

## **FUNDING AND ASSIGNMENT AGREEMENT**

**THIS FUNDING AND ASSIGNMENT AGREEMENT** (the “Agreement”), by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **THE DENVER ART MUSEUM**, a Colorado nonprofit corporation (the “DAM”).

### **RECITALS**

**WHEREAS**, the qualified and registered voters of the City approved by a margin of 71% referred question 2B on November 7, 2017, approving the issuance of general obligation bonds (the “**Bonds**”) by the City in the aggregate principal amount of \$116,907,000.00 for the purpose of financing the cost of repairs and improvements to Denver cultural facilities; and

**WHEREAS**, the DAM is a treasured resource in Denver’s cultural community that enriches the lives of the citizens of Denver and beyond; and

**WHEREAS**, the DAM secured more than \$100 million in private funds to support improvements to the campus; and

**WHEREAS**, the qualified and registered voters approved the renovation, preservation and expansion of the Denver Art Museum North Building, an architectural icon and the only building in the United States designed by architect Gio Ponti; and

**WHEREAS**, the qualified and registered voters intended specific improvement to the infrastructure and systems throughout the facility; and

**WHEREAS**, the completed renovation will serve the every corner of the city by welcoming all citizens to experience art installations representing cultures around the world, expanded educational offerings to support school and youth programs and new, unprecedented views of the Front Range and Civic Center; and

**WHEREAS**, the DAM intends to implement and improve critical systems, energy efficiency and accessibility throughout the North Building and Welcome Center. and the City desires to make a part of the proceeds, totaling an amount not to exceed \$35,500,000 of the Bonds (the “Proceeds”), available to fund costs associated with the above-stated improvements to the buildings and grounds all as more fully described below (the “**Project**”), in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, the DAM is willing and has the present capacity to satisfactorily complete and operate the Project for the use and benefit of the citizens of the City, as specified herein; and

**WHEREAS**, the DAM is willing to advance private funds for the Project that the City will repay with Proceeds when and if the Bonds are issued; and

**WHEREAS**, the undertaking of this Project is in accordance with the agreements by which the City has designated the DAM as the City's Agency for art (the "DAM Agreements"); and

**WHEREAS**, the City and the DAM desire to specify the conditions upon which the Proceeds and any private funds advanced by the DAM will be used by the DAM for the purposes of completing the Project.

**NOW, THEREFORE**, in consideration of the above, and the mutual promises and covenants contained herein, the City and the DAM agree as follows:

**1.     The Project**: The "Project," as used herein, refers to the improvements to be designed, constructed, and installed by the DAM at the Denver Art Museum as described in **EXHIBIT A**. The Project will be funded in part by the Proceeds, to the extent such Proceeds are made available hereunder. The DAM will perform or cause to be performed all work items and provide all supplementary funds necessary to satisfactorily complete the Project in accordance with the terms and conditions of this Agreement. The DAM is to notify the "Manager" of any material scope or budget revisions to EXHIBIT A for review and approval.

**2.     Coordination and Liaison**:

A.     The City's Program Implementation Manager (the "Manager") is vested with the authority to act on behalf of the City in performing the City's obligations under this Agreement. The Manager may designate someone to act on the Manager's behalf as the authorized representative. The City may change its authorized representative at any time by providing written notice to the DAM of such change.

B.     Christoph Heinrich, Frederick & Jan Mayer Director of the DAM, is the DAM's authorized representative under this Agreement and, as such, is responsible for overseeing the satisfactory completion of the Project, in accordance with the terms and conditions of this Agreement. The DAM may change its authorized representative at any time by providing written notice to the City of such change. The DAM's authorized representative shall devote reasonable time and good faith efforts to such responsibility and in connection

therewith shall not have personal liability with respect to the Project in the absence of the authorized representative's gross negligence and willful neglect.

3. **City Payment and Related Responsibilities:**

A. As consideration for the performance of the DAM under this Agreement and in order to enhance the ability of the DAM to perform the functions and services set forth in the DAM Agreements, the City agrees to pay the Proceeds in partial fulfillment of the cost of completing the Project. All other expenditures required to complete the Project or other costs associated with the Project are solely the responsibility of the DAM and shall be paid by the DAM. When and if the Bonds are issued, the City will repay with Proceeds expenses paid by the DAM toward the Project. If the parties mutually agree to utilize on-call City contracts to complete work on the Project, the value of that work shall be deducted from the Proceeds available to reimburse the DAM.

