

LEASE AGREEMENT

THIS LEASE AGREEMENT (“Lease”) is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a home rule municipal corporation of the State of Colorado (“City”), and **OBMSMG, LLC**, an Ohio limited liability company, whose address is 250 N. Hartford Ave, Columbus, Ohio 43222 (“Lessee”). The City and Lessee shall each be referred to as a “Party” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, the City owns and operates through its Denver Arts & Venues division (“DAV”), the Denver Performing Arts Complex (“DPAC”) and the Colorado Convention Center (“CCC”), which are located within the City of Denver’s B-5-T zoning district commonly known as the Downtown Theatre District (the “Theatre District”), and which Theatre District is subject to the terms and conditions of that certain District Sign Plan for the Theatre District adopted by the City of Denver, as amended from time to time;

WHEREAS, Lessee desires to install, operate, maintain and service certain marquees, billboards, and kiosks identified on **Exhibit A** (each a “Sign” and collectively, the “Leased Premises”), to perform certain advertising sales services and produce all the deliverables set forth on **Exhibit B** (the “Scope of Work”) subject to and in accordance with the terms and conditions of this Lease; and

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter contained, the City and the Lessee agree as follows:

1. **CONTINGENCIES**: None.
2. **LEASED PREMISES**: Subject to the terms of this Lease, the City agrees to lease, demise, and let unto Lessee and the Lessee does hereby lease from the City that certain Leased Premises at the CCC and DPAC, as more particularly depicted on **Exhibit A**, attached hereto and incorporated herein.
3. **TERM**: The term of this Lease shall begin on the date the City receives written notice from the Lessee that the Leased Premises are operational and capable of displaying advertising or three hundred sixty-five (365) days from the date of this Lease, whichever is earlier (the “Commencement Date”), and it shall terminate seven years from the Commencement Date (the “Term”). The Term may be extended for up to three (3), three (3) year periods (each, a

“Renewal Term” or collectively, “Renewal Terms”) automatically unless the City or the Lessee provides written notice to the other Party not less than sixty (60) days prior to the end of the Term or a Renewal Term.

In the event the City plans on redeveloping the Leased Premises (hereinafter a “Terminated Premises”), City shall have the right to terminate Lessee’s right to lease such Terminated Premises by providing Lessee with written notice (a “Termination Notice”) of such termination along with: (a) a description of the City’s plan to redevelop the Terminated Premises, (b) the date for removal of the Lessee’s Leased Premises, which shall not be less than sixty (60) days after the date of the Termination Notice, and (c) a draft of an amendment to this Lease memorializing the removal (or substitution of an alternative location for the Leased Premises, if applicable) of the Terminated Premises from the Lease and establishes the new Minimum Annual Guaranteed Rent (as defined below) payable by the Lessee (if applicable). Within twenty (20) days following receipt of a Termination Notice from the City, Lessee shall provide the City with an invoice for the total reasonable out of pocket costs incurred by Lessee for the acquisition, installation, and construction of the applicable Leased Premises (collectively, “Improvement Costs”) as well as all reasonable out of pocket costs associated with the removal of the Leased Premises (the “Removal Costs”). Upon approval of such an amendment by the City Council, which shall include the Improvement Costs and the Removal Costs, the Terminated Premises shall be removed from the Lease on the date specified in the amendment to this Lease (the “Termination Date”), provided that in the event the Parties have not agreed to substitute a new Leased Premises to replace the Terminated Premises, or agreed to an alternative fee arrangement in lieu of the formula for Rent as set forth in Section 4 of this Lease, the City shall pay the Lessee (the “Termination Payment”) an amount equal to the Removal Costs plus the unamortized portion of the Improvement Costs in relation to the Terminated Premises, amortized on a straight line basis over the Term (including all Renewal Terms). Thereafter, the Minimum Annual Guaranteed Rent (as defined below) would be reduced by the Guaranteed Rent Percentage (as defined below) attributable to the Leased Premises which is no longer being leased by Lessee.

4. **RENT:** Rent shall be paid by Lessee quarterly to the City on April 30, July 30, September 30 and February 28 of each calendar year, or to another party as otherwise specified by the City to receive Rents on its behalf. Should the City specify another party to receive Rents,

Lessee will be given written notice of such change no less than seven (7) days prior to the next succeeding Rent due date so that Lessee is allowed time sufficient to deliver Rents on or before the due date. Rent payable quarterly by Lessee shall be the greater of (a) Minimum Annual Guaranteed Rent or (b) Percentage Rent.

“Gross Advertising Revenue” means the total revenue derived from display of advertisements upon the Leased Premises actually earned and collected by Lessee.

“Guaranteed Rent Percentages” means the percentage of Minimum Annual Guaranteed Rent attributable to each Sign. The Parties agree that the Guaranteed Rent Percentages are as follows :

<u>Sign Location</u>	<u>Guaranteed Rent Percentage</u>
14 th & Curtis	3.5%
14 th & Arapahoe	10%
Speer DPAC	43.25%
Speer CCC	43.25%

“Minimum Annual Guaranteed Rent” means \$83,240 in year 1 of the Term, (ii) \$133,184 in year 2 of the Term, (iii) \$199,776 in year 3 of the Term, \$201,774 in year 4 of the Term, \$203,791 in year 5 of the Term, \$205,829 in year 6 of the Term, \$207,887 in year 7 of the Term and (iv) 1% annual increases in each year of the Renewal Terms. Rent payments for partial calendar quarters shall be pro-rated.

“Percentage Rent” means fifteen percent (15%) of Lessee’s Gross Advertising Revenue derived from the Leased Premises during each calendar year of the Term or Renewal Term (or partial calendar year).

