

**BY AUTHORITY**

ORDINANCE NO. \_\_\_\_\_

COUNCIL BILL NO. CB13-0299

SERIES OF 2013

COMMITTEE OF REFERENCE:

BUSINESS, WORKFORCE, & SUSTAINABILITY

**A BILL**

**For an ordinance approving a proposed Agreement between the City and County of Denver and Ned Kahn Studios for the design of a public art project at Denver International Airport.**

**BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

**Section 1.** The proposed Agreement between the City and County of Denver and Ned Kahn Studios (201310482) in the words and figures contained and set forth in that form of Agreement available in the office and on the web page of City Council, and to be filed in the office of the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver, under City Clerk's Filing No. 2013-0397, is hereby approved.

COMMITTEE APPROVAL DATE: May 9, 2013

MAYOR-COUNCIL DATE: May 14, 2013

PASSED BY THE COUNCIL: \_\_\_\_\_, 2013

\_\_\_\_\_ - PRESIDENT

APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_, 2013

ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
EX-OFFICIO CLERK OF THE  
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL: \_\_\_\_\_, 2013; \_\_\_\_\_, 2013

PREPARED BY: John M. Redmond, Assistant City Attorney *JR* DATE: May 16, 2013

Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed ordinance. The proposed ordinance is submitted to the City Council for approval pursuant to § 3.2.6 of the Charter.

Douglas J. Friednash, City Attorney for the City and County of Denver

BY: \_\_\_\_\_, Assistant City Attorney DATE: May 16, 2013

## AGREEMENT

**THIS AGREEMENT** is entered into as of the date indicated on the signature page below, by and between the **CITY AND COUNTY OF DENVER**, a Colorado municipal corporation (“City”), Party of the First Part, and **NED KAHN STUDIOS**, a Sole Proprietorship (“Artist”), Party of the Second Part.

### **RECITALS:**

1. The City has allocated funds to include the design of a three-dimensional artwork (“Work”) in the exterior area of the Denver International Airport (“DIA” or “Airport”), specifically the area known as the South Terminal Project located at 8500 Pena Boulevard, Denver, Colorado 80249 (“Site”); and

2. The Artist has been competitively selected by the City through DIA to design, execute, fabricate, deliver, and install a work of art for the City after consultation with DIA and the City; and

3. Both Parties wish to reasonably promote the integrity and clarity of the Artist’s ideas and statements as represented by the Work; and

4. The City believes the Artist to be qualified to perform such services for the City, and desires to enter into an agreement with the Artist to perform such services; and

5. The Artist is ready, willing, and able to render such services as an independent contractor; and

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

### **AGREEMENT:**

In consideration of the premises and the mutual covenants herein contained, and subject to the terms and conditions hereinafter stated, the Parties hereto hereby agree as follows:

1. **WORK TO BE PERFORMED:**

1.1 **General.**

a. As used in this Agreement, unless the context otherwise requires, "Work" means the work of art as ultimately conceived, designed, executed, and fabricated by the Artist after consultation with the Site designers and others. The Work includes all physical components of the complete artwork, including but not limited to all the components necessary to complete the fabrication of the artwork. See Scope of Work ("**Exhibit A**").

b. The Artist shall undertake travel to the Work at the Site and shall perform all services and furnish all supplies, material, and equipment as necessary for the design, execution, and fabrication of the Work, including payments for all necessary taxes, insurance, small tools, Artist consultants, rental equipment, and all other items incidental to producing a complete and acceptable Work.

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

1.2 **Phase I Preliminary Design.**

a. The Artist will develop and submit an initial Preliminary Design document. The City, in its sole discretion, may accept or reject the Preliminary Design. The City shall review the Preliminary Design document and within ninety (90) days after receipt of the design, notify the Artist whether the City wishes to proceed with the project by issuing a Notice to Proceed to the Artist as set out below. Upon City acceptance of the Preliminary Design, the Artist shall be paid Two Hundred Thousand Dollars (\$200,000.00).

If the City determines not to proceed with the project, the City shall so notify the Artist, and this Agreement shall be deemed terminated for all purposes with the Artist retaining the Two Hundred Thousand Dollars (\$200,000.00) compensation that was paid as full and complete compensation for his Preliminary Design services. In the event that the Agreement is terminated, the City shall be entitled to retain copies of the Preliminary Design document.

b. The Preliminary Design document shall include an artist's statement,

proposed schedule of completion, and proposed budget. The proposed budget shall include costs for design, execution, fabrication, and other costs associated with the Work. Further documentation in the Preliminary Design document may be required at the discretion of the STRP Public Art Administrator referred to in Section 2 of this Agreement.

c. After its receipt of the Artist's Preliminary Design pursuant to this Section, the City shall notify the Artist within the time period referred to in Section 1.2(a) if it approves of such submission, budget, and of all revisions made as a result thereof. The City's approval shall be in its sole discretion. Revisions made pursuant to this Section become a part of the Preliminary Design Document.

