understand and agree that the City, its elected and appointed officials, employees, agents and volunteers are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations and any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 to 120, , or otherwise available to the City, its elected and appointed officials, employees, agents and volunteers.

## **10. DEFENSE AND INDEMNIFICATION:**

**A.** Artist 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 Artist 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.** Artist’s duty to defend and indemnify the City shall arise at the time written notice of the Claim is first provided to the City regardless of whether Claimant has filed suit on the Claim. Artist’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.** Artist 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, including but not limited to time expended by the City Attorney Staff, whose costs shall be computed at the rate of two hundred dollars and no cents (\$200.00) per hour of City Attorney time. 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 Artist under the terms of this indemnification obligation. Artist 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.

## **11. DISPUTES:**

All disputes arising under or related to this Agreement shall be resolved by administrative hearing under the procedures described in D.R.M.C. § 5-17 and all related rules and procedures. The Parties hereto agree that the CEO determination resulting from said administrative hearing shall be final, subject only to the right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106.

## **12. GENERAL TERMS AND CONDITIONS:**

**A. Status of Artist.** Parties agree that the status of Artist shall be an independent contractor retained on a contractual basis to perform professional or technical services for limited periods of time as described in § 9.1.1(E)(x) of the Charter of the City and County of Denver (the "**City Charter**"). It is not intended, nor shall it be construed, that Artist or its personnel are employees or officers of the City under D.R.M.C. Chapter 18 for any purpose whatsoever.

**B. Assignment.** Artist shall not assign, pledge or transfer its duties, obligations, and rights under this Agreement, in whole or in part, without first obtaining the written consent of the CEO. Any attempt by Artist to assign or transfer its rights hereunder without such prior written consent shall, at the option of the CEO, automatically terminate this Agreement and all rights of Artist hereunder.

**C. Compliance with all Laws and Regulations.** Artist and its subcontractor(s) shall perform all work under this Agreement in compliance with all existing and future applicable laws, rules, regulations, and codes of the United States, and the State of Colorado and with the City Charter, ordinances, Executive Orders, and rules and regulations of the City.

**D. Compliance with Americans with Disabilities Act (“ADA”).** Artist shall provide the services specified in this Agreement in a manner that complies with the ADA. Artist shall not discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Artist, its employees, agents or assigns will constitute a material breach of this Agreement. Artist shall cooperate with City and allow City to take reasonable steps to ensure that the artwork is accessible to the disabled, with respect to the elimination of both architectural and programmatic barriers. Such cooperation shall include assisting with modifications to the artwork, or preparing or authorizing tactile models, reproductions, or other materials necessary to provide access to the artwork. If requested by City, Artist shall engage a consultant, as part of the overall Project budget, to review the artwork for compliance with the ADA.

**E. Compliance with Patent, Trademark and Copyright Laws.**

(i) Artist agrees that all work performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the United States, as they may be amended from time to time. Artist will not utilize any protected patent, trademark or copyright in performance of its work unless it has obtained proper permission, all releases, and other necessary documents. If Artist prepares any documents which specify any material, equipment, process or procedure which is protected, Artist shall disclose such patents, trademarks and copyrights in such documents.

(ii) Pursuant to Section 10, Artist shall indemnify and defend the City from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings resulting from, or arising out of, directly or indirectly, the performance of work under this Agreement which infringes upon any patent, trademark, service mark, property rights by a third party or copyright protected by law.

**F. Warranties.**

(i) Warranties of Title. Artist represents and warrants to the City that:

- a. The Work is solely the result of the artistic effort of Artist;
- b. Except as otherwise disclosed in writing to the City prior to the time of execution hereof, the Work is unique and original and does not infringe upon any copyright;
- c. That neither the Work delivered hereunder, nor a duplicate thereof, has been accepted for sale elsewhere; and
- d. The Work is free and clear of any liens or claims from any source whatsoever.

(ii) Warranties of Quality and Condition. Artist further represents and warrants to the City that:

- a. The Work will be free of defects in design and draftsmanship, including any defects consisting of “inherent vice” or qualities which would cause or accelerate deterioration of the fabricated artwork.

(iii) Duration of Warranties; Breach. The warranties described herein shall survive for a period of two (2) years after the date of the City’s written notification to Artist of the final acceptance of the Work. The City shall give notice to Artist of any observed breach with reasonable promptness. Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by Artist utilizing artistic skill and which cure is consistent with professional conservation standards as determined solely by the City.

**G. Notices.**

(i) Notices of Termination. Notices concerning termination of this Agreement, shall be made as follows:

by Artist to:

Chief Executive Officer  
Denver International Airport  
Airport Office Building  
8500 Peña Boulevard, 9th Floor  
Denver, Colorado 80249-6340

And by the City to:

Mythograph, Inc.  
669 West 8th Street  
Claremont, California 91711  
Attn: Kipp Kobayashi  
Phone: 909.240.4326  
Email: [khk@kobayashi-studios.com](mailto:khk@kobayashi-studios.com)

(ii) Delivery of Formal Notices. Formal notices of the termination of this Agreement shall be delivered personally during normal business hours to the appropriate office above or by prepaid U.S. certified mail, return receipt requested; express mail (Fed Ex, UPS, or similar service) or package shipping or courier service; or by electronic delivery directed to the person identified above and copied to the Director through the electronic or software system used at the City’s direction for any other official communications and document transmittals. Mailed notices shall be deemed effective upon deposit with the U.S. Postal Service and electronically transmitted notices by pressing “send” or the equivalent on the email or other transmittal method sufficient to irretrievably transmit the document. Either party may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed, delivered or emailed, but such substitutions shall not be effective until actual receipt of written or electronic notification thereof through the method contained in Subsection (G)(ii).

(iii) Other Correspondence. Other notices and day-to-day correspondence between the Parties may be done via email directed to the Project Manager or through the electronic or software system used for work-related communications and transmittals at the City's direction.

**H. 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 covenant or default which may then exist on the part of Artist. The City making any such payment when any breach or default exists shall not impair or prejudice any right or remedy available to the City with respect to such breach or default. The City's assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of this Agreement shall not be deemed or taken to be a waiver of any other breach.

**I. No Third-Party Beneficiaries.** The Parties agree 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 Artist, and nothing contained in this Agreement shall give or allow any such claim or right of action by any third party. It is the express intention of the Parties that any person or entity other than the City or Artist receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only and shall not have any interest or rights under this Agreement.