On the same date which the Rent is due, Lessee shall submit to the City a statement of Lessee’s Gross Advertising Revenue (“Quarterly Statement”) earned from the Leased Premises during the applicable preceding calendar quarter. In addition, on or before February 15th of each calendar year, Lessee shall submit to the City a statement of Lessee’s Gross Advertising Revenue earned from the Leased Premises during the preceding calendar year or partial calendar year (“Annual Reconciliation Statement”), as the case may be, to determine if Percentage Rent exceeds the Minimum Annual Guaranteed Rent. Each Quarterly Statement and the Annual Reconciliation Statement shall be signed by an authorized representative of Lessee.

In addition to the foregoing, Lessee shall pay before delinquency any and all taxes,

assessments, and other charges levied, assessed or imposed, including any Possessory Interest tax, as defined and permitted under Colorado law, if assessed, and which become payable during the Term and any Renewal Term, upon Lessee's operations, occupancy, or conduct of business at the Leased Premises, resulting from Lessee's occupation or subletting of the Leased Premises, or upon Lessee's equipment, furniture, appliances, trade fixtures, and other personal property of any kind installed or located on the Leased Premises. Such taxes include any Possessory Interest taxes resulting from this Lease or a sublease of the Leased Premises.

5. **USE:** The Leased Premises are to be used and occupied by Lessee solely as a marquee, billboard or kiosk, as further described in **Exhibit B** hereto, and for no other purpose, unless the Executive Director (the "Director") of DAV agrees in writing to another use, which consent shall not be unreasonably withheld. The Lessee shall use the Leased Premises in a careful, safe, and proper manner, and shall not use or permit the Leased Premises to be used for any purpose prohibited by the laws of the United States of America, the State of Colorado, or the Charter, ordinances or Executive Orders of the City and County of Denver. The Lessee shall not commit or suffer to be committed any waste or damage upon the Leased Premises or any nuisance to be created or maintained thereon. The Lessee shall also keep the Leased Premises free and clear from all trash, debris, and waste resulting from its use or the use by its employees, officers, agents, licensees and visitors.

(a) The Lessee shall diligently undertake, perform, and complete the advertising sales services and produce all the deliverables set forth on **Exhibit B** (the Scope of Work), with respect to the Leased Premises to the City's satisfaction. City shall have such rights to display content on the Leased Premises as set forth and further described on **Exhibit B**, which includes any Colorado Convention Center kiosk advertisements that are also acquired/sold by Visit Denver to its members.

(b) Advertising sales that are obtained by Lessee shall be memorialized using the kiosk or marquee/billboard (as applicable) form of written contracts attached hereto as **Exhibit C** (each a "Standard Advertising Contract"); provided, however, that Standard Advertising Contracts may only be used by Lessee if the term of the contract is six months or less and the consideration provided by the advertiser is less than \$500,000.00. Standard Advertising Contracts may be executed by Lessee and the applicable advertiser only after the form and terms of the subject Standard Advertising Contract is approved by the Director as evidenced by his or

her signature on the contract. In addition, Lessee shall not enter into a Standard Advertising Contract with the same advertiser (or with different representatives of the same advertiser) in two consecutive years, it being the parties' intent that contracts in excess of six months or contracts for \$500,000.00 or more or multi-year contracts be processed as agreements to which the City is a party in accordance with the City's Charter and the Denver Revised Municipal Code. Notwithstanding the foregoing, the City reserves the right to determine in its sole discretion that a given Standard Advertising Contract or, upon prior written notice to Lessee, that all Standard Advertising Contracts shall be processed as agreements to which the City is a party in accordance with the City's Charter and the Denver Revised Municipal Code. Any modifications, amendments, or waivers to the forms of Standard Advertising Contracts attached hereto as **Exhibit C** shall be pre-approved in writing by the Director in consultation with the City Attorney.

(c) Lessee shall not obtain advertising sales that would violate other City obligations of which Lessee has received reasonable advance notice or any law, rule, policy, or executive order of the City or state or federal law. Further, Lessee shall not do anything in the performance of the services contemplated hereunder that would tend to discredit, dishonor, reflect adversely upon, or in any way injure the good name, reputation, or business of the City.

(d) The City reserves the absolute right in its sole discretion to refuse any advertising sales opportunity presented by Lessee and the City shall not be liable for any fee in the event of such refusal.

(e) The Lessee is ready, willing, and able to provide the services required by this Lease.

(f) The Lessee shall faithfully perform the services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in this Lease and in accordance with the terms of this Lease.

(g) The City shall receive a minimum of twenty percent (20%) of the time on the Leased Premises to advertise and promote events in the City, or run and/or sponsored by DAV, or other public or charity announcements as the City may reasonably choose and Lessee shall in good faith reasonably assist City in producing its content.

(h) If as a result of the acts, omissions or negligence of DAV, other tenants or

licensees of DAV who have access to space near a Leased Premises and/or their respective agents, employees or contractors or an event of damage or destruction, or if the viewability of any Sign are in Lessee's reasonable discretion blocked or otherwise impaired by the construction or installation of a building or other structure, tree or other impediment, or Lessee's use of a Sign upon the Leased Premises is interrupted or impaired, then Rent shall also abate on a day for day basis (e.g., if the period of abatement occurred for a period of one (1) month for a Sign, then any Gross Advertising Revenue received by Lessee in relation to such Sign, if any, during such one (1) month period would not be used to calculate the Rent payable to the City and any Minimum Annual Guaranteed Rent for such period shall not accrue) until the interruption or impairment is corrected. If a law, regulation, administrative denial or revocation of Lessee's permit(s) or governmental approvals required to carry out Lessee's permitted use prevents Lessee from selling and/or displaying Advertising upon the Signs or if a renewal or reapplication for any of the permits or other approvals Lessee is required to maintain is denied for any reason and such denial prevents Lessee from selling and/or displaying Advertising upon the Signs ("Regulatory Interruption"), Rent shall be suspended until such time as Lessee is able to remedy the Regulatory Interruption, provided, however, that for a Regulatory Interruption to occur, it must prevent Lessee from generating revenue on a Sign by preventing Lessee from displaying Advertising on a Sign. Lessee shall use commercially reasonable efforts, time being of the essence, to prevent and remedy a Regulatory Interruption

6. **"AS IS" CONDITION:** The Leased Premises are accepted by Lessee in an "AS IS, WHERE IS" condition, with all faults and defects. No additional work will be performed by the City and Lessee hereby accepts the Leased Premises in its as-is condition. The City does not make and disclaims any warranty or representation whatsoever, express or implied, and shall have no obligation or liability whatsoever, express or implied, as to the condition of or any other matter or circumstance affecting the Leased Premises.