1.3 Phase II Final Design.

a. Upon receipt of the approval of the Phase I Preliminary Design by the City, the Artist shall have ninety (90) days to submit to the City a Final Design for review and approval. The Final Design shall include a definition of equipment to be used, Diagrams, and principal location plans for the equipment to be set up, a final work plan, and an estimation of costs related to the Work, including the cost of the lighting equipment obtained from the suppliers.

The final budget, not to exceed Two Million Dollars (\$2,000,000.00), shall include all costs for design, execution, fabrication, insurance, contingencies, consultant fees, any costs associated with transfer of ownership to the City, and any other costs associated with the Work.

b. The City will review the Final Design and make any requests to change the scope, design, color, size, material, or texture of the Work within ninety (90) days of receiving the Final Design document.

c. The Artist shall have ninety (90) days to respond and submit an amended Final Design to the City's request for changes in the Final Design.

d. Upon final acceptance by the City, the Final Design cannot be significantly changed without the City's review and approval. The City shall in its sole discretion determine whether a significant change exists. Significant changes may include

changes to the scope, design, color, size, material, or texture of the Work prior to the time of delivery of the Final Design document. The Artist shall present to the City in writing for further review and approval any significant changes the Artist intends to make prior to the time of delivery of the Final Design document.

e. Upon final acceptance of the Final Design, the Artist shall be paid Four Hundred Thousand Dollars (\$400,000.00) by the City.

f. Such Final Design shall be incorporated into this Agreement by reference as **Exhibit B** and may be amended by written agreement between the City and the Artist.

1.4 Phase III Fabrication of Work.

a. After written approval by the City of the Final Design, the Artist shall furnish to the City a schedule for the completion of fabrication and installation of the Work, including a schedule for the submission of progress reports and invoices. After the City provides written approval of the schedule, the Artist shall fabricate, transport, and install the Work in accordance with such schedule. Such approved schedule shall be incorporated into this Agreement by reference as **Exhibit D** and may be amended by written agreement between the City and the Artist.

b. The City shall have the right to review the Work at reasonable times during the fabrication hereof. The Artist shall submit to the City progress reports acceptable to the City with each invoice or at the request of the City.

c. The Artist shall complete the fabrication, transportation, and installation of Work in conformity with the Final Design.

d. The Artist shall present to the City in writing for further review and approval any significant changes in the scope, design, color, size, material, or texture of the Work. The City in its sole discretion shall determine whether a significant change exists.

e. The City may make periodic payments during the fabrication period based upon a schedule mutually agreed upon among the Parties. The Artist must submit invoices during the fabrication period to support any request for payment.

f. The Artist shall be paid Five Hundred Thousand Dollars (\$500,000.00) by

the City for fabrication of the Work.

1.5 Phase IV Delivery and Installation.

a. The Artist shall notify the City in writing when fabrication of the Work is completed and it is ready for delivery and installation at the Site.

b. The Artist shall deliver and install the completed Work at the Site in accordance with the approved schedule.

c. The City shall endeavor to prepare the Site for the timely installation of the Work, including public access and area lighting of the Work, but the City shall not be responsible for any utility provision or expense, or for any physical alteration of the Site surface.

d. Upon installation of the Work, the Artist shall be paid Five Hundred Thousand Dollars (\$500,000.00) by the City.

1.6 Phase V Final Acceptance.

a. Within thirty (30) days after installation of the Work, the Artist at his sole expense shall furnish the City with full copies of any photographic or video documentation in digital format as well as all construction documents.

b. Prior to Final Acceptance of the Work by the City, the Artist shall provide the City with lien and/or claim releases from contractor, subcontractors, and suppliers on the Project and shall otherwise comply with the provisions of C.R.S. §38-26-107.

c. Having overseen the installation of the Work, the Artist must officially approve the Work done, and the City must also give final approval of the Work in writing on its letterhead. The Artist shall also provide a letter to the City transferring ownership to the City upon Final Acceptance. The transfer of ownership letter shall be incorporated into this Agreement by reference as **Exhibit E**.

d. Upon Final Acceptance of the Work, the Artist shall provide to the City written recommendations for appropriate maintenance and preservation of the Work.

e. The City shall notify the Artist in writing of its Final Acceptance of the Work and shall pay the Artist Two Hundred Thousand Dollars (\$200,000.00).

1.7 Public Appearance.

a. The lead artist (Ned Kahn) or a designee (to be approved by the City) will make at least one public appearance in Denver on behalf of the project as a means of promoting the Work and the studio's work. This could take the form of a public presentation, a panel discussion, a series of outreach events, or other similar type of event as agreed upon by the Parties to this Agreement. The City shall endeavor to arrange publicity for the completed Work in such art publications and otherwise as may be determined between the City and the Artist as soon as practicable following transfer of the ownership to the City.

b. The City shall pay the Artist One Hundred Thousand Dollars (\$100,000.00) for these public appearances.

1.8 Ownership of Work Products.

The City, at its option, may retain all plans, drawings, slides, photographs, submittals, studies, designs, maquettes and models, and other documents submitted to the City by the Artist. When submitted, these items become the property of the City, and the City may without restriction make use of such documents for educational, public relations, arts promotional, and other non-commercial purposes. The Artist shall not be liable for any damage which may result from any use of said documents for purposes other than those described in this Agreement.