**J. Governing Law.** This Agreement is made under and shall be governed by the laws of the State of Colorado. Each and every term, provision and condition herein is subject to the provisions of Colorado law, the City Charter, and the ordinances and regulations enacted pursuant thereto, as may be amended from time to time.

**K. Bond Ordinances.** This Agreement is in all respects subject and subordinate to any and all the City bond ordinances applicable to the Airport System and to any other bond ordinances which amend, supplement, or replace such bond ordinances.

**L. Venue.** Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.

**M. Cooperation with Other Contractors.**

(i) The City may award other contracts for additional work, and Artist shall fully cooperate with such other contractors. The City, in its sole discretion, may direct Artist to coordinate its work under this Agreement with one or more such contractors.

(ii) Artist shall have no claim against the City for additional payment due to delays or other conditions created by the operation of other contractors. The City will decide the respective rights of the various contractors in order to secure the completion of the work.

**N. Inurement.** The rights and obligations of the Parties herein set forth shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.

**O. Force Majeure.** The Parties shall not be liable for any failure to perform any of its obligations hereunder due to or caused by, in whole or in part, fire, strikes, lockouts, unusual delay by common carriers, unavoidable casualties, war, riots, acts of terrorism, acts of civil or military authority, acts of God, judicial action, or any other causes beyond the control of the Parties. The Parties shall have the duty to take reasonable actions to mitigate or prevent further delays or losses resulting from such causes.

**P. Coordination and Liaison.** Artist agrees that during the term of this Agreement it shall fully coordinate all services that it has been directed to proceed upon and shall make every reasonable effort to fully coordinate all such services as directed by the Director or their authorized representative, along with any City agency, or any person or firm under contract with the City doing work which affects Artist's work.

**Q. No Authority to Bind City to Contracts.** Artist has no authority to bind the City on any contractual matters. Final approval of all contractual matters which obligate the City must be by the City as required by the City Charter and ordinances.

**R. Information Furnished by the City.** The City will furnish to Artist information concerning matters that may be necessary or useful in connection with the work to be performed by Artist under this Agreement. The Parties shall make good faith efforts to ensure the accuracy of information provided to the other Party; however, Artist understands and acknowledges that the information provided by the City to Artist may contain unintended inaccuracies. Artist shall be responsible for the verification of the information provided to Artist.

**S. Severability.** In case any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**T. Taxes and Costs.** Artist shall promptly pay, when due, all taxes, bills, debts and obligations it incurs performing work under this Agreement and shall allow no lien, mortgage, judgment or execution to be filed against land, facilities or improvements owned by the City.

**U. Environmental Requirements.** Artist, in conducting its activities under this Agreement, shall comply with all existing and future applicable local, state and federal environmental rules, regulations, statutes, laws and orders (collectively "**Environmental Requirements**"), including but not limited to Environmental Requirements regarding the storage, use and disposal of Hazardous or Special Materials and Wastes, Clean Water Act legislation, Centralized Waste Treatment Regulations, and DEN Rules and Regulations.

(i) For purposes of this Agreement the terms "Hazardous Materials" shall refer to those materials, including without limitation asbestos and asbestos-containing materials, polychlorinated biphenyls (PCBs), per – and polyfluoroalkyl substances (PFAS), oil or any other petroleum products, natural gas, source material, pesticide, and any hazardous waste, toxic substance or related material, including any substance defined or treated as a "hazardous substance," "hazardous waste" or "toxic substance" (or comparable term) in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C.

Sec. 9601 et seq. (1990)), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq. (1990)), and any rules and regulations promulgated pursuant to such statutes or any other applicable federal or state statute.

(ii) Artist shall acquire all necessary federal, state and local environmental permits and comply with all applicable federal, state and local environmental permit requirements.

(iii) Artist agrees to ensure that its activities under this Agreement are conducted in a manner that minimizes environmental impact through appropriate preventive measures. Artist agrees to evaluate methods to reduce the generation and disposal of waste materials.

(iv) In the case of a release, spill or leak as a result of Artist's activities under this Agreement, Artist shall immediately control and remediate the contaminated media to applicable federal, state and local standards. Artist shall reimburse the City for any penalties and all costs and expenses, including without limitation attorney's fees, incurred by the City as a result of the release or disposal by Artist of any pollutant or hazardous material.

### **13. RECORD RETENTION AND OTHER STANDARD CITY PROVISIONS:**

**A. Diversity and Inclusiveness.** The City encourages the use of qualified small businesses doing business within the metropolitan area that are owned and controlled by economically or socially disadvantaged individuals. Artist is encouraged, with respect to the goods or services to be provided under this Agreement, to use a process that includes small businesses when considering and selecting any subcontractors or suppliers.

**B. Non-Discrimination Policy.** In connection with the performance of services under this Agreement, Artist shall not refuse to hire, discharge, promote, demote, to discriminate in matters of compensation against any person otherwise qualified solely because of race, creed, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender variance, gender identity, gender expression, marital status, military status, source of income, protective hairstyle and/or physical or mental disability. Artist further agrees to insert this provision in all subcontracts hereunder.

**C. Advertising and Public Disclosures.** Artist shall not include any reference to this Agreement or to work performed hereunder in any of its advertising or public relations materials without first obtaining the written approval of the SVP or their authorized representative. Any oral presentation or written materials related to DEN shall include only presentation materials, work product, and technical data which have been accepted by the City, and designs and renderings, if any, which have been accepted by the City. Artist shall notify the SVP in advance of the date and time of any such presentations. Nothing herein, however, shall preclude Artist's transmittal of any information to officials of the City, including without limitation, the Mayor, the CEO, any member or members of Denver City Council, and the Auditor.

**D. Colorado Open Records Act.**

(i) Artist acknowledges that the City is subject to the provisions of the Colorado Open Records Act (“**CORA**”), C.R.S. §§ 24-72-201 et seq., and Artist agrees that it will fully cooperate with the City in the event of a request or lawsuit arising under such act for the disclosure of any materials or information which Artist asserts is confidential or otherwise exempt from disclosure. Any other provision of this Agreement notwithstanding, all materials, records, and information provided by Artist to the City shall be considered confidential by the City only to the extent provided in CORA, and Artist agrees that any disclosure of information by the City consistent with the provisions of CORA shall result in no liability of the City.