7. **QUIET ENJOYMENT:** Lessee shall and may peacefully have, hold and enjoy the Leased Premises, subject to the other terms hereof, provided that Lessee pays the rental herein recited as and when due and performs all of Lessee's covenants and agreements herein contained.

8. **PREMISES/CONSTRUCTION:**

(a) **By City:** Unless otherwise expressly stipulated herein, the City shall not be

required to make any improvements to or repairs of any kind or character on the Leased Premises during the term of this Lease.

(b) By Lessee: Lessee may erect digital advertising signs in place of the existing Leased Premises (“Tenant Improvements”) according to the construction plans and specifications submitted to and approved by the Director, in his reasonable discretion. Such work shall be built or made strictly in accordance with the following terms and conditions, and no such work or contracts or subcontracts for the same shall be entered until Lessee has established to the Director’s reasonable satisfaction that the following terms and conditions have been fully and appropriately satisfied.

(i) Before the commencement of such work, (A) conceptual/schematic, preliminary and final detailed plans (which shall include samples of colors and materials), and specifications shall be filed with and approved by the Director and all governmental departments or authorities having jurisdiction or design review thereover, (B) all such work shall be done subject to and in accordance with the requirements of law and applicable regulations of all such governmental departments and authorities and, when required, each affected public utility company, and (C) all work shall be fully coordinated with scheduled DPAC or CCC events and with the construction, remodeling, repair and other work being performed by others at the DPAC or the CCC.

(ii) Before the commencement of such work, Lessee shall obtain, and provide to the City Attorney for approval, payment and performance bonds to the extent required by and in accordance with the laws of the State of Colorado, the City Charter and ordinances of the City and County of Denver.

(iii) Lessee shall pay and ensure that its construction contractors and subcontractors pay any and all prevailing wage rates to laborers and workmen, as set forth in sections 20-76 through 20-79 of the Denver Revised Municipal Code (“DRMC”), as the same may be amended or recodified from time to time.

(iv) Lessee shall obtain insurance as required by the City’s Office of Risk Management, and provide evidence thereof to the City Attorney, against all liabilities and claims potentially arising out of or related to the work contemplated by this Section 8. The City’s Risk Management Office shall be notified of all such work prior to commencement of the work and, upon receipt of notice thereof, will require appropriate

insurance of the Lessee and/or Lessee's General Contractors. Insurance requirements may include, without limitation, Builders' Risk and an Installation Floater covering the property and equipment, with the City and County of Denver listed as an Additional Insured, and professional insurance covering all engineering and architectural work. Per Section 20, all subcontractors and subconsultants are required to procure and maintain the same coverage required of the Lessee, as applicable to the scope of work being performed by such subcontractors and subconsultants. All coverage related to the subject work shall be kept in full force at all times during the work and warranty period. Evidence of coverage must be submitted to the City Attorney before commencement of such work. Neither the obligation to obtain such insurance nor the obtaining of such insurance shall relieve or lessen Lessee's indemnification of City, except to the extent of payment under policies of such insurance.

(v) Such work shall be performed in compliance with the provisions for small business enterprise, equal employment opportunity, and minority and women business enterprise participation that are contained in sections 28-31 through 28-90, DRMC, as the same may be amended or recodified from time to time.

(vi) Such work shall be performed in a first class workmanlike manner and in accordance with the plans and specifications approved for the same and by contractors satisfactory to the Director. Lessee shall redo or replace, at its sole cost and expense, prior to or after completion of such work, any work as determined by the Director which is not done in accordance with such plans and specifications as approved by the Director.

(vii) The risk of loss or damage to all such required or permitted repairs, alterations, modifications or installations prior to completion thereof shall be upon Lessee and Lessee shall, at its own cost and expense, replace and repair any and all such damage in accordance with the provisions of this Section.

(viii) Lessee shall replace the LED screen on the Sign as required by **Exhibit B** hereto.

9. **ENTRY:** Lessee shall permit representatives of the City to enter into and upon the Leased Premises after receiving reasonable prior notice from the City to inspect the same, except in the case of emergencies, in which case the City will attempt to contact Lessee and if the City is unable to contact Lessee and the emergency is imminent, in the City's sole discretion,

the City may enter into and upon the Leased Premises without notice, and Lessee shall not be entitled to any abatement or reduction of Rent by reason thereof. City shall not cause unreasonable interference in the normal course of Lessee's business and Lessee or an authorized employee or agent shall have the right to accompany the City during its inspections.

Lessee shall have, as appurtenant to a Sign, the non-exclusive right during the Term and any Renewal Terms, as applicable, to access and utilize those portions of the DPAC or the CCC surrounding the Leased Premises necessary for erecting, maintaining, illuminating, repairing, repositioning, replacing or removing advertisements and Signs in accordance with the requirements set forth in Section 8(b) of this Lease.

10. **CARE AND SURRENDER OF THE LEASED PREMISES:** Notwithstanding anything to the contrary contained in this Lease, upon the expiration or earlier termination of this Lease, Lessee shall be permitted to remove any and all Tenant Improvements. Lessee shall remove all of Lessee's Tenant Improvements and other effects at least ten (10) days prior to the end of the Term or Renewal Term, as applicable. All moveable furniture and other effects that are not so removed shall conclusively be deemed to have been abandoned and may be appropriated, sold, stored, destroyed or otherwise disposed of by the City without notice to Lessee or any other person, and without obligation to account therefor, and Lessee shall pay the City all reasonable expenses incurred in connection with removal of such property. Lessee's obligation to observe or perform this covenant shall survive the termination of this Lease.