2. LINE OF AUTHORITY:

The City's Manager of Aviation ("Manager of Aviation" or the "Manager"), authorizes all work performed under this Agreement. The Manager hereby delegates his/her authority over the work described herein to the South Terminal Program Manager ("STRP Manager"), as the

Manager's authorized representative for the purpose of administering, coordinating, and approving work performed by the Artist under this Agreement. The Artist shall coordinate its services with the STRP Manager or his/her designated representative.

The STRP Manager's authorized representative for day-to-day administration of the Artist's services under this Agreement is the South Terminal Program Public Art Administrator ("STRP Public Art Administrator") or his/her designated representative. The Artist shall submit its reports, memoranda, correspondence, and submittals to the STRP Public Art Administrator or his/her designated representative. The Manager and the STRP Manager may rescind or amend any such designation or delegation of authority and may from time to time designate a different individual to act as the authorized representative, upon notice to the Artist.

3. **TERM OF AGREEMENT AND TIME OF PERFORMANCE:**

3.1 **Term.** The term of the Agreement shall commence on the date of execution hereof, and terminate on completion of the services to be performed by the Artist hereunder or within three (3) years from the date of execution, or on December 31, 2016, whichever is later.

3.2 **Duration.** The services to be required of the Artist, as set forth in Section 1, shall be completed in accordance with the schedule for completion of the Work as set out in this Agreement; provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

3.3 **Early Completion of Artist's Services.** The Artist shall bear any transportation and storage costs resulting from the completion of his services hereunder prior to the time provided in the schedule for transfer of the ownership to the City.

3.4 **Time Extensions.** The City shall grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the City in performing its obligations



under this Agreement or in completing the Work, or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract; provided that such obligations shall be suspended only for the duration of such conditions.

4. **PAYMENT:**

4.1 **Fees.** The Artist agrees to accept, and the City agrees to pay, as full and complete compensation for completion of all the items of work contained in this Agreement a fixed fee of Two Million Dollars (\$2,000,000), which shall constitute full compensation for all services and materials whatsoever to be performed and furnished by the Artist under this Agreement. It is agreed that the City has no obligations regarding commission or any agreements with galleries or agents with whom the Artist may have contracted. The fee shall be paid in the following installments, subject to receipt by the City of acceptable periodic invoices and supporting documentation from the Artist, each installment to represent full and final, nonrefundable payment for all services and materials provided prior to the due date thereof:

**AGREEMENT MILESTONES**

	Agreement Milestones	%	Amount
1.	Execution of Agreement	5%	\$100,000 USD
2.	Preliminary Design	10%	\$200,000 USD
3.	Final Design (Finalized Study)	20%	\$400,000 USD
4.	Fabrication of Artwork	25%	\$500,000 USD

5.	Installation of Artwork (25%)	25%	\$500,000 USD
6.	Final Acceptance (10%)	10%	\$200,000 USD
7.	Public Appearance (5%)	5%	\$100,000 USD
	Total Maximum Amount Payable of Agreement Not to Exceed (Maximum Contract Liability)	100%	\$2,000,000 USD

Any of the milestones may be subdivided into payments by agreement between the Parties. The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of all travel by the Artist, the Artist's agents and employees necessary for the proper performance of the services required under this Agreement, and for all other miscellaneous charges hereunder.

4.2 Appropriation. Notwithstanding any other term or condition of this Agreement, it is understood and agreed that the obligation of the City for all or any part of its payment obligation hereunder, whether direct or contingent, shall only extend: (i) to the City's "City and County of Denver, Airport System Capital Improvement Fund" or (ii) as to other funds, to payment of monies duly and lawfully appropriated by the City Council for the purpose of this Agreement and paid into the Treasury of the City. The City is under no obligation to make any future apportionments or allocations to said fund. The City is under no obligation to amend this Agreement to increase the Maximum Contract Liability as stated.

4.3 Maximum Amount Payable. The maximum amount payable by the City under this Agreement shall not exceed Two Million Dollars (\$2,000,000).

5. **STATUS OF ARTIST:**

It is understood and agreed by and between the Parties that the status of the Artist shall be that of an independent contractor retained on a contractual basis to perform professional or technical services for limited periods of time as described in Section 9.1.1.E(x) of the Charter of the City, and it is not intended nor shall it be construed that the Artist, its employees, or its subcontractors are employees or officers of the City under Chapter 18 of the Revised Municipal Code (“D.R.M.C.”) or for any purpose whatsoever.

6. **WARRANTIES:**

6.1 **Warranties of Title.** The Artist represents and warrants to the City that:

a. The Work is solely the result of the artistic effort of the Artist;

b. Except as otherwise disclosed in writing to the City prior to the time of execution hereof, the Work is unique and original and does not infringe upon any copyright and any other property or personal right;

c. That neither the Work delivered hereunder, nor a duplicate thereof, has been accepted for sale elsewhere; and

d. The Work is free and clear of any liens or claims or encumbrances from any source whatsoever.

e. The Artist shall defend and indemnify the City if a third party asserts a copyright infringement or claim involving the Work.