(ii) In the event of a request to the City for disclosure of such information, time and circumstances permitting, the City will make a good faith effort to advise Artist of such request in order to give Artist the opportunity to object to the disclosure of any material Artist may consider confidential, proprietary, or otherwise exempt from disclosure. In the event Artist objects to disclosure, the City, in its sole and absolute discretion, may file an application to the Denver District Court for a determination of whether disclosure is required or exempted. In the event a lawsuit to compel disclosure is filed, the City may tender all such material to the court for judicial determination of the issue of disclosure. In both situations, Artist agrees it will either waive any claim of privilege or confidentiality or intervene in such legal process to protect materials Artist does not wish disclosed. Artist agrees to defend, indemnify, and hold harmless the City, its officers, agents, and employees from any claim, damages, expense, loss, or costs arising out of Artist’s objection to disclosure, including prompt reimbursement to the City of all reasonable attorney’s fees, costs, and damages the City may incur directly or may be ordered to pay by such court, including but not limited to time expended by the City Attorney Staff, whose costs shall be computed at the rate of two hundred dollars and no cents (\$200.00) per hour of City Attorney time.

**E. Examination of Records and Audits.**

(i) 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 Artist’s performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Artist 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 Artist to make disclosures in violation of state or federal privacy laws. Artist shall at all times comply with D.R.M.C. §20-276.

(ii) Additionally, Artist agrees that until the expiration of three (3) years after the final payment under the Agreement, any duly authorized representative of the City, including the CEO or his or her representative, shall have the right to examine any pertinent books, documents, papers and records of Artist related to Artist's performance of this Agreement, including communications or correspondence related to Artist's performance, without regard to whether the work was paid for in whole or in part with federal funds or was otherwise related to a federal grant program.

(iii) In the event the City receives federal funds to be used toward the services performed under this Agreement, the FAA, the Comptroller General of the United States and any other duly authorized representatives shall have access to any books, documents, papers and records of Artist which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts and transcriptions. Artist further agrees that such records will contain information concerning the hours and specific services performed along with the applicable federal project number.

**F. Use, Possession or Sale of Alcohol or Drugs.** Artist shall cooperate and comply with the provisions of Denver 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 barring Artist from City facilities or participating in City operations.

**G. City Smoking Policy.** Artist and its officers, agents and employees shall cooperate and comply with the provisions of Denver Executive Order No. 99 and the Colorado Indoor Clean Air Act, prohibiting smoking in all City buildings and facilities.

**H. Conflict of Interest.**

(i) Artist and its subsidiaries, affiliates, subcontractors, principals, or employees shall not engage in any transaction, work, activity or conduct which would result in a conflict of interest. A conflict of interest occurs when, for example, because of the relationship between two individuals, organizations or one organization (including its subsidiaries or related organizations) performing or proposing for multiple scopes of work for the City, there is or could be in the future a lack of impartiality, impaired objectivity, an unfair advantage over one or more firms competing for the work, or a financial or other interest in other scopes of work.

(ii) Artist represents that, in its Response or Proposal, as applicable, it disclosed any and all current or potential conflicts of interest of which it is aware, including transactions, work, activities, or conduct that might affect the judgment, actions, or work of Artist or which might give Artist an unfair advantage in this or a future procurement. If the Parties identified a conflict of interest and agreed to a plan to mitigate such conflict, Artist agrees it will comply with that mitigation plan.

(iii) The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement if such a conflict exists, after it has given Artist written notice which describes such conflict. If, during the course of the Agreement, the



City determines that a potential conflict of interest exists or may exist, Artist shall have thirty (30) days after the notice is received in which to eliminate or cure the conflict of interest in a manner which is acceptable to the City.

(iv) Artist has a continuing duty to disclose, in writing, any actual or potential conflicts of interest including work Artist is performing or anticipates performing for other entities on the same or interrelated projects or tasks. Artist must disclose, in writing, any corporate transactions involving other companies that Artist knows or should know also are performing or anticipate performing work at DEN on the same or interrelated projects or tasks. In the event that Artist fails to disclose in writing actual or potential conflicts, the CEO in their sole discretion, may terminate the Agreement for cause or for its convenience.

#### **I. Confirmation of Lawful Employment.**

(i) The Agreement is subject to C.R.S. §§ 8-17.5-101 *et seq.* and Division 5, Article IV, Chapter 20 of D.R.M.C., including any amendments (“**Certification Ordinance**”). Artist is liable for any violations as provided in said statute and ordinance.

(ii) Artist certifies that:

- a. At the time of its execution of this Agreement, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement, nor will it knowingly employ or contract with a worker without authorization to perform work under this Agreement in the future.
- b. It will participate in the E-Verify Program, as defined in C.R.S. § 8-17.5-101(3.7) to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.
- c. It shall not enter into a contract with a subcontractor or subconsultant that fails to certify to Artist that it shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.
- d. It is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement and it has complied with all federal requirements regarding the use of the E-Verify program, including, by way of example, requirements related to employee notification and preservation of employee rights.
- e. If it obtains actual knowledge that a subcontractor or subconsultant performing work under the Agreement knowingly employs or contracts with a worker without authorization, it will notify such subcontractor

and the City within three (3) days. Artist will also then terminate such subcontractor or subconsultant if within three (3) days after such notice the subcontractor or subconsultant does not stop employing or contracting with the worker without authorization, unless during such three-day period the subcontractor or subconsultant provides information to establish that the subcontractor or subconsultant has not knowingly employed or contracted with a worker without authorization.

- f. It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of C.R.S. § 8-17.5-102(5), or the City Auditor under authority of D.R.M.C. § 20-90.3.

(iii) Artist is liable for any violations as provided in the Certification Ordinance. If Artist violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If this Agreement is so terminated, Artist shall be liable for actual and consequential damages to the City. Any termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Artist from submitting bids or proposals for future contracts with the City.

#### **14. SENSITIVE SECURITY INFORMATION:**

Artist acknowledges that, in the course of performing its work under this Agreement, Artist may be given access to Sensitive Security Information (“SSI”), as material is described in the Code of Federal Regulations, 49 C.F.R. Part 1520. Artist specifically agrees to comply with all requirements of the applicable federal regulations, including but not limited to, 49 C.F.R. Parts 15 and 1520. Artist understands any questions it may have regarding its obligations with respect to SSI must be referred to DEN’s Security Office.