Unless otherwise specified herein, the Proceeds shall be made available to the DAM to be expended to pay capital costs incurred in completing the Project as specified in Exhibit A. The DAM will not utilize the Proceeds for operating or other working capital expenditures. The DAM shall submit to the "Manager" any use of Proceeds for furniture, fixtures and equipment for prior review and approval.

B. Upon the City's receipt of the Proceeds, the City agrees to pay to the DAM the Proceeds from available funds upon notice from the DAM that it is ready to commence the Project and as draws are submitted and approved by the Manager and the City's Chief Financial Officer, or his designee, for payment from the Proceeds, as further described in paragraph 5B below.

C. Upon obtaining a Certificate of Occupancy for the Project, the DAM will provide to the City an accounting of all Proceeds and other funds expended on the Project and attaching all required or requested supporting documentation. Such accounting, including supporting documentation, shall be sufficient to demonstrate that the Proceeds have been expended only for actual costs associated with the completion of the Project and in accordance with the terms and conditions of this Agreement. The accounting shall itemize the expenditure of the Proceeds for the scope of work described in Exhibit A.

D. The parties agree that the obligation of the City for all or any part of its payment obligation hereunder, whether direct or indirect, shall extend only to the payment of the

Proceeds that are duly and lawfully appropriated by the City Council for the purpose of this Agreement.

4. **Assignment**: Pursuant to the authority granted in Section 2.3.3(A) of the City Charter, the Mayor hereby assigns to the DAM, as agent for the City under the DAM Agreements, all matters relating to the design, planning, and construction of the Project, including any demolition, and the qualification, selection and retention of all consultants, architects, and contractors engaged in connection therewith.

5. **The DAM Responsibilities**: Except as otherwise provided in this Agreement, the DAM shall have sole responsibility with respect to undertaking and completing the Project in accordance with this Agreement.

A. The DAM shall submit design plans and specifications for such work to the Manager for the written approval of said documents by the Manager. Design review will include a review for safety engineering purposes by City's insurance carrier and the City's Risk Management office, which review and recommendation will be reported to the Manager. The design plans and specifications will be approved or disapproved, in writing, with the reasons for any disapproval being stated, within thirty (30) days of receipt of complete sets of design plans and specifications. Any deficiencies in said plans and specifications shall be remedied by the DAM, to the reasonable satisfaction of the Manager, prior to the commencement of additional work. All plans previously approved through proper City process at the signing of this agreement shall be considered approved by the Manager.

B. The DAM shall submit quarterly draw requests that anticipate the Proceeds and other funds needed for the coming quarter or request for reimbursement for activities related to the Project. With each draw request, the DAM shall provide (1) a schedule of values; (2) a cash flow and detailed report of anticipated future expenditures for the next quarter and for the Proceeds of the Project, showing projected expenditures compared to the budget for the Proceeds of the Project, or expended funds for the Project since the previous draw request; and (3) a detailed report of the expenditures made in the past for the Proceeds of the Project, showing past expenditures compared to the budget for the Proceeds of the Project. Failure to provide such documents as requested may result in a delay by City of providing Proceeds requested in the draw request.

C. The DAM shall provide to the Manager a public communication plan for approval and will continue to coordinate its public outreach efforts with the Manager.

D. The DAM shall at all reasonable hours ensure right of entry to any City inspector or other authorized agent of the City to the work site to conduct tests and evaluations to determine that the work performed and materials used are of good quality and in conformance with the approved design plans and specifications. If the City determines that the work is not otherwise being performed in accordance with this Agreement, the Manager shall give written notice of such default to the DAM prior to material action being taken, and if the DAM does not correct the issue, order that the DAM cease to conduct the work until there is satisfactory evidence that the work will be performed in accordance with this Agreement.

E. The City shall not charge the DAM for the City's activities under this paragraph 5, including design plan and specifications review, inspections, material testing, and construction monitoring. Standard building permit fees and other fees mandated by existing ordinance or rule for construction approvals will be paid, from either Proceeds or by the DAM.