6.2 **Warranties of Quality and Condition.** The Artist represents and warrants to the City that:

a. The execution and fabrication of the Work will be performed in a workmanlike manner;

b. The Work, as fabricated and executed, will be free of defects in material and workmanship, including any defects consisting of “inherent vice” or qualities which cause or accelerate deterioration of the Work; and

c. Reasonable maintenance of the Work will not require procedures substantially in excess of those described in the maintenance recommendations to be submitted by the Artist to the City hereunder.

6.3 Duration of Warranties; Breach. The City shall give notice to the Artist of any observed breach with reasonable promptness. At the City's request and at no cost to the City, the Artist shall cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards as determined solely by the City (including, for example cure by means of repair or refabricating of the Work). The warranties described in section 6.2 shall survive for a period of two (2) years after the date of the City's written notification of final acceptance of the Work.

7. **OWNERSHIP AND REPRODUCTION RIGHTS:**

7.1 Title. Title to the Work shall pass to the City upon final acceptance. The Artist shall confirm in writing that ownership of the Work belongs to the City.

7.2 The Work. The Artist retains all rights expressly granted in this Agreement, but the Artist expressly waives all other rights in and to the Work, including all rights in the nature of "Droit Moral" in regard to any continuing interest the Artist may have in the maintenance or modification of the Work. Insofar as such moral rights are transferable, such rights are assigned to the City. Because the Work in its final dimension is intended to be and shall be unique, the Artist shall not make any additional exact duplicate, two or three-dimensional reproductions of the final Work, including posters or prints, nor shall the Artist grant permission to others to do so except with the written permission of the City. The Artist, however, may use photographic reproductions of the Work in his portfolio, in critical and scholarly writings, or for non-commercial purposes, including reproductions used in advertising brochures, media publicity, and catalogues or other similar publications.

The Artist grants to the City and its assigns a nonexclusive and irrevocable license to make two-dimensional reproductions of the Work for commercial purposes, which shall include reproductions used on calendars, postcards, posters, or similar items. Any additional commercial uses of the Work will need to be negotiated in a separate agreement by the Parties to this Agreement.

The Artist grants to the City and its assigns an irrevocable license to make two-dimensional reproductions of the Work for non-commercial purposes, in the sole discretion of the City and its assigns, including reproductions used in advertising brochures, media publicity, and catalogues or other similar publications.

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

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

7.5 Registration. The Artist shall at his expense cause to be registered with the United States Register of Copyrights a copyright of the Work in the Artist's name.

7.6 Display Period. The City may display the Work at its discretion and where appropriate. The City may at its discretion not display the Work and will store the Work in a proper manner during these times. At the end of this display period, the City shall notify the Artist of any future actions taken with the Work including but not limited to those outlined in Section 9.4. The City shall make every reasonable effort to engage with the Artist for recommendations at the end of the display period.

8. **WAIVER OF ARTISTS'S RIGHTS UNDER 17 U.S.C. §106A(a) AND §113**

**ET. SEQ., AS AMENDED:**

The Artist understands and agrees that, as to his rights in the Work, the provisions of this Section shall control over the provisions of 17 U.S.C. §106A(a) and §113 et. seq., as amended, and shall constitute a waiver by the Artist of any rights in the Work set out in or otherwise granted by 17 U.S.C. §106A(a) or §113 et. seq. as amended, or otherwise in the nature of “Droit Moral” under which artists claim an interest in their work.

9. **MAINTENANCE AND REPAIR:**

9.1 **Conservation of Work: Maintenance, Repairs, and Restoration.** After consultation with a professional conservator selected by the City, the City shall have the right to determine, in its sole discretion, when and if maintenance, repairs, and restorations to the Work will be made. To the extent practical, during the Artist’s lifetime the Artist shall be given the opportunity to consult on significant repairs or restorations. All repairs and restorations shall be made in accordance with recognized principles of conservation.

9.2 **Damage.** Subject to Section 9.4 below, the City agrees that it will not intentionally damage, alter, or modify the Work without the prior written approval of the Artist. Additionally, the City will endeavor to the best of its ability to make reasonable efforts to maintain the visual integrity of the Work as originally intended by the Artist.

9.3 **Notification to Artist.** The City shall endeavor to (i) notify the Artist of any proposed alteration of the Work that would affect the intended character of the Work; (ii) consult with the Artist in the planning and execution of any such alteration; and (iii) make a reasonable effort to maintain the integrity of the Work, subject to DIA operational, security, and maintenance needs.