#### **15. DEN SECURITY:**

**A.** Artist, its officers, authorized officials, employees, agents, subcontractors, and those under its control, shall comply with safety, operational, or security measures required of Artist or the City by the FAA or TSA. If Artist, its officers, authorized officials, employees, agents, subcontractors or those under its control, fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against the City, then, in addition to any other remedies available to the City, Artist shall fully reimburse the City any fines or penalties levied against the City, and any attorney fees or related costs paid by the City as a result of any such violation. Artist must pay this amount within fifteen (15) days from the date of the invoice or written notice. Any fines and fees assessed by the FAA or TSA against the City due to the actions of Artist and/or its agents will be deducted directly from the invoice for that billing period.

**B.** Artist is responsible for compliance with Airport Security regulations and 49 C.F.R. Parts 1542 (Airport Security) and 14 C.F.R. Parts 139 (Airport Certification and Operations). Any and all violations pertaining to Parts 1542 and 139 resulting in a fine will be passed on to and borne by Artist. The fee/fine will be deducted from the invoice at time of billing.

**16. FEDERAL RIGHTS:**

This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for airport purposes and the expenditure of federal funds for the extension, expansion or development of the Airport System. As applicable, Artist shall comply with the Standard Federal Assurances identified in *Appendix 1*.

**17. CONTRACT DOCUMENTS; ORDER OF PRECEDENCE:**

**A. Attachments.** This Agreement consists of Section 1 through 18 which precede the signature page, and the following attachments which are incorporated herein and made a part hereof by reference:

- Appendix 1: Standard Federal Assurances
- Exhibit A: Scope of Work
- Exhibit B: Milestone Deliverables and Payout Amounts
- Exhibit C: Insurance Requirements
- Exhibit D: Plaque Specifications
- Exhibit E: Final Design
- Exhibit F: Installation and Safety Plan with Progress Reports
- Exhibit G: Maintenance Manual
- Exhibit H: Acceptance Letter

**B. Order of Precedence.** In the event of an irreconcilable conflict between a provision of Section 1 through 18 and any of the listed attachments or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

- Appendix 1
- Section 1 through Section 18 hereof
- Exhibit A
- Exhibit B
- Exhibit E
- Exhibit F
- Exhibit C
- Exhibit D
- Exhibit G
- Exhibit H

**18. CITY EXECUTION OF AGREEMENT:**

**A. City Execution.** This Agreement is expressly subject to, and shall become effective upon, the execution of all signatories of the City and, if required, the approval of Denver City Council. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same.

**B. Electronic Signatures and Electronic Records.** The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City and/or Artist 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.

**[SIGNATURE PAGES TO FOLLOW  
AFTER APPENDIX]**

## **APPENDIX 1**

### **Standard Federal Assurances and Nondiscrimination Non-Federal Contract Provision**

## A5 CIVIL RIGHTS - GENERAL

The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

## A6 CIVIL RIGHTS – TITLE VI ASSURANCE

Title VI Solicitation Notice:

The (**Name of Sponsor**), in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, [select disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

### **Compliance with Nondiscrimination Requirements:**

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will

permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

#### **CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY**

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of the Airport Improvement Program grant assurances.

**NOW, THEREFORE**, the Federal Aviation Administration as authorized by law and upon the condition that the (*Title of Sponsor*) will accept title to the lands and maintain the project constructed thereon in accordance with (*Name of Appropriate Legislative Authority*), for the (**Airport Improvement Program or other program for which land is transferred**), and the policies and procedures prescribed by the Federal Aviation Administration of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 USC § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the (*Title of Sponsor*) all the right, title and interest of the U.S. Department of Transportation/Federal Aviation Administration in and to said lands

described in (*Exhibit A attached hereto or other exhibit describing the transferred property*) and made a part hereof.

**(HABENDUM CLAUSE)**

**TO HAVE AND TO HOLD** said lands and interests therein unto (*Title of Sponsor*) and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the (*Title of Sponsor*), its successors and assigns.

The (*Title of Sponsor*), in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]\* (2) that the (*Title of Sponsor*) will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the Federal Aviation Administration and its assigns as such interest existed prior to this instruction].\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

**CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED  
UNDER THE AIRPORT IMPROVEMENT PROGRAM**

The following clauses will be included in (deeds, licenses, leases, permits, or similar instruments) entered into by the (*Title of Sponsor*) pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
  1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services



in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, (*Title of Sponsor*) will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*
- C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the (*Title of Sponsor*) will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the (*Title of Sponsor*) and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

**CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED  
UNDER THE ACTIVITY, FACILITY OR PROGRAM**

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by (*Title of Sponsor*) pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above nondiscrimination covenants, (*Title of Sponsor*) will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*

- C. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, (*Title of Sponsor*) will there upon revert to and vest in and become the absolute property of (*Title of Sponsor*) and its assigns. \*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

#### **Title VI List of Pertinent Nondiscrimination Acts and Authorities**

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with

disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

#### **A17 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)**

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The [*Contractor / Consultant*] has full responsibility to monitor compliance to the referenced statute or regulation. The [*Contractor / Consultant*] must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

#### **A20 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

**Contract Control Number:** PLANE-202264226-00  
**Contractor Name:** MYTHOGRAPH INC

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:**

PLANE-202264226-00  
MYTHOGRAPH INC

DocuSigned by:  
*Kipp Kobayashi*  
By: C99742CD28684D7...

Name: Kipp Kobayashi  
(please print)

Title: President  
(please print)

ATTEST: [if required]

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

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

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



DENVER INTERNATIONAL AIRPORT  
DEN Public Art  
Scope of Work – Public Art Contract: “The Cosmology of Flight” by Kipp Kobayashi

## **Exhibit A** **“The Cosmology of Flight” by Kipp Kobayashi**

**CIP Project:** DEN Concourse Expansion Program  
**LOCATION:** Concourse B-West Expansion Site  
**BUDGET:** \$2,500,000.00

### **PROJECT OVERVIEW**

This contract is for a new public artwork within the Concourse B-West expansion site as part of the Concourse Expansion Program at DEN. The artist will create a suspended artwork constructed from stainless-steel welded mesh titled, *The Cosmology of Flight*. The artwork which is inspired by scale, perception and size will activate the center circulation space of the newly constructed Concourse B-West expansion with a life-sized 767 aircraft. The translucent dream like sculpture will allow passengers the uncommon view an airplane up-close to appreciate the modern marvel of air travel.