11. **UTILITIES, JANITORIAL SERVICE AND MAINTENANCE EXPENSE:**

(a) **City's Responsibilities.** Subject to the billing and payment provisions contained subparagraph 11(b) below, the City shall provide the following utilities, separately metered, for the Leased Premises, as may be reasonable and necessary for normal intended use of Leased Premises: water, sewer, and electricity. Further, City shall, at its expense, maintain the structure and exterior, including snow and ice removal, of the buildings of which the Leased Premises are a part.

(b) **Lessee's Responsibilities.**

(i) Lessee shall pay for all water, sewer, gas and electricity, or other utilities or services allocable to the Leased Premises, which the City and Lessee agree will equal the actual cost for such services as metered. Lessee's payment shall be due within 30 days of the date of the City's billing statement. All past due payments shall accrue

interest at the rate of 12% per annum until paid. Lessee shall be responsible for arranging for, and paying all deposits, fees and charges associated with (A) telephone and other communication services to the Leased Premises, (B) janitorial services, and (C) trash hauling. Lessee shall pay prevailing wages, as set by the City's prevailing wage ordinance (§20-76, DRMC) for janitorial services.

(ii) The City will not be liable for any reason for any loss or damage resulting from an interruption of any of these services. Notwithstanding the foregoing, if Tenant's use of the Signs is interrupted or materially impaired due to a utility failure, which interruption is due to the negligent acts or omissions of Landlord and such utility failure lasts for more than one (1) day, then Rent due and owing hereunder shall abate on a day for day basis beginning on the second (2nd) day of the interruption until such time as the utility failure is remedied.

(iii) The Lessee shall maintain the Leased Premises, including electrical, plumbing, mechanical systems exclusively serving the Leased Premises, and be responsible for any, and casualty damage to the Leased Premises and make all repairs thereto, as necessary. Additionally, the Lessee shall maintain any non-structural portions of the Leased Premises.

12. **INDEMNITY**: The Lessee shall defend, indemnify, and save harmless the City, its officers, agents and employees from any and all losses, damages, claims, demands, suits, actions or proceedings of any kind or nature whatsoever, including without limitation Workers' Compensation claims, of or by anyone whomsoever, that the City may sustain or on account of injuries to the person or property of the City, its agents or employees or to injuries or death of any other person rightfully on the Leased Premises for any purpose whatsoever, where the injuries are caused by the negligence or misconduct of the Lessee, the Lessee's agents, employees, subtenants, assignees, or of any other person entering upon the Leased Premises under express or implied invitation of the Lessee or where such injuries are the result of the violation of the provisions of this Lease by any of such persons. This indemnity shall survive the expiration or earlier termination of this Lease. Lessee need not, however, indemnify or save harmless the City, its officers, agents and employees from damages resulting from the sole negligence of the City's officers, agents and employees. This indemnity clause shall also cover the City's defense costs, in the event that the City, in its sole discretion, elects to provide its own

defense. Insurance coverage specified herein constitutes the minimum requirements, and said requirements shall in no way lessen or limit the liability of the Lessee under this Lease. Subject to compliance with the provisions of Section 18 below, the Lessee shall procure and maintain, at its own expense and cost, any additional kinds and amounts of insurance that it may deem necessary.

13. **LOSS OR DAMAGE**: The City shall not be liable or responsible to Lessee for any loss or damage to any property or person occasioned by theft or fire, natural disasters, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of any governmental entity other than the City. Likewise, Lessee shall not be liable or responsible to City for any loss or damage to the Leased Premises occasioned by theft, vandalism, fire, natural disasters, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of any governmental entity. In the event of a fire or other casualty in or to the Leased Premises, Lessee shall immediately give notice thereof to City. In case of partial destruction of the Leased Premises by fire, or other casualty, the City at its discretion may repair the Leased Premises with reasonable dispatch after notice of said partial destruction. If the Leased Premises are made untenable by fire, the elements, or other casualty, or if the building in which the Premises are located is partially destroyed to the point where City, within a reasonable time, decides not to rebuild or repair the Leased Premises, then this Lease shall terminate and any Rent shall be prorated and payable only up until the time of the partial or full destruction of the Leased Premises.

14. **HAZARDOUS SUBSTANCES**: Lessee shall not cause or permit any Hazardous Substance to be used, stored, generated, or disposed of on or in the Leased Premises by Lessee, Lessee's agents, employees, contractors, or invitees. If Hazardous Substances are used, stored, generated, or disposed of on or in the Leased Premises, or if the Leased Premises become contaminated in any manner due to the actions or inactions of the Lessee, Lessee shall indemnify and hold harmless the City from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, a decrease in value of the premises, damages caused by loss or restriction of rentable or usable space, or any damages caused by adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant, and expert fees) arising during or after the Lease Term and arising as a result of those actions or inactions by Lessee. This indemnification includes, without limitation, any and

all costs incurred because of any investigation of the site or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision. Without limitation of the foregoing, if Lessee causes or permits the presence of any Hazardous Substance on the Leased Premises and that results in contamination, Lessee shall promptly, at its sole expense, take any and all necessary actions to return the Leased Premises to the condition existing prior to the presence of any such Hazardous Substance on the premises. Lessee shall first obtain City's approval for any such remedial action. As used herein, "Hazardous Substance" means any substance that is toxic, ignitable, reactive, or corrosive and that is regulated by any local government, the State of Colorado, or the United States Government. "Hazardous Substance" includes any and all material or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to state, federal, or local governmental law. "Hazardous Substance" includes but is not restricted to asbestos, polychlorobiphenyls ("PCBs"), and petroleum.