9.4 Removal, Relocation, Sale, Donation, or Destruction. Nothing in this Agreement shall preclude any right of the City in its sole discretion to (i) remove the Work from public display; (ii) move or relocate the Work to another location selected solely by the City for public display; (iii) donate or sell the Work to a third person or entity; or (iv) destroy the Work. In addition, the Artist will have the right of final refusal as to any sale of the Work. The Artist understands that due to the dynamic nature of a large international airport the City has the right to move the Work for any reason. If the City decides to donate or sell the Work, the donee or buyer of the Work (i) will assume all of the City's duties toward the Artist stated herein; (ii) will be obligated to defend and indemnify the City with respect to such duties; and (iii) will take the Work subject to all of the Artist's rights as stated herein. The donee or buyer shall be given a copy of this executed Agreement at the time of the donation or sale. The City will endeavor to notify the Artist of such donation and sale and of the identity of the donee or buyer. If the City shall at any time decide to destroy the Work, the City shall notify the Artist and offer the Artist a reasonable opportunity to recover the Work at no cost to the Artist, except for an obligation of the Artist to indemnify and reimburse the City for the difference between the City's cost to recover the Work and the City's cost to destroy the Work, as reasonably determined solely by the City. Without limiting the generality of Section 8, the Artist agrees that his rights in connection with the destruction of the Work are as described in this Section 9.4; the Artist waives any greater or other rights which he might have in connection with the removal or destruction of the Work under 17 U.S.C. §106A(a) and §113.

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

9.6 Artist's Address. The Artist shall notify the City of changes in his address. The failure to do so, if such failure prevents the City from locating the Artist, shall be deemed a waiver by the Artist of the rights granted to or retained by the Artist in this Section 9,

the exercise of which requires response by the Artist. A mailing of notice by the City by certified mail with return receipt requested to the address of the Artist or of his attorney currently on file with the City at the time of such mailing shall be deemed to be an adequate notification effort by the City hereunder.

9.7 Surviving Covenants. The covenants and obligations set forth in this Section shall be binding upon the Parties, their heirs, legatees, executors, administrators, assigns, transferees, and all their successors in interest, and the City's covenants do attach and run with the Work and shall be binding to and until twenty (20) years after the death of the Artist. The obligations imposed upon the City by Sections 9.3 through 9.5, however, shall terminate on the death of the Artist. The City shall give any subsequent owner of the Work notice in writing of the covenants herein providing such owner with an executed copy of this Agreement.

9.8 Event of Artist's Default or Incapacity.

a. In the event of incapacity or death of the original Artist, such event will not be deemed a breach of this Agreement or a default on the part of the original Artist. The original Artist has the right to appoint a successor artist to complete the Work in the event of incapacity or death. The successor artist is subject to approval of the City at the time of the signing of this Agreement and shall be bound to complete the Work under the same terms, including the budget, herein; however, the successor artist shall be automatically given an extension of sixty (60) days added to the timeline. The original Artist shall be paid only for that portion of Work or services satisfactorily completed at the time of incapacity or death with remaining payments to be made to the successor Artist. The original Artist shall provide a copy of this Agreement to the successor artist, and the successor artist shall provide a written acknowledgement to the City of the successor artist's agreement to abide by the terms of this Agreement.

b. In the event of incapacity or death of the original Artist where no successor artist has been appointed or where an appointed successor artist does not complete the



Work, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's sole option become its property. If the Work was at mid-point of fabrication or beyond at the time of death or incapacity and no successor is appointed, the City retains the rights to select a successor artist to finish the Work at the City's expense. If the Work was not at mid-point of fabrication or beyond at the time of death or incapacity, and no successor is appointed, the City retains possessory rights to the Work as then in existence and to exhibit the Work with the designation that it is "unfinished." The Artist shall be paid only for that portion of Work or services satisfactorily completed at the time of incapacity or death.

10. **COMPLIANCE WITH PATENT, TRADEMARK, AND COPYRIGHT LAWS:**

10.1 Artist's Compliance with Intellectual Property Laws. The Artist agrees that all work performed under this Agreement shall comply with all applicable patent, trademark, and copyright laws, rules, regulations, and codes of the United States. The Artist will not utilize any protected patent, trademark, or copyright in performance of its work unless it has obtained proper permission and all releases and other necessary documents. If the Artist prepares any design documents which specify any material, equipment, process, or procedure that is protected, the Artist shall disclose such patents, trademarks, and copyrights in the construction drawings or specifications.

10.2 Artist Indemnifies the City. The Artist further agrees to release, indemnify, and save harmless the City, its officers, agents and employees, pursuant to Section 20, "Indemnification," from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind or nature whatsoever, of or by anyone whomsoever, in any way resulting from or arising out of, directly or indirectly, the performance of work under this Agreement which infringes upon any patent, trademark, or copyright protected by law, except in cases where the Artist's personnel are working under the direction of City personnel and do not have direct knowledge or control of information regarding patents, trademarks, and copyrights.

10.3 Airport as a Public Building. The Artist understands and acknowledges that the Airport is owned and operated by the City and County of Denver (“City”) and is thus considered a public building. The Artist understands that the City often issues film permits to persons and entities who wish to film at the Airport, whether still, motion picture or otherwise. Additionally the general public may occasionally film, photograph, or otherwise capture images of the Work and that such recordings of the Work result directly from the public nature of the building and are thus beyond the control of the City. Notwithstanding any other provision of this Agreement, the Artist recognizes and permits the City to issue such permits to persons and entities, to include the Artwork and surrounding site, and the Artist holds the City harmless therefore. The Artist will not hold or seek to hold the City liable in any way for the acts of any member of the general public for their filming or use of the Work or any person/entity utilizing a film permit for their filming or use of the Work.