The artwork aims to offer a sense of place within the airport and aid in navigation for our passengers while additionally providing a sense of wonder. The installation will be 140’ L x 25’ W x 20’ D with a maximum budget of \$2,500,000.00.

The artist and his concept have been selected through a competitive process per Denver's Public Art Policy and Ordinance. This art project is tied to the Concourse Expansion Program per the Public Art Ordinance and is funded through 1% CIP Public Art dollars. The Request for Qualifications (RFQ) was publicly released in August 2021 for artists internationally to apply, and three artists were asked to create a site-specific proposal. Kipp Kobayashi was unanimously awarded the project from the Public Art Selection Panel on May 10th, 2022. The selection panel's decision has been ratified by the Public Art Committee on May 31<sup>st</sup>, Denver Commission of Cultural Affairs on June 7<sup>th</sup>, 2022, and is currently with the Denver Mayor's Office for final approval.

### **The artist has a project team as follows and was part of the selection criteria of the Public Art Selection Panel:**

- The artist is the sole designer of the artwork and awarded per the Public Art Policy and Ordinance
- The artist will work with local art fabrication company Demiurge LLC for all fabrication, installation and transportation needs.
- Nick Geurts who is prominent within the local art community will handle all engineering needs and is licensed in the State of Colorado.

### **SCOPE OF WORK**

Kipp Kobayashi and team will work with the DEN Public Art, Concourse Expansion Program, Airport Planning and Design Teams along with necessary stakeholders for the design, engineering, fabrication and installation of the sculpture, “The Cosmology of Flight” within the Concourse B-West expansion site at DEN.

1. Artist shall perform all services and furnish all supplies, materials, and equipment as necessary for the conception and design of the artwork, including but not limited to, payments for all necessary taxes, permits, insurance, small tools, any subconsultants, rental equipment, and all other items incidental to producing a complete and acceptable artwork.



DENVER INTERNATIONAL AIRPORT  
DEN Public Art

Scope of Work – Public Art Contract: “The Cosmology of Flight” by Kipp Kobayashi

2. The work includes all design of the complete artwork including but not limited to associated foundations, mounting brackets or devices, electronic components, video components and all other miscellaneous components necessary to complete the fabrication and installation of the artwork.
3. Artist shall determine the artistic expression, scope, design, color, size, material and texture of the Work, subject to review and acceptance by the City/ Denver International Airport as defined by the selected concept.
4. Artist shall provide a plaque at the designed site, according to the specifications set forth by DEN Arts. Plaque specifications will be determined during the Final Design phase.
5. Artist shall be responsible for the payment of all storage, transportation or shipping of the artwork to the site.
6. The Artist shall, if applicable, comply with all the City and County of Denver Department of Transportation and Infrastructure, Standard Specifications for Construction (“Yellow Book”) and permitting or engineering requirements of Denver International Airport.
7. Upon final acceptance and completion of the artwork, the artist will appear for a public appearance and final dedication event.

**PHASING:**

1. Phase I Notice to Proceed:  
Upon execution of this Agreement, the City shall issue a NTP to Artist. Once the NTP has been issued, Artist may begin the next phase of the agreement.
2. Phase II Site and Design Research:  
Artist shall undertake site and design research. Artist will review all design items, BIM Models, architectural drawings, engineering documents, site plans and design specifications of the site, and coordinate any necessary meetings with DEN Arts or other stakeholders to develop the Work design.
3. Phase III Preliminary Design:  
Artist shall develop and submit a minimum of one (1) and maximum of three (3) Preliminary Designs, which may be accepted or rejected in City’s sole discretion. Artist shall prepare and submit to DEN Arts detailed working drawings of the Work, including site specific information, initial preliminary costs and other materials as reasonably requested by the City. Following initial review, the Director may request up to two (2) material revisions to the proposed Preliminary Design, which shall be updated and re-submitted for approval as the Final Design. The City may request revisions for other practical, safety and or nonaesthetic reasons. DEN DRC and DEN Arts must approve the Preliminary Design before Artist proceeds to the next phase of the Agreement.
4. Phase IV Final Design:  
Artist shall submit a Final Design for review and approval by the City. The Final Design shall have a stamped approval of structural integrity by a professional engineer – or another relevant expert – certified or licensed to practice in Colorado. The Final Design shall include a definition of the type of materials and equipment to be used, a full set of design documents, – including the plaque design, a budget related to the Work and a tentative fabrication and installation schedule.



DENVER INTERNATIONAL AIRPORT

DEN Public Art

Scope of Work – Public Art Contract: “The Cosmology of Flight” by Kipp Kobayashi

Artist shall include all estimated costs for design, execution, fabrication, insurance, permitting, contingencies, consultant fees, and any other costs associated with the Work to be approved by the City. The Final Design shall also include a written statement detailing anticipated regular and routine maintenance.

5. Phase V Project Installation and Safety Plan:

Artist shall provide an Installation and Safety Plan to the City for the Work. This Plan must include:

- a) How Artist will integrate the work into the agreed upon site;
- b) Timeline of fabrication and installation sequencing;
- c) Budget breakdown of sequencing; and
- d) Progress reports schedule.

Artist shall work with DEN Art Team, DEN Architecture, Operations, Ground Transportation, Transportation Security Administration (“TSA”), Federal Aviation Administration (“FAA”) and any other necessary stakeholders in development of the Plan.

6. Phase VI Fabrication:

Artist shall begin the fabrication process per the approved sequencing schedule. Artist shall complete the fabrication of the Work in conformity with the approved Final Design. Artist will notify the City in writing at mid-point fabrication completion and in accordance with the approved sequencing schedule.

7. Phase VII Delivery and Installation:

Artist shall notify the City in writing when the fabrication of the Work is completed and begin coordination with DEN Arts, Operations, Ground Transportation, Airline partners, FAA, TSA, and any other necessary stakeholders for the installation process. The completed Work shall be delivered to the site in compliance with an installation plan coordinated and approved by DEN Arts. Artist shall provide a plaque at the site.

8. Phase VIII Final Acceptance:

Artist shall furnish the City with full copies of any photographic or video documentation in digital format of the completed installed Work. Artist shall, prior to Final Acceptance of the Work by the City, provide the City with lien and/or claim releases from contractor, subcontractors, and suppliers on the Project and shall otherwise comply with the provisions of C.R.S. §38-26-107. Having overseen the installation of the Work, Artist must officially approve the work done, and the City must also give final approval of the Work in writing.