F. The DAM shall be solely responsible for assuring that all phases of the Project are properly contracted and performed and that the work done and the materials used are in conformance with all applicable laws (local, state, and federal) that govern the performance of the work, including (to the extent applicable) the requirements of the federal Americans with Disabilities Act and any other federal or state laws requiring access for the disabled to public accommodations.

G. In addition to compliance with the above-mentioned laws, all work by DAM required to complete the Project and obtain a certificate of occupancy shall be governed and controlled by all limitations and provisions that are imposed on the City Department of Public Works by the Charter or ordinances of the City. Specifically, such work shall be performed in compliance with the provisions:

- for competitive procurement set forth in the Denver City Charter at 2.3.3(A)(i) and Section 20-56 of the Denver Revised Municipal Code (“DRMC”);
- for payment of prevailing wages set forth in Sections 20-76 through 20-79, DRMC;
- for public art in Sections 20-85 through 28-90, DRMC;

- and for small business enterprise, equal employment opportunity, and minority and women business enterprise participation that are contained, respectively, in Sections 28-31 through 28-91, DRMC,

as the same may be amended or re-codified from time to time. **The DAM shall demonstrate to the City’s reasonable satisfaction that construction contracts entered into by the DAM have been appropriately satisfied these Charter and ordinance requirements.**

H. Workforce Development. The City values increasing the awareness, outreach, training, and employment opportunities of people in economically disadvantaged areas and populations and addressing shortages in qualified construction workers. In support of this, the DAM shall include the following workforce development related activities for this Project:

- Identify a designated point of contact for workforce development activities.
- Post new positions online with Connecting Colorado at [www.connectingcolorado.com](http://www.connectingcolorado.com).
- Participate in WORKNOW and or City led outreach and recruitment events.
- Utilize WORKNOW ([work-now.org](http://work-now.org)) and City employment support services to help build easy on-ramps to project, including training and support services
- Provide quarterly reports on the number of outreach and job fairs held or attended, including information about where it was held, who sponsored the event, and number of people hired at and or as a result of participating in the event.

These activities are not intended to replace existing and or on-going workforce development activities that DAM and its contractors and subcontractors utilize and or provide.

I. Insurance requirements.

a. **General Conditions:** The DAM agrees to secure, and maintain, the following insurance covering all operations, goods or services provided pursuant to this Agreement, or any extension thereof, during any warranty period, and for any claims-made policy, three (3) years after termination of the Agreement. The required insurance shall be

underwritten by an insurer licensed to do business in Colorado and rated by A.M. Best Company as “A” and “Financial Size Category of Class VIII” or better, or other insurer acceptable to the City

If any policy is in excess of a deductible or self-insured retention, the City must be notified by the DAM. The DAM shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the DAM. If a policy provides higher limits of coverage the policy shall not limit the City’s coverage as an additional insured to the minimum limits stated in this Agreement. The DAM shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

b. **Proof of Insurance:** The DAM shall provide a copy of this Agreement to its insurance agent or broker. The DAM shall provide proof of required insurance to the City, through a certificate of insurance or other proof of insurance as required by the City’s Risk Management Office. Such written notice shall be sent thirty (30) days prior to such cancellation or reduction unless due to non-payment of premiums for which notice shall be sent ten (10) days prior.”

c. **Workers’ Compensation/Employer’s Liability Insurance:** The DAM shall maintain the Workers’ Compensation Coverage as required by statute and Employer’s Liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. The DAM expressly represents to the City, as a material condition and requirement of this Agreement, that none of the DAM’s officers or employees who may be eligible under any statute or law to reject Workers’ Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date the DAM executes this Agreement.

d. **General Liability:** The DAM shall maintain limits of \$1,000,000 for each occurrence claim, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations for each occurrence, and \$2,000,000 policy aggregate.

e. **Automobile Liability:** The DAM shall maintain limits of \$1,000,000 for combined single limit applicable to all vehicles operating on City property and elsewhere which

includes auto pollution liability coverage for any vehicle hauling cargo containing pollutants or contaminants.