11. **TERMINATION OR SUSPENSION OF AGREEMENT:**

11.1 Termination for Default or Convenience. In addition to the City’s rights of termination during Work design and fabrication as set out above, the City may terminate this Agreement at any time on ten (10) days’ notice if the Artist’s services become unsatisfactory to the City or if the project is canceled. The City may otherwise terminate the Agreement without cause, for its convenience, upon thirty (30) days’ notice to the Artist. If the Artist’s services are terminated, he shall be paid only for that portion of work or services satisfactorily completed at the time of notice of such action.

11.2 Event of Artist’s Default. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement prior to default shall at the City’s sole option become its property, provided that no right to fabricate or execute the

Work shall pass to the City. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined or the City exercises all of its other rights hereunder.

11.3 Suspension. The Manager may, in his or her sole discretion, suspend performance of this Agreement by both Parties until the Artist full complies with the insurance requirements set out in Section 19.

12. **SUBCONSULTANTS AND SUBCONTRACTORS:**

12.1 City's Consent Required for Subconsulting and Subcontracting. Although the Artist may retain, hire, and contract with outside subconsultants, no final agreement or contract with any such subconsultant shall be entered into without the prior written consent of the Manager or his/her authorized representative. Requests for such approval must be made in writing and include a description of the nature and extent of the services to be provided; the name, address, and professional experience of the proposed subconsultant; and any other information requested by the Manager. Any final agreement or contract with an approved subconsultant must contain a valid and binding provision whereby the subconsultant waives any and all rights to make any claim of payment against the City or to file or claim any lien or encumbrance against any City property arising out of the performance or non-performance of the contract.

12.2 Manager's Right to Reject Subconsultant or Subcontractor. Because the Artist's represented professional qualifications are a consideration to the City in entering into this Agreement, the Manager shall have the right to reject any proposed outside subconsultant or subcontractor deemed in his or her sole discretion to be unqualified or unsuitable for any reason

to perform the proposed services. Further, the Manager shall have the right to limit the number of outside subconsultants or subcontractors or to limit the percentage of work to be performed by them, all in his/her sole and absolute discretion.

13. **WHEN RIGHTS AND REMEDIES NOT WAIVED:**

In no event shall any payment by the City hereunder constitute or be construed to be a waiver by the City of any breach of term, covenant, or condition or any default which may then exist on the part of the Artist. The making of any such payment when any such breach or default shall exist shall not impair or prejudice any right or remedy available to the City with respect to such breach or default. No expressed or implied assent to any breach of one or more covenants, provisions, terms, or conditions of the Agreement shall be deemed or taken to be a waiver of any other breach.

14. **EXAMINATION OF RECORDS:**

14.1 City's Access to Records. The Artist agrees that the City's duly authorized representatives shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Artist involving this Agreement.

14.2 Other's Access to Records. The City, the Federal Aviation Administration, the Comptroller General of the United States, and any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Artist which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts, and transcriptions in connection with any services performed hereunder on items of work toward which federal funds may be received under the Airport and Airway Development Act of 1970, as amended. The Artist further agrees that such records will contain

information concerning the personnel, hours, and specific tasks performed, along with the applicable federal project number.

15. **GOVERNING LAW; BOND ORDINANCES; VENUE:**

This Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of the State of Colorado and the Charter and Ordinances of the City and County of Denver and Denver International Airport Rules and Regulations. This Agreement is in all respects subject and subordinate to any and all City bond ordinances applicable to the Denver Municipal Airport System and to any other bond ordinances which amend, supplement, or replace such bond ordinances. Venue for any action hereunder shall be in the City and County of Denver, State of Colorado. The Artist agrees that any and all notices, pleadings, and process may be made by serving two (2) copies of the same upon the Colorado Secretary of State, State Capitol, Denver, Colorado, and by sending by return receipt mail an additional copy of the same to the Artist at the address shown herein. Said service shall be considered as valid personal service, and judgment may be taken if appearance, pleading, or answer is not made within the time prescribed by Colorado law or Rules of Civil Procedure.

16. **ASSIGNMENT AND SUBCONTRACTING:**

The City is not obligated or liable under this Agreement to any party other than the Artist named herein. The Artist understands and agrees that he shall not assign or subcontract with respect to any of his rights, benefits, obligations, or duties under this Agreement except upon prior written consent and approval of the City, which consent or approval may be withheld in the absolute discretion of the City. In the event any such assignment or subcontracting shall occur, such action shall not be construed to create any contractual relationship between the City and such assignee or subcontractor, and the Artist herein named shall remain responsible to the City according to the terms of this Agreement.

17. **PREVAILING WAGES:**

Employees of the Artist or his subcontractors may be subject to the payment of prevailing wages pursuant to Section 20-76, D.R.M.C. By executing this Agreement, the Artist covenants that he is familiar with this Code Section and is prepared to pay or cause to be paid prevailing wages, if any, required by the scope of work of the Artist's or his subcontractor's employees.