15. **HOLDING OVER:** If after the expiration of the Term and any Renewal Terms of this Lease, Lessee shall remain in possession of the Leased Premises or any part thereof, and continue to pay rent, without any express agreement as to such holding, then such holding over shall be deemed and taken to be a periodic tenancy from month-to-month, subject to all the terms and conditions of this Lease, except for the provisions relating to the period of Lessee's occupancy, and at a rent equivalent to 125% of the then current quarterly installment of rent due hereunder, payable in advance on the first day of each calendar quarter thereafter. Such holding over may be terminated by City or Lessee upon ten (10) days' notice. In the event that Lessee fails to surrender the Leased Premises upon termination or expiration of this Lease, or such month-to-month tenancy, then Lessee shall indemnify City against loss or liability resulting from any delay of Lessee in not surrendering the Leased Premises.

16. **REMEDIES UPON BREACH:** In the event of a breach of this Lease by Lessee, the City may have any one or more of the following described remedies, in addition to all of the rights and remedies provided at law or in equity:

- (a) The City may terminate this Lease and forthwith repossess the Leased Premises and be entitled to recover as damages a sum of money equal to the total of (i) the cost of recovering the Leased Premises, including reasonable attorneys' fees; (ii) the unpaid Rent earned at the time of termination, plus interest thereon at the rate of twelve

percent (12%) per annum from the due date; (iii) the balance of the Rent for the remainder of the term discounted to present value less any rents the City receives or could reasonably be expected to receive for the Leased Premises for said period; (iv) damages for the wrongful withholding of the Leased Premises by Lessee; (v) unpaid and due and owing taxes or assessments, as those taxes and assessments are described in Section 4; and (vi) any other sum of money in damages owed by Lessee to City as a result of its breach of this Lease.

(b) The City shall supply written notice of such default to the Lessee and provide fifteen (15) days from the date of such notice to cure the noted default, provided that if the default is of such a nature that it cannot reasonably be cured within such fifteen (15) day period, Lessee shall have such additional time as is reasonably necessary to cure the same. If Lessee fails to cure the default within the time period set forth herein, City may exercise the rights and remedies set forth in Section 16(a).

17. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Lease, the Lessee agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.

18. **LESSEE'S INSURANCE:** From the commencement of this Lease, and at all times throughout the term, Lessee (or its Lessee(s)) shall carry and maintain the following insurance policies. Lessee shall keep the required insurance coverage in force at all times during the term of the Lease, or any extension thereof, during any warranty period, and for three (3) years after termination of the Lease. 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 Lease. Such notice shall reference the City contract number listed on the signature page of this Lease. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal 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, Lessee 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) and referencing the City's contract number. Lessee shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Lease are the minimum requirements, and these requirements do not lessen or limit the liability of the Lessee. The Lessee 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 Lease.

(a) Workers' Compensation/Employer's Liability Insurance: Lessee shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$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.

(b) Property Insurance: Lessee shall provide 100% replacement cost for Lessee's tenant improvements and personal property.

(c) Commercial General Liability: Lessee shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate. Lessee's coverage is to be primary and non-contributory with any coverage or self insurance maintained by the City. The City and County of Denver, its officers, officials and employees shall be included as additional insureds.

(d) Waiver of Subrogation: Waiver of Subrogation and Rights of Recovery against the City, its officers, officials and employees for all coverages required.

(e) The certificates evidencing the existence of the above policy or policies, all in such form as the City's Risk Management Office may require, are to be provided to the City upon execution of this Lease. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Lease shall not act as a waiver of Lessee's breach of this Lease or of any of the City's rights or remedies under this Lease. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

(f) Lessee understands and acknowledges that the City does not provide any

insurance coverage for any property of the Lessee, its agents, employees or assignees located in the Leased Premises and Lessee acknowledges and agrees that the Lessee, its agents, employees and assignees have no claim against the City for any damage or loss of personal property and belongings of Lessee, its agents, employees or assignees in the Leased Premises.

19. **VENUE, GOVERNING LAW:** This Lease shall be construed and enforced in accordance with the laws of the State of Colorado, without regard to the choice of law thereof, and the Charter and Revised Municipal Code of the City and County of Denver. Venue for any legal action relating to this Lease shall lie in the State District Court in and for the City and County of Denver, Colorado.

20. **ASSIGNMENT AND RIGHT TO SUBLEASE:** The Lessee shall not assign or transfer its rights under this Lease, or sublet the Leased Premises without first obtaining the written consent of the Director, whose consent will not be unreasonably withheld.

21. **NO SALE OR ADVERTISING OF TOBACCO PRODUCTS:** The Lessee, its officers, agents, and employees shall cooperate and comply with the provisions of Executive Order No. 13, which prohibits the sale or advertisement of tobacco products on City owned property and in facilities owned or operated or controlled by the City and County of Denver. “Sale” includes promotional distribution, whether for consideration or not, as well as commercial transactions for consideration. “Advertising” includes the display of commercial and noncommercial promotion of the purchase or use of tobacco products through any medium whatsoever, but does not include any advertising and sponsoring which is a part of a performance or show or any event displayed or held in City facilities.

Lessee shall be subject to the advertising or sponsorship policies of DAV and the Theatre District, as the same may be amended from time to time.

22. **EXAMINATION OF RECORDS:** The Lessee agrees that any duly authorized representative of the City shall, until the expiration of three (3) years after final payment under this Lease, have access to and the right to examine any directly pertinent books, documents, and records of the Lessee involving matters directly related to this Lease.

23. **AMENDMENT:** No alteration, amendment or modification of this Lease shall be valid unless evidenced by a written instrument executed by the parties hereto with the same formality as this Lease; however, the Director shall have the authority to execute agreements which make technical, minor, or non-substantive changes to this Lease. The failure of either

party hereto to insist in any one or more instances upon the strict compliance or performance of any of the covenants, agreements, terms, provisions or conditions of this Lease, shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision or condition, but the same shall remain in full force and effect.

24. **SEVERABILITY**: If any portion of this Lease is determined by a court to be unenforceable for any reason, the remainder of the Lease remains in full force and effect.