9. Phase IX Public Appearance:

The artist shall make at least one public appearance in Denver, on behalf of the Project as a means of promoting the Project and the studio’s work. This could take the form of a public presentation, a panel discussion, a series of outreach events, or other similar type of event as agreed upon.







**Denver International Airport, PROJECT SITE—"ARTWORK NAME" - Preliminary / Final Project Budget**

Artist Name

Date

Artwork Description

Item	Quantities	Unit Cost	Item Total	Description
<b>1.0 ENGINEERING &amp; GRAPHICS</b>				
1.01 Mock-ups	UNIT	\$ UNIT COST	\$	
1.02 Shop Drawings	UNIT	\$ UNIT COST	\$	
1.03 Renderings	UNIT	\$ UNIT COST	\$	
1.04 3D Modeling	UNIT	\$ UNIT COST	\$	
1.05 Structural Engineering	UNIT	\$ UNIT COST	\$	
1.06 Electrical Engineering	UNIT	\$ UNIT COST	\$	
1.07 Plaque Design	UNIT	\$ UNIT COST	\$	
<b>Subtotal</b>			<b>\$0</b>	<b>\$ SUB TOTAL</b>

Item	Quantities	Unit Cost	Item Total	Description
<b>2.0 ARTWORK MATERIALS &amp; FABRICATION</b>				
2.01 Materials (list each)	UNIT	\$ UNIT COST	\$	
2.02 Labor (list each)	UNIT	\$ UNIT COST	\$	
2.03 Structural Hardware	UNIT	\$ UNIT COST	\$	
2.04 Tools / Equipment	UNIT	\$ UNIT COST	\$	
2.05 Templates	UNIT	\$ UNIT COST	\$	
2.06 Transportation	UNIT	\$ UNIT COST	\$	
2.07 Crating	UNIT	\$ UNIT COST	\$	
2.08 Shipping	UNIT	\$ UNIT COST	\$	
2.09 Insurance on Artwork in Transit	UNIT	\$ UNIT COST	\$	
2.10 Plaque Fabrication	UNIT	\$ UNIT COST	\$	
<b>Subtotal</b>			<b>\$0</b>	<b>\$ SUB TOTAL</b>

Item	Quantities	Unit Cost	Item Total	Description
<b>3.0 BUILDING AND ELECTRICAL MODIFICATIONS</b>				
3.01 Foundation and Base Site Integration	UNIT	\$ UNIT COST	\$	
3.02 Modifications to Site Electrical	UNIT	\$ UNIT COST	\$	
3.03 Other Structural Site Alterations	UNIT	\$ UNIT COST	\$	
3.04 Labor and Materials	UNIT	\$ UNIT COST	\$	
<b>Subtotal</b>			<b>\$0</b>	<b>\$ SUB TOTAL</b>

Item	Quantities	Unit Cost	Item Total	Description
<b>4.0 SITE WORK &amp; INSTALLATION</b>				
4.01 Offload Artwork at Site	UNIT	\$ UNIT COST	\$	
4.02 Artwork Assembly	UNIT	\$ UNIT COST	\$	
4.03 Equipment Rentals	UNIT	\$ UNIT COST	\$	
4.04 Artwork Installation	UNIT	\$ UNIT COST	\$	
4.05 Electrical Installation	UNIT	\$ UNIT COST	\$	
4.05 Barricades and Safety Equipment	UNIT	\$ UNIT COST	\$	
4.06 Artwork Plaque Installation	UNIT	\$ UNIT COST	\$	
<b>Subtotal</b>			<b>\$0</b>	<b>\$ SUB TOTAL</b>



Item	Quantities	Unit Cost	Item Total	Description
<b>5.0 FEES &amp; EXPENSES</b>				
5.01 Permit Fees	UNIT	\$ UNIT COST	\$	
5.02 Permit Log-in Review Fee	UNIT	\$ UNIT COST	\$	
5.03 Permit Fees	UNIT	\$ UNIT COST	\$	
5.04 Inspections and Testing	UNIT	\$ UNIT COST	\$	
5.05 Liability & Builders Risk Insurance	UNIT	\$ UNIT COST	\$	
5.06 Taxes	UNIT	\$ UNIT COST	\$	
<b>Subtotal</b>			<b>\$0</b>	<b>\$ SUB TOTAL</b>

Item	Quantities	Unit Cost	Item Total	Description
<b>6.0 PROJECT ADMINISTRATION</b>				
6.01 Artist Fee	UNIT	\$ UNIT COST	\$	
6.02 Studio Expenses	UNIT	\$ UNIT COST	\$	
6.03 Storage Rentals	UNIT	\$ UNIT COST	\$	
6.04 Administration	UNIT	\$ UNIT COST	\$	
6.05 Documentation	UNIT	\$ UNIT COST	\$	
6.06 Travel	UNIT	\$ UNIT COST	\$	
6.07 Contingency Funds	UNIT	\$ UNIT COST	\$	
<b>Subtotal</b>			<b>\$0</b>	<b>\$ SUB TOTAL</b>

CONSTRUCTION SUBTOTAL	\$
FEES & EXPENSES	\$
<b>SUBTOTAL</b>	<b>\$</b>
ORIGINAL CONTRACT AMOUNT	\$
<b>OVERAGE COSTS</b>	<b>\$</b>
<b>TOTAL ARTWORK COST</b>	<b>\$0</b>

PROJECT EXPENDITURES SPENT WITHIN COLORADO \$

Notes on budget items:



DENVER INTERNATIONAL AIRPORT

DEN Public Art

Milestone Payment Schedule – “The Cosmology of Flight” by Kipp Kobayashi

**Exhibit B**  
**MILESTONE PAYMENTS**

<b>Payment</b>	<b>%</b>	<b>Amount</b>
Execution of Contract/Notice to Proceed	5%	\$125,000.00
Site and Design Research	5%	\$125,000.00
Preliminary Design Submission	10%	\$250,000.00
Final Design Submission	30%	\$ 750,000.00
Project Installation and Safety Plan	5%	\$125,000.00
Fabrication Mid-Point Complete	20%	\$500,000.00
Delivery and Installation	20%	\$500,000.00
Final Acceptance	5%	\$125,000.00
<b>TOTAL</b>	<b>100%</b>	<b>\$2,500,000.00</b>

## EXHIBIT C

### CITY AND COUNTY OF DENVER INSURANCE REQUIREMENTS FOR DEPARTMENT OF AVIATION PROFESSIONAL SERVICES AGREEMENT

#### A. Certificate Holder and Submission Instructions

Contractor must provide a Certificate of Insurance as follows:

Certificate Holder: CITY AND COUNTY OF DENVER  
Denver International Airport  
8500 Peña Boulevard  
Denver CO 80249  
Attn/Submit to: [insert specific DEN email address for the given contract]

- ACORD Form (or equivalent) certificate is required.
- Contractor must be evidenced as a Named Insured party.
- Electronic submission only, hard copy documents will not be accepted.
- Reference on the certificate must include the City-assigned Contract Number, if applicable.