18. **NO DISCRIMINATION IN EMPLOYMENT:**

In connection with the performance of work under this Agreement, the Artist 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. The Artist further agrees to insert the foregoing provision in all subcontracts hereunder.

19. **INSURANCE:**

19.1 **Insurance Coverage.** The Artist shall obtain and keep in force during the entire term of this Agreement, all of the insurance policies described in the City's form of insurance certificate which is attached to this Agreement as **Exhibit C** and incorporated herein. Such insurance coverage includes workers' compensation and employer liability, commercial general liability, business automobile liability, and if appropriate, professional liability. Upon execution of this Agreement, the Artist shall submit to the City a fully completed and executed original of the attached insurance certificate form or an ACORD form, which specifies the issuing company or companies, policy numbers and policy periods for each required coverage.

19.2 Insurance Certificates. The City's acceptance of any submitted insurance certificate is subject to the approval of the City's Risk Management Administrator. All coverage requirements specified in the certificate shall be enforced unless waived or otherwise modified in writing by the City's Risk Management Administrator.

19.3 Artist's Compliance with Insurance Conditions. The Artist shall comply with all conditions and requirements set forth in the insurance certificate for each required coverage during all periods in which coverage is in effect.

19.4 Subconsultants as Additional Insureds. Unless specifically excepted in writing by the City's Risk Management Administrator, the Artist shall include all subconsultants performing services hereunder as insureds under each required policy or shall furnish a separate certificate (on the form certificate provided or an ACORD form) for each subconsultant if requested by City. All coverages for subconsultants shall be subject to all of the requirements set forth in the form certificate, and the Artist shall insure that each subconsultant complies with all of the coverage requirements.

19.5 No Waiver Intended. The Parties hereto understand and agree that the City and County of Denver, its officers, officials, and employees are relying on and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., or otherwise available to the City and County of Denver, its officers, officials, and employees.

20. **INDEMNIFICATION:**

The Artist shall defend, release, indemnify, and save and hold harmless the City against

any and all damages to property or injuries to or death of any person or persons, including property and employees or agents of the City. Further, the Artist shall defend, release, indemnify, and save and hold harmless the City from any and all claims, demands, suits, liabilities, actions, causes of action, or legal or equitable proceedings of any kind or nature, including worker's compensation claims of or by anyone whomsoever to the extent that such claims, losses, damages, or expenses are caused by the Artist's intentional or negligent acts, errors, or omissions, including acts or omissions of the Artist or her officers, employees, representatives, suppliers, invitees, licensees, subconsultants, contractors, and agents. Provided, however, the Artist need not indemnify and save harmless the City, its officers, agents, and employees from damages proximately 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. The insurance coverage specified herein constitutes the minimum requirements and said requirements shall in no way lessen or limit the liability of the Artist under the terms of the Agreement. The Artist shall procure and maintain at his own expense and cost any additional kinds and amounts of insurance that in his judgment may be necessary for his proper protection in the prosecution of the services hereunder. This indemnity clause shall survive termination of this Agreement.

21. **CONFLICT OF INTEREST:**

The Artist agrees that it and its subsidiaries, affiliates, subconsultants, principals, or employees will not engage in any transaction, activity, or conduct which would result in a conflict of interest. The Artist represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities, or conduct that would affect the judgment, actions, or work of the Artist by placing the Artist's own interests or the interest of any party with whom the Artist has a contractual arrangement in conflict with those of the City. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement if such a conflict exists, after it has given the Artist



written notice which describes such conflict. The Artist shall have thirty (30) days after the notice is received in which to eliminate or cure the conflict of interest in a manner which is acceptable to the City.

**22. NO THIRD PARTY BENEFICIARY:**

It is expressly understood and agreed 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 Artist, 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 Agreement. It is the express intention of the City and the Artist that any person or entity other than the City or the Artist receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

**23. DISPUTES:**

Disputes arising under or related to this Agreement or the work which is the subject of this Agreement shall be resolved by administrative hearing, which shall be conducted in accordance with the procedures set forth in Section 5-17, D.R.M.C. The Parties hereto agree that the Manager's determination resulting from said administrative hearing shall be final, subject only to the Artist's right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106.

**24. TAXES, CHARGES, AND PENALTIES:**

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

25. **PARAGRAPH HEADINGS:**

The captions and headings set forth herein are for convenience of reference only and shall not be construed so as to define or limit the terms and provisions hereof.

26. **NOTICES:**

Notwithstanding the above, notices concerning termination of this Agreement, notices of alleged or actual violations of the terms of this Agreement, and other notices of similar importance shall be made as follows:

If to the City: Manager of Aviation  
Denver International Airport  
8500 Peña Boulevard, 9th Floor  
Denver, Colorado 80249-6340

If to the Artist: Ned Kahn Studios.  
10299 Moonshine Road  
Sebastopol, CA 95472  
nedkahn@earthlink.net

Said notices shall be delivered personally during normal business hours to the appropriate office above or by prepaid U.S. certified mail, return receipt requested. Mailed notices shall be deemed effective upon deposit with the U.S. Postal Service. Either party may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed or delivered, but such substitutions shall not be effective until actual receipt of written notification thereof.