25. **BINDING EFFECT**: This Lease when executed and when effective, shall inure to the benefit of and be binding upon the successors in interest or the legal representative of the respective parties hereto.

26. **THIRD PARTIES**: This Lease does not, and shall not be deemed or construed to, confer upon or grant to any third party or parties any right to claim damages or to bring any suit, action or other proceeding against the parties hereto because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein.

27. **NOTICES**: All notices hereunder shall be given to the following by hand delivery or by certified mail, return receipt requested or by nationally recognized overnight courier service:

Venues	To the City:	Executive Director of Denver Arts & 1345 Champa Street Denver, CO 80204
	With copies to:	Denver City Attorney's Office 201 W. Colfax, Department 1207 Denver, Colorado 80202
	To Lessee:	OBMSMG, LLC 250 N. Hartford Avenue Columbus, Ohio 43222
	With copies to:	Kooperman, Mental, Ferguson, Yaross, Ltd. 100 South 4th Street, Suite 100 Columbus, Ohio 43215 Attn: Brian Kooperman, Esq.

Either party hereto may designate in writing from time to time the address of substitute or supplementary persons to receive such notices. The effective date of service of any such notice shall be the date such notice is deposited in the mail or hand-delivered to the Party.

28. **ENTIRE AGREEMENT:** The parties acknowledge and agree that the provisions contained herein and Exhibits hereto constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect.

29. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event shall any performance hereunder constitute or be construed to be a waiver by any party of or any breach of covenant or condition or of any default which may then exist. The rendering of any such performance when any breach or default exists shall in no way impair or prejudice any right or remedy available with respect to such breach or default. Further, no assent, expressed or implied, to any breach of any one or more covenants, provisions, or conditions of the Lease shall be deemed or taken to be a waiver of any other default or breach.

30. **NO PERSONAL LIABILITY:** No elected official, director, officer, agent or employee of the City, nor any director, officer, employee or personal representative of Lessee shall be charged personally or held contractually liable by or to the other party under any term or provision of this Lease or because of any breach thereof or because of its or their execution, approval or attempted execution of this Lease.

31. **CONFLICT OF INTEREST BY CITY OFFICER:** Lessee represents that to the best of its information and belief, no officer or employee of the City is either directly or indirectly a party or in any manner interested in this Lease, except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

32. **APPROPRIATION:** All obligations of the City under and pursuant to this Lease are subject to prior appropriation of monies expressly made by the City Council for the purposes of this Lease and paid into the Treasury of the City.

33. **AUTHORITY TO EXECUTE:** Lessee represents that the persons who have affixed their signatures hereto have all necessary and sufficient authority to bind Lessee.

34. **PARAGRAPH HEADINGS:** The paragraph headings are inserted only as a matter of convenience and for reference and in no way are intended to be a part of this Lease or to define, limit or describe the scope or intent of this Lease or the particular paragraphs to which they refer.

35. **USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** Lessee shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A

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 contract personnel being barred from City facilities and from participating in City operations.

36. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** Lessee consents to the use of electronic signatures by the City. The Lease, 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 Lease 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 Lease 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.

[Remainder of Page Intentionally Left Blank.]

Contract Control Number:

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

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

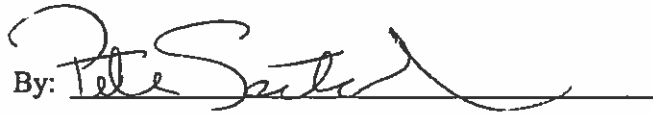
By _____

By _____



Contract Control Number: THTRS-201631374-00

Contractor Name: OBMSMG, LLC

By: 

Name: Pete Scantland
(please print)

Title: CEO
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



Exhibit A

Sign Locations

Digital Advertising Sign Lease:

Vendor will erect, maintain, and service digital advertising signs ("Sign(s)"), along with associated equipment, furnishings, fixtures and electrical service for the display of commercial, industrial, public service, or charitable advertising ("Advertisement(s)") on the four (4) digital Sign(s) located at the Colorado Convention Center (CCC) and Denver Performing Arts Complex (DPAC) outlined below.

Sign Locations:

1. 14th & Curtis/DPAC
2. 14th & Arapahoe/DPAC
3. Speer & Arapahoe/DPAC
4. Speer & California/CCC