f. **Crime:** DAM shall maintain minimum limits of \$1,000,000 in commercial crime insurance coverage. Coverage shall include theft of City's money, securities or property by contractor's employees, including any extended definition of employee. The City and County of Denver shall be named as Loss Payee as its interest may appear.

g. **Additional Provisions:**

- (i) For all general liability, the policies must provide the following:
  - (a) Unlimited defense costs outside of policy limits;
  - (b) Contractual liability covering the indemnification provisions of this Agreement;
  - (d) A severability of interests provision;
  - (e) Waiver of exclusion for lawsuits by one insured against another;
  - (f) A provision that coverage is primary; and
  - (g) A provision that coverage is non-contributory with other coverage or self-insurance provided by the City.
- (ii) For all general liability, if the policy is a claims-made policy, then the retroactive date must be on or before the date of this Agreement.

h. **Additional Insured's:** For all coverages, the DAM's insurer shall name the City as an additional insured.

i. **Waiver of Subrogation:** For the General Liability and Workers' Compensation coverages, the DAM's insurer shall waive subrogation rights against the City.

J. The DAM shall submit to the City the form of all contracts to be entered into or entered into by the DAM in connection with the construction of the Project, which will be reviewed by the Office of the City Attorney to assure compliance with the requirements of this Agreement, including compliance with City insurance requirements for the construction, similar to those listed in **EXHIBIT B**, in amounts to be determined based on size and complexity of the Project, in consultation with the City's Risk Management Office. The Office of the City Attorney shall review such contracts within 21 days of the submittal of the contracts to the Office



of the City Attorney by the DAM. Contracts already in effect for the project at the time of signing this agreement shall be deemed approved.

K. The DAM and its contractors and subcontractors shall pay all applicable taxes, which may include sales and use taxes and occupational privilege taxes, levied by the State and the City on any tangible property built into or incorporated into the work. Upon request by the City, an itemized and certified statement, including the names and addresses of the suppliers, the amount of such taxes owed or paid, and the dates of payment, shall be furnished to the City.

L. The DAM shall require its General Contractor to obtain Subcontractor Default Insurance (SDI) in an amount sufficient to cover the Project costs listed in Exhibit A.

M. The DAM or its contractors shall obtain a bond or bonds or other financial guarantee acceptable to the City Attorney, conditioned (1) that the DAM and its contractors shall promptly make payment of all amounts lawfully due to all contractors, subcontractors, and persons or entities furnishing labor or materials used in the prosecution of the work on any phase of the Project, and shall indemnify the City to the extent of all payments in connection with performing the work, and (2) guaranteeing performance of the DAM of its obligation to complete the Project. The dollar amount of such bonds shall be modified to reflect any change orders that modify the total value of the Project or part of the Project.

N. The DAM will provide and install at the Project site signs, in a form mutually agreeable to the Manager and the DAM, stating the scope of the Project and acknowledging the participation of the City and the bond funding for the Project.

O. If, for any reason, construction of any phase of the Project is delayed or halted while in process for more than 21 days, the DAM shall take reasonable measures to protect the existing Project site and buildings from weather damage, vandalism and other similar threats.

P. The DAM agrees to complete the Project within three (3) years of the date of the first draw of Proceeds by the DAM, in accordance with the terms and conditions of this Agreement.

Q. The DAM agrees that any Proceeds received from the City may not be invested, if at all, at a rate greater than the rate to be provided by the City's Finance Department

at the time of disbursement of the Proceeds to the DAM. The DAM agrees to provide evidence of compliance with this responsibility at the time the investment, if any, occurs. The DAM agrees to monitor the deposit and any investment of Proceeds pending disbursement to a third party and provide the City with copies of all bank statements relating to the investment and expenditure of such amounts.

6. **Reporting & Audits:**

A. The DAM shall provide, or cause its contractors to provide, to the City Auditor documentation of expenditures of the Proceeds for the Project, in form and detail sufficient to enable the Auditor to perform his responsibilities under the Charter and ordinances of the City. Such documentation shall include periodic invoices evidencing the work performed and the payroll reporting requirements contained in DRMC Section 20-76(d) and pertaining solely to the activities included in Exhibit A.