The City may at any time modify submission requirements, including the use of third-party software and/or services, which may include an additional fee to the Contractor.

#### B. Defined Terms

1. “Agreement” as used in this exhibit refers to the contractual agreement to which this exhibit is attached, irrespective of any other title or name it may otherwise have.
2. “Contractor” as used in this exhibit refers to the party contracting with the City and County of Denver pursuant to the attached Agreement.

#### C. Coverages and Limits

##### 1. Commercial General Liability

Contractor shall maintain insurance coverage including bodily injury, property damage, personal injury, advertising injury, independent contractors, and products and completed operations in minimum limits of \$1,000,000 each occurrence, \$2,000,000 products and completed operations aggregate; if policy contains a general aggregate, a minimum limit of \$2,000,000 annual policy aggregate must be maintained.

- a. Coverage shall include Contractual Liability covering liability assumed under this Agreement (including defense costs assumed under contract) within the scope of coverages provided.
- b. Coverage shall include Mobile Equipment Liability, if used to perform services under this Agreement.
- c. If a “per location” policy aggregate is required, “location” shall mean the entire airport premises.

##### 2. Business Automobile Liability

Contractor shall maintain a minimum limit of \$1,000,000 combined single limit each occurrence for bodily injury and property damage for all owned, leased, hired and/or non-owned vehicles used in performing services under this Agreement.

- a. If operating vehicles unescorted airside at DEN, a \$10,000,000 combined single limit each occurrence for bodily injury and property damage is required.
- b. If Contractor does not have blanket coverage on all owned and operated vehicles and will require unescorted airside driving privileges, then a schedule of insured vehicles (including year, make, model and VIN number) must be submitted with the Certificate of Insurance.

- c. If transporting waste, hazardous material, or regulated substances, Contractor shall carry a Broadened Pollution Endorsement and an MCS 90 endorsement on its policy.
  - d. If Contractor does not own any fleet vehicles and Contractor's owners, officers, directors, and/or employees use their personal vehicles to perform services under this Agreement, Contractor shall ensure that Personal Automobile Liability including a Business Use Endorsement is maintained by the vehicle owner, and if appropriate, Non-Owned Auto Liability by the Contractor. This provision does not apply to persons solely commuting to and from the airport.
  - e. If Contractor will be completing all services to DEN under this Agreement remotely and not be driving to locations under direction of the City to perform services this requirement is waived.
3. **Workers' Compensation and Employer's Liability Insurance**  
Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits no less than \$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.
- a. Colorado Workers' Compensation Act allows for certain, limited exemptions from Worker's Compensation insurance coverage requirements. It is the sole responsibility of the Contractor to determine their eligibility for providing this coverage, executing all required documentation with the State of Colorado, and obtaining all necessary approvals. Verification document(s) evidencing exemption status must be submitted with the Certificate of Insurance.
4. **Property Insurance**  
Contractor is solely responsible for any loss or damage to its real or business personal property located on DEN premises including, but not limited to, materials, tools, equipment, vehicles, furnishings, structures and personal property of its employees and subcontractors unless caused by the sole, gross negligence of the City. If Contractor carries property insurance on its property located on DEN premises, a waiver of subrogation as outlined in Section F will be required from its insurer.
5. **Professional Liability (Errors and Omissions) Insurance**  
Contractor shall maintain a minimum limit of \$1,000,000 each claim and annual policy aggregate, providing coverage for all applicable professional services outlined in this Agreement.
6. **Unmanned Aerial Vehicle (UAV) Liability:**  
If Contractor desires to use drones in any aspect of its work or presence on DEN premises, the following requirements must be met prior to commencing any drone operations:
- a. Express written permission must be granted by DEN.
  - b. Express written permission must be granted by the Federal Aviation Administration (FAA).
  - c. Drone equipment must be properly registered with the FAA.
  - d. Drone operator(s) must be properly licensed by the FAA.
  - e. Contractor must maintain UAV Liability including flight coverage, personal and advertising injury liability, and hired/non-owned UAV liability for its commercial drone operations with a limit no less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
7. **Excess/Umbrella Liability**  
Combination of primary and excess coverage may be used to achieve minimum required coverage limits. Excess/Umbrella policy(ies) must follow form of the primary policies with which they are related to provide the minimum limits and be verified as such on any submitted Certificate of Insurance.

**D. Reference to Project and/or Contract**

The City Project Name, Title of Agreement and/or Contract Number and description shall be noted on the Certificate of Insurance, if applicable.

**E. Additional Insured**

For all coverages required under this Agreement (excluding Workers' Compensation, Employer's Liability and Professional Liability, if required), Contractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, successors, agents, employees, and volunteers as Additional Insureds by policy endorsement.

**F. Waiver of Subrogation**

For all coverages required under this Agreement (excluding Professional Liability, if required), Contractor's insurer(s) shall waive subrogation rights against the City and County of Denver, its elected and appointed officials, successors, agents, employees, and volunteers by policy endorsement.

If Contractor will be completing all services to the City under this Agreement remotely and not be traveling to locations under direction of the City to perform services, this requirement is waived specific to Workers' Compensation coverage.

**G. Notice of Material Change, Cancellation or Nonrenewal**

Each certificate and related policy shall contain a valid provision requiring notification to the Certificate Holder in the event any of the required policies be canceled or non-renewed or reduction in required coverage before the expiration date thereof.

1. Such notice shall reference the DEN assigned contract number related to this Agreement.
2. Such notice shall be sent thirty (30) calendar days prior to such cancellation or non-renewal or reduction in required coverage unless due to non-payment of premiums for which notice shall be sent ten (10) calendar days prior.
3. If such written notice is unavailable from the insurer or afforded as outlined above, Contractor shall provide written notice of cancellation, non-renewal and any reduction in required coverage to the Certificate Holder within three (3) business days of receiving such notice by its insurer(s) and include documentation of the formal notice received from its insurer(s) as verification. Contractor shall replace cancelled or nonrenewed policies with no lapse in coverage and provide an updated Certificate of Insurance to DEN.
4. In the event any general aggregate or other aggregate limits are reduced below the required minimum per occurrence limits, Contractor will procure, at its own expense, coverage at the requirement minimum per occurrence limits. If Contractor cannot replenish coverage within ten (10) calendar days, it must notify the City immediately.