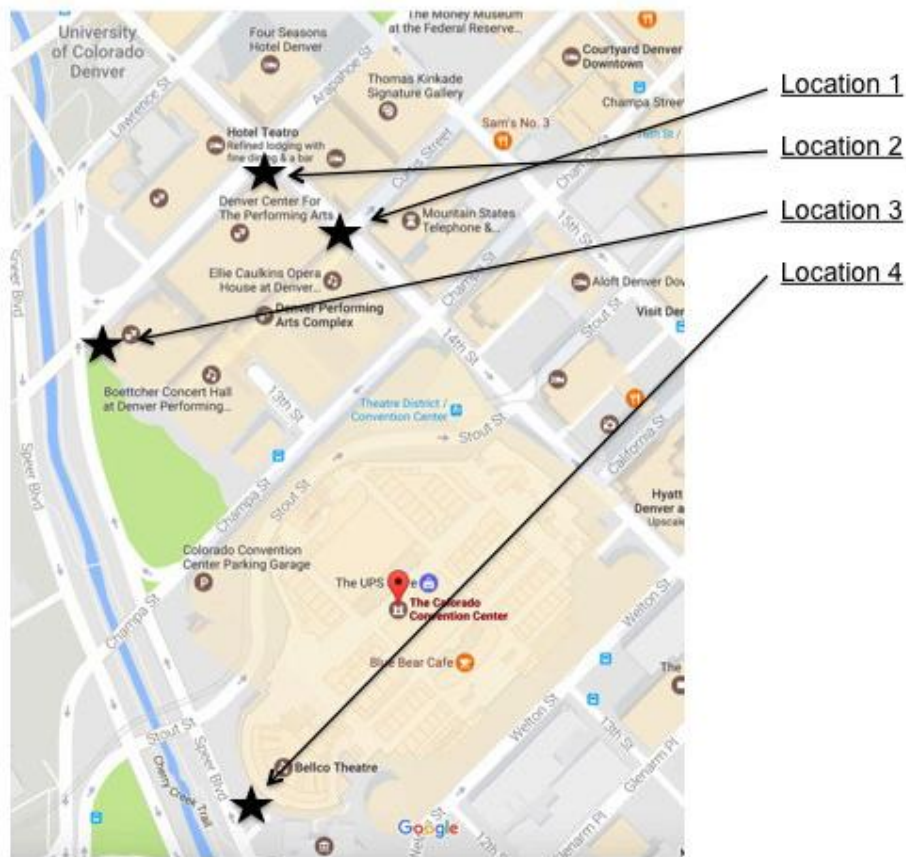


Exhibit B

Scope of Work

In the event of a conflict between the terms of the Lease and this Exhibit B, the terms of the Lease shall govern and control.

Digital Advertising Sign Lease:

OBM will erect, maintain, and service digital advertising signs (“Sign(s)”), along with associated equipment, furnishings, fixtures and electrical service for the display of commercial, industrial, public service, or charitable advertising (“Advertisement(s)”) on the Sign(s).

Sign Locations: The following four (4) Signs.

1. 14th & Curtis
2. 14th & Arapahoe
3. Speer DPAC
4. Speer CCC

Digital Advertising Sales:

OMB shall be the exclusive representative with respect to providing the advertising sales services for DAV and the City. OMB shall solicit non-City parties (the “Advertisers”) to promote their brand, products, services, events, or the like on the digital signs and Colorado Convention Center kiosks.

Notwithstanding the foregoing, City may cause OBM to display content for its Sponsors, as that term is defined herein, during City’s allocated time on the Lease Premises as set forth in Section 5(g) of the Lease, but shall be prevented from selling such time independently of a larger sponsorship package containing other assets controlled by City. As used herein, the term “Sponsors” shall mean any groups or organizations sponsoring activities taking place at the Denver Performing Arts Complex or the Colorado Convention Center. For any such Sponsor, the value of any advertisement time received from the City cannot exceed more than 50% of the total remuneration or donation that the City is receiving from such Sponsor, with the value of the advertisement being based on the prices then in effect for such advertisement time as established by Lessee. City shall be prevented from offering category exclusivity with respect to any brands, products, services or events to any of its Sponsors on the Leased Premises. The City’s designated tourism partner may, at times, request kiosk and Colorado Convention Center signage inventory on an as available basis, which shall be counted towards the City’s allotted time as set forth in the Lease.

With respect to all advertising sold by OBM, OBM shall also be responsible for providing the following support services:

1. Providing support to the Advertisers, including handling all inquiries from the Advertisers of any type or nature;
2. Preparing and submitting to DAV on an annual basis, a detailed sales plan and strategy which shall include revenue goals, performance requirements, and other items as reasonably requested by DAV. Such sales plan shall be subject to DAV approval, which shall not be unreasonably withheld, conditioned or delayed;
3. Preparing proof-of-run affidavits (POP reports) and visual/photographic documentation of advertising as reasonably required by DAV or the Advertisers;
4. Producing all artwork including electronic and static installation and submitting such artwork to DAV at such time and in such manner that allows for timely installation and display on the subject signage. Artwork and content shall comply with any technical and creative guidelines provided to OBM by the City or its Sponsors;
5. Conducting billing reconciliations.

Prices to be charged to the Advertisers shall comply with the pricing rates set or otherwise approved in writing by DAV, which approval shall not be unreasonably withheld, conditioned or delayed.

Content Standards:

OBM agrees that it will not display any item, photograph, representation, depiction, text, or other visual display of any nature that is inconsistent with the general standard of decency in the Denver community (“Decency Standard”) or otherwise violates the terms of the Lease.

Screen Replacement:

OBM agrees to replace the LED screen, or the components thereof, on each Sign at least one (1) time following the conclusion of the first Renewal Term provided City agrees to waive its rights to not renew for the second and third Renewal Terms. Replacements shall include advances in LED technology such as an increase in pitch, matrix, viewing area or module size and improved scheduling software and operating systems that house scheduling software and digital advertising files. Lessee shall also be responsible for maintenance of the hardware and software scheduling system and providing all security and software updates as needed. Lessee will not be responsible or liable for communication failure caused by City IT or Internet connectivity issues.

DAV Allocation:

The City and DAV shall together receive a minimum of twenty percent (20%) of the time on the Leased Premises to advertise and promote events in the City, or run and/or sponsored by DAV, or other public or charity announcements as the City or DAV may reasonably choose and Lessee shall in good faith reasonably assist City and DAV in producing their content. The City and DAV shall be responsible for allocating the aforementioned twenty percent (20%) between them at their discretion.

City and County of Denver
 Division of Arts & Venues
 1345 Champa Street
 Denver, CO 80204

**City and County of Denver
 Denver Arts & Venues
 Marquee/Billboard Advertising Contract**

Date: _____ <div style="border: 1px solid black; border-radius: 15px; padding: 2px; display: inline-block;">New / Renewal</div>
Bill to: _____

Advertiser: _____

Ad Locations: _____

Mailing Address: _____ Nat'l/Local: _____

City: _____ State: _____ Zip: _____ Contact: _____

Phone: _____ Term: Months (not to exceed 6 months) Dates: _____

Fax: _____ E-mail: _____

Location	Product Length	# of units per day	(\$ Net/Mo.)												TOTAL		
			Jan '13	Feb '13	Mar '13	Apr '13	May '13	Jun '13	Jul '13	Aug '13	Sep '13	Oct '13	Nov '13	Dec '13			
																	\$
																	\$
																	\$
																	\$
																	\$
																	\$
																	\$
TOTAL																\$	

THE TERMS ON THE SECOND PAGE ARE PART OF THIS CONTRACT

Special Provisions _____

Other Provisions _____

Advertiser authorizes and instructs OBMSMG, LLC (OMB), as representative of City and County of Denver, Denver Arts & Venues (DAV or City), to post in good and workman like manner, and to maintain for the terms set forth above, the advertising displays described above or on the attached list. In consideration thereof, Advertiser agrees to pay the City all contracts amounts within thirty (30) days after the date of billing unless noted differently above. Any payments not made when due pursuant to the above terms shall accrue interest at the rate of 18% per annum commencing on the 5th calendar day after the date such amount is due and owing until paid to the City. Advertiser acknowledges and agrees to be bound by the terms and conditions contained on both pages of this contract. The undersigned representative or agent of Advertiser hereby warrants to OMB that he/she is the authorized representative of the Advertiser and is authorized to execute this contract on behalf of Advertiser.