B. The DAM agrees that any duly authorized representative of the City shall, until the expiration of three (3) years after completion of the Project, have access to and the right to examine any directly pertinent books, documents, papers and records of the DAM involving transactions related to this Agreement, including expenditure data and investment of Proceeds, if any, required by the City's Department of Finance.

C. DAM agrees to maintain its files relating to the Proceeds for the Project and expenditures therefore for the life of the bonds issued to make the Proceeds available for the Project and to make such files available to the City if the City is audited by the Internal Revenue Service and requests such files in order to respond to such an audit.

7. **Term:** The term of this Agreement shall commence on the date above first written and shall terminate upon the completion of the Project, as indicated by receipt of a temporary or permanent Certificate of Occupancy.

8. **Title:** Upon approval and acceptance by the City and DAM, this agreement shall not be deemed to alter the DAM Agreements or any interest, right, title or fee within.

9. **No Discrimination in Employment:** In connection with the performance of work under this contract, the DAM may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. The DAM shall

insert the foregoing provision in all subcontracts.

10. **Limitation on Application of Agreement:** The provisions of this Agreement are intended to govern the commencement and completion of the Project and shall not be construed to prohibit, limit, waive, or modify other agreements between the parties currently existing or entered in the future.

11. **Notices:** Any notices, responses, or communications given hereunder may be personally delivered or sent by first class mail, addressed to the following:

To the City:

Bond Program  
201 West Colfax Avenue, Dept. 507  
Denver, CO 80202

City Attorney  
201 W. Colfax Avenue, Dept. 1207  
Denver, CO 80202

To the DAM:

Andrea Fulton  
Deputy Director/Chief Marketing Officer  
Denver Art Museum  
100 14<sup>th</sup> Avenue Parkway  
Denver, CO 80204

The contacts and addresses specified above may be changed by the parties at any time upon written notice to the other party.

12. **Conflict of Interest:** The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the Project or related services or property described herein.

13. **No Third Party Beneficiaries:** The Parties expressly 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 the DAM; and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such agreements. The City and the DAM expressly agree that any person other than the City and the DAM receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

14. **Subject to Local Laws; Venue:** Each and every term, provision or condition herein is subject to and shall be construed in accordance with the provisions of Colorado law, the Charter and Municipal Code of the City and County of Denver, and the applicable ordinances, regulations, executive orders, or fiscal rules, enacted or promulgated pursuant thereto. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

15. **Execution of Agreement:** This Agreement is expressly subject to and shall not be or become effective or binding on the City and the DAM until fully executed by all signatories of the City and the DAM.

16. **Legal Authority:** The City and the DAM each represent that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

17. **Agreement as Complete Integration; Amendments:** Except for the DAM Agreements, this Agreement is intended as the complete integration of all understandings between the parties, and no prior or contemporaneous addition, deletion or other amendment shall have any force or effect, unless embodied herein in writing. Amendments to this Agreement will become effective only when approved by both parties and executed in the same manner as this Agreement.

18. **Counterparts of Agreement:** This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement, and all of which, taken together, shall constitute one and the same document.

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

**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



**Contract Control Number:** PWADM-201841947-00

**Contractor Name:** The Denver Art Museum

By: 

Name: CHRISTOPH HEINRICH  
(please print)

Title: FREDERICK AND JAN MAYER DIRECTOR  
(please print)

**ATTEST: [if required]**

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

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

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



## Exhibit A

The Denver Art Museum is renovating the North Building and the Welcome Center totaling more than \$100 million.

- I. The Project (the “Project”) consists of items and activities on which the Denver Art Museum expends \$35.5 million in GO Bond funds, including:
  - a. North Building and Welcome Center security, mechanical. Electrical, plumbing, fire suppression, cabling and vertical transportation systems
  - b. Insulation and windows in the North Building
  - c. Construction activities the parties to this agreement deem necessary and appropriate to obtain a certificate of occupancy within the broad reading of the voter-approved ballot question 2B.
- II. The Project does not include items and activities funded by any other source.