**H. Cooperation**

Contractor agrees to fully cooperate in connection with any investigation or inquiry and accept any formally tendered claim related to this Agreement, whether received from the City or its representative. Contractor's failure to fully cooperate may, as determined in the City's sole discretion, provide cause for default under the Agreement. The City understands acceptance of a tendered claim does not constitute acceptance of liability.

**I. Additional Provisions**

1. Deductibles or any type of retention are the sole responsibility of the Contractor.
2. Defense costs shall be in addition to the limits of liability. If this provision is unavailable that limitation must be evidenced on the Certificate of Insurance.
3. Coverage required may not contain an exclusion related to operations on airport premises.
4. A severability of interests or separation of insureds provision (no insured vs. insured exclusion) is included under all policies where Additional Insured status is required.
5. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City under all policies where Additional Insured status is required.
6. If the Contractor procures or maintains insurance policies with coverages or limits beyond those stated herein, such greater policies will apply to their full effect and not be reduced or limited by the minimum requirements stated herein.

7. All policies shall be written on an occurrence form. If an occurrence form is unavailable or not industry norm for a given policy type, claims-made coverage will be accepted by the City provided the retroactive date is on or before the Agreement Effective Date or the first date when any goods or services were provided to the City, whichever is earlier, and continuous coverage will be maintained or an extended reporting period placed for three years (eight years for construction-related agreements) beginning at the time work under this Agreement is completed or the Agreement is terminated, whichever is later.
8. Certificates of Insurance must specify the issuing companies, policy numbers and policy periods for each required form of coverage. The certificates for each insurance policy are to be signed by an authorized representative and must be submitted to the City at the time Contractor signed this Agreement.
9. The insurance shall be underwritten by an insurer licensed or authorized to do business in the State of Colorado and rated by A.M. Best Company as A- VIII or better.
10. Certificate of Insurance and Related Endorsements: The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. All coverage requirements shall be enforced unless waived or otherwise modified in writing by DEN Risk Management. Contractor is solely responsible for ensuring all formal policy endorsements are issued by their insurers to support the requirements.
11. The City shall have the right to verify, at any time, all coverage, information, or representations, and the insured and its insurance representatives shall promptly and fully cooperate in any such audit the City may elect to undertake including provision of copies of insurance policies upon request. In the case of such audit, the City may be subject to a non-disclosure agreement and/or redactions of policy information unrelated to verification of required coverage.
12. No material changes, modifications, or interlineations to required insurance coverage shall be allowed without the review and written approval of DEN Risk Management.
13. Contractor shall be responsible for ensuring the City is provided updated Certificate(s) of Insurance prior to each policy renewal.
14. Contractor's failure to maintain required insurance shall be the basis for immediate suspension and cause for termination of this Agreement, at the City's sole discretion and without penalty to the City.

#### **J. Part 230 and the DEN Airport Rules and Regulations**

If the minimum insurance requirements set forth herein differ from the equivalent types of insurance requirements in Part 230 of the DEN Airport Rules and Regulations, the greater and broader insurance requirements shall supersede those lesser requirements, unless expressly excepted in writing by DEN Risk Management. Part 230 applies to Contractor and its subcontractors of any tier.

#### **K. Applicability of ROCIP Requirements**

The City and County of Denver and Denver International Airport (hereinafter referred to collectively as "DEN") has arranged for certain construction activities at DEN to be insured under an Owner Controlled Insurance Program (OCIP) or a Rolling Owner Controlled Insurance Program (ROCIP) (hereinafter collectively referred to as "ROCIP"). A ROCIP is a single insurance program that insures DEN, the Contractor and subcontractors of any tier, and other designated parties (Enrolled Parties), for work performed at the Project Site. **Contractor is NOT eligible for or provided insurance coverage under a ROCIP program. Contractor must provide its own insurance as specified in this Agreement. If Contractor is assigned work to be conducted within a ROCIP Project Site it must comply with the provisions of the DEN ROCIP Safety Manual, which is part of the Contract Documents and which is linked below to the most recent manual.**

[DEN ROCIP Safety Manual](#)

DEN is additionally providing links to the DEN ROCIP Insurance Manual and the DEN ROCIP Claims Guide solely for Contractor's information.

[DEN ROCIP Insurance Manual](#)  
[DEN ROCIP Claims Guide](#)





**Notice of Change to ROCIP:** DEN reserves the right to assign work per task order to a specific ROCIP program, if more than one is active, as well as terminate or modify a DEN ROCIP or any portion thereof. Further, dependent on factors including, but not limited to, the official timing and duration of the ROCIP project for which services are provided or related to under this Agreement, DEN may need to transition from one ROCIP program to another and introduce corresponding requirements for contractors. DEN will provide Contractor notice of changes regarding a ROCIP program as applicable to Contractor's work or responsibilities under the ROCIP Safety Manual.

## Exhibit D

**Title**  
**Artist**

**Public Art Program - 20XX**  
**City and County of Denver**  
**Denver Commission on Cultural Affairs**



**PUBLIC ART**  
**DENVER ARTS & VENUES**



General Notes:

1. Scale: Proportional.
2. Size and Layout: Dependent on project site and artwork. To be determined by DEN Arts and Design Review Committee during final design phase.
3. Material: Subject to project: Bronze, Aluminum, or material relevant to project. Smooth surface on raised areas; field area enameled, provide stud anchors at back to secure plaque to substrate, or provide alternate mounting acceptable to City.

**EXHIBIT E**

**RESERVED FOR FINAL DESIGN**

**[INTENTIONALLY LEFT BLANK]**

**EXHIBIT F**

**RESERVED FOR INSTALLATION AND SAFETY PLAN WITH PROGRESS  
REPORTS**

**[INTENTIONALLY LEFT BLANK]**

**EXHIBIT G**

**RESERVED FOR MAINTENANCE MANUAL**

**[INTENTIONALLY LEFT BLANK]**

**EXHIBIT H**

**RESERVED FOR ACCEPTANCE LETTER**

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