Advertiser (Company Name): _____

Signature: _____

Printed Name: _____

Title: _____ (e.g., Managing Partner, Sole Member, President, etc.)

This contract is NOT BINDING UNTIL ACCEPTED by [Senior Management] of OBMSMG, LLC and APPROVED BY the City, as evidenced by signatures below:

ACCEPTED BY OBMSMG, LLC:

Signature: _____

Printed Name: _____

Title: _____

FORM APPROVED BY DIRECTOR OF DAV (OR DESIGNEE):

Signature: _____

Printed Name: _____

Title: _____

THIS INFORMATION FOR OFFICE USE ONLY

Billing Start Date: _____

Contract End Date: _____

Mo. Billing Rate: _____

Political: _____ Split Billing: _____

Product Code: _____

Nat'l Contract No. _____

Sales Exec: _____

Dept: _____ Bill Code: _____

Terms and Conditions of Advertising Contract

- 1.) Advertiser agrees to furnish creative for said advertising and deliver the same as designated by OMB at least seven (7) working days before the installing date without expense to OMB. The creative material used shall be subject to approval by OMB and its decision as to acceptability shall be final. Outdated/expired copy is subject to removal with or without notice. Dissatisfaction with results or appearance of advertising shall not constitute grounds for nonpayment of bills.
- 2.) Loss of Service due to failure of the Advertiser to furnish creative (including new creative when old creative is outdated/expired) as provided above for installation on the stated commencement date and during the duration of the contract, shall be the Advertiser's loss. Other delays in commencing service on any of the Marquees contracted for, or the omission of units from a reasonable number of days, shall not constitute a violation of this contract, but the Advertiser shall be entitled upon either of such happening to a pro rata credit, or, at the option of OMB an extension of the term of the service equivalent to the delay or omission.
- 3.) Advertiser shall indemnify and save harmless the City and OMB, and their officers and employees, against any liability to which they may be subjected by reason of the advertising material displayed under this contract, including, but not limited to, liability or infringement of trademarks, trade names, copyrights, invasion of rights of privacy, defamation, illegal competition or trade practices, as well as all reasonable cost, including attorney's fees, in defending any such action or actions.
- 4.) In the event any official of the City or OMB shall disapprove any advertisement, the City or OMB shall have the right to remove said advertisement forthwith and the Advertiser shall receive a pro rata credit from the date of removal of such advertisement. All advertising must comply with all federal, state, and municipal laws and regulations with respect to the advertising matter to be displayed. In the event such advertising becomes illegal or a request is received to terminate the advertising, OMB reserves the right to terminate.
- 5.) OMB reserves the right to terminate this contract at any time upon default by Advertiser in the payment of bills, or other breach, or in the event of any material violation on the part of the Advertiser of any of the conditions herein named; and upon such cancellation, all advertising done hereunder, including all rates and charges under this contract, shall become immediately due and payable. In case of delinquency in payment, the City/OMB shall be discharged from any obligation to display the Advertiser's copy. In the event of suit for collection of unpaid accounts, OMB or the City shall be entitled to recover all amounts due, including late fees, post judgment interest, costs of suit, and reasonable attorneys' fees and collection agency fees. Advertiser consents to jurisdiction and venue in the Courts of the City and County of Denver, Colorado for any such suit.
- 6.) This contract is not assignable by the Advertiser, nor may the subject of the advertising be changed.
- 7.) This contract becomes effective when executed by OMB and contains the full agreement of the parties, and no representation or assurance, verbal or written, shall affect or alter the obligation of either party hereto.
- 8.) All contracts are non-terminable by Advertiser.
- 9.) In the event that a sign is no longer available due to technical issues or removal of the sign then OMB may, in its discretion, move the advertising to a comparable location (and adjust units per day if needed) or cancel the portion of the contract assigned to that location.
- 10.) Any bills rendered to the DAV or Advertiser shall be conclusive as to the correctness of the items therein set forth and shall constitute an account stated unless written objection is made thereto by the Advertiser within thirty (30) days from the rendering thereof.
- 11.) In connection with the performance of work pursuant to this contract, Advertiser and OMB agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability.
- 12.) Advertiser represents that to the best of its information and belief, no officer or employee of the City is either directly or indirectly a party or in any manner interested in this contract, except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee
- 13.) This contract is subject to and shall be construed in accordance with the laws of the State of Colorado and the City and County of Denver.
- 14.) Advertiser and OMB agree that any duly authorized representative of the City shall, until the expiration of three (3) years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, and records of the advertiser involving matters directly related to this contract.

SURETY AGREEMENT:

In consideration of OMB entering into this contract with Advertiser, the undersigned ("Surety") guarantees and becomes a surety for Advertiser in favor of OMB for all sums dues by Advertiser under this contract. The obligation of Surety is joint and several with Advertiser for the full performance of all of Advertiser's obligations under this contract or any continuation. Surety consents to all extensions. It is understood that, without this guarantee or surety agreement, OMB would not be willing to enter this contract with Advertiser.

Signature: _____

Print Name: _____

Title: _____

Date: _____