**EXHIBIT B**  
**EXAMPLE OF CONSTRUCTION INSURANCE REQUIREMENTS**

**Note: The City and County of Denver’s Risk Management Office must be consulted on final insurance to be required of all contractors.**

**INSURANCE:**

**A. General Conditions:** General Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. General Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for eight (8) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as “A”VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such written notice shall be sent thirty (30) days prior to such cancellation or reduction unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. . If such written notice is unavailable from the insurer, contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s). If any policy is in excess of a deductible or self-insured retention, the [CULTURAL FACILITY] must be notified by the General Contractor. The General Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements do not lessen or limit the liability of the General Contractor. The General Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

**B. Proof of Insurance:** General Contractor shall provide a copy of this Agreement to its insurance agent or broker. General Contractor further agrees to have its agent or broker provide proof of General Contractor’s required insurance. The [CULTURAL FACILITY] reserves the right to require the General Contractor to provide a certificate of insurance, a policy, or other proof of insurance as required by the [CULTURAL FACILITY]’s Risk Administrator in his sole discretion.

**C. Additional Insureds:** For general liability, excess/umbrella liability, and Builder’s Risk, the General Contractor’s insurer shall name the [CULTURAL FACILITY] and the City and County of Denver as an additional insured, and/or loss payee.

**D. Waiver of Subrogation:** For all coverages, General Contractor’s insurer shall waive subrogation rights against the [CULTURAL FACILITY].

**E. Subcontractors:** All subcontractors, independent contractors, suppliers or other entities providing goods or services required by this Agreement shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the General Contractor. General Contractor shall include all such subcontractors, independent contractors,



suppliers or other entities as insureds under its policies or shall ensure that all subcontractors maintain the required coverages. General Contractor agrees to provide proof of insurance for all such subcontractors, independent contractors, suppliers or other entities upon request by the [CULTURAL FACILITY].

**F. Worker's Compensation/Employer's Liability Insurance:** General Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. General Contractor expressly represents to the [CULTURAL FACILITY], as a material representation upon which the [CULTURAL FACILITY] is relying in entering into this Agreement, that none of the General Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date General Contractor executes this Agreement. These coverages shall apply to all work or services performed outside the United States. These coverages shall apply to any work or services performed by employees covered by the Federal Employee's Liability and Compensation Act.

**G. General Liability:** General Contractor shall maintain limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury, \$1,000,000 products and completed operations for each occurrence, and \$2,000,000 policy aggregate. Aggregate limits must be "per project" or "per location".

**H. Business Automobile Liability:** General Contractor shall maintain \$1,000,000 combined single limit applicable to all vehicles operating on [CULTURAL FACILITY] property and elsewhere which includes auto pollution liability coverage for any vehicle hauling cargo containing pollutants or contaminants. If transporting wastes, hazardous material, or regulated substances, Contractor shall carry a pollution coverage endorsement and an MCS 90 endorsement on their policy. Transportation coverage under the Contractors Pollution Liability policy shall be an acceptable replacement for a pollution endorsement to the Business Automobile Liability policy.

**I. Builders' Risk or Installation Floater (if required by Risk Management):** Contractor shall maintain limits equal to the completed value of the project. Coverage shall be written on an all risk, replacement cost basis including coverage for soft costs, flood and earth movement, if in a flood or quake zone, and, if applicable, equipment breakdown including testing. The City and County of Denver, Contractor, and sub-contractors shall be Additional Named Insureds under the policy. Policy shall remain in force until acceptance of the project by the City.

The General Contractor shall be responsible for the ultimate costs associated with deductibles under the builder's risk insurance as a Cost of the Work.

**J. Excess/Umbrella Liability:** General Contractor shall maintain \$\_(TBD by Risk

Management)\_\_\_\_\_ excess/umbrella liability coverage.

K. **Contractors Pollution Liability (if required by Risk Management):** General Contractor shall maintain limits of \$1,000,000 per occurrence and \$2,000,000 policy aggregate. Policy to include bodily injury; property damage including loss of use of damaged property; defense costs including costs and expenses incurred in the investigation, defense or settlement of claims; and clean up costs. L. **Additional Provisions:**

(1) For all general liability and excess/umbrella liability, the policies must provide the following:

- (i) That this Agreement is an Insured Contract under the policy;
- (ii) Defense costs are in excess of policy limits;
- (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
- (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(b) For claims-made coverage:

- (i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier

(c) Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.