27. **EXHIBITS:**

The following documents, certain of which are attached hereto, are incorporated herein

and made a part of this Agreement:

A.	Exhibit A	Scope of Work
B.	Exhibit B	Artist's Final Design (incorporated herein by reference if accepted)
C.	Exhibit C	Insurance Certificate
D.	Exhibit D	Approved Schedule
E.	Exhibit E	Transfer of Ownership Letter
F.	Appendix No. 1	Standard Federal Assurances
G.	Appendix No. 2	Nondiscrimination in Airport Employment Opportunities

The terms and conditions of Sections 1 through 39 hereof shall control over any contradictory or inconsistent terms and conditions that may be found or contained in the above-referenced **Exhibit A, Exhibit B, Exhibit C, Exhibit D, Exhibit E, Appendix No. 1, and Appendix No. 2** attached or incorporated documents. The order of precedence among those exhibits, in descending order of precedence, shall be **Exhibit C, Exhibit A, Exhibit B, Exhibit D, Exhibit E, Appendix No. 1, and Appendix No. 2.**

28. **SEVERABILITY:**

It is understood and agreed by the Parties hereto that if any part, term, or provision of this Agreement is held by the Courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

29. **AGREEMENT AS COMPLETE INTEGRATION; AMENDMENTS:**

29.1 **Artist's Assurance.** The Artist assures and guarantees 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.

29.2 Authorized Signature. The person or persons signing and executing this Agreement on behalf of the Artist do hereby warrant and guarantee that he/she or they have been fully authorized by the Artist to execute this Agreement on behalf of the Artist and to validly and legally bind the Artist to all the terms, performances, and provisions herein set forth.

29.3 Dispute as to Legal Authority. The City shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of either the Artist or the persons signing the Agreement to enter into this Agreement. The City shall not be obligated to pay the Artist for any performance of the provisions of this Agreement after the City has suspended or terminated this Agreement as provided in this Section.

29.4 Complete Integration. This Agreement is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement properly executed by the Parties. This Agreement and any amendments shall be binding upon the Parties, their successors, and their assigns.

30. **USE, POSSESSION, OR SALE OF ALCOHOL OR DRUGS:**

The Artist shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto concerning the use, possession, or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City barring the Artist from City facilities or participating in City operations.

31. **CITY SMOKING POLICY:**

The Artist and its officers, agents, and employees shall cooperate and comply with the provisions of Denver Executive Order No. 99 prohibiting smoking in all indoor City buildings and facilities.

32. **PROMPT PAYMENT:**

The City shall process all invoices for payment received from the Artist on a timely basis in accordance with Denver's Prompt Payment Ordinance, Section 20-107, et seq. D.R.M.C., subject to the Maximum Contract Liability set forth herein. Payments shall be based upon invoices and receipts submitted by the Artist in accordance with the provisions of this Agreement and that have been audited and approved by the City. The Artist agrees that interest and late fees shall be payable by the City hereunder only to the extent authorized and provided for in the City's Prompt Payment Ordinance. For any subcontractor engaged by the Artist under this Agreement, the Artist is subject to Section 20-112, D.R.M.C., requiring the Artist to pay its subcontractors in a timely fashion. A payment is timely if it is mailed to the subcontractor no later than seven (7) days after receipt of any payment from City. Any late payments by the Artist are subject to a late payment penalty as provided for in Section 20-112, D.R.M.C.

33. **FEDERAL PROVISIONS:**

This Agreement is subject and subordinate to the terms, reservations, restrictions, and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for airport purposes and the expenditure of federal funds for the extension, expansion, or development of the Denver Municipal Airport System, including DIA. The provisions of the attached **Appendix 1** and **Appendix 2** are incorporated herein by reference.

34. **AIRPORT SECURITY:**

34.1 **Compliance with Airport Security.** It is a material requirement of this Agreement that the Artist shall comply with all rules, regulations, written policies, and authorized directives from the City and/or the Transportation Security Administration with respect to Airport security. The Artist shall conduct all of its activities at the Airport in compliance with the Airport security program, which is administered by the Security Section of the Airport Operations Division, Department of Aviation. Violation by the Artist or any of its employees, subcontractors, or vendors of any rule, regulation, or authorized directive from the City or the Transportation Security Administration with respect to Airport Security shall be grounds for immediate termination by the City of this Agreement for cause.

34.2 **Access Authorizations.** The Artist, promptly upon notice of award of this Agreement, shall meet with the Airport's Assistant Security Manager to establish badging and vehicle permit requirements for the Artist's operations under this Agreement. The Artist shall obtain the proper access authorizations for all of its employees, subcontractors, and vendors who will enter the Airport to perform work or make deliveries, and the Artist shall be responsible for each such person's compliance with all Airport rules and regulations, including without limitation those pertaining to security. Any person who violates such rules may be subject to revocation of his/her access authorization. The failure of the Artist or any subcontractor to complete any required services hereunder shall not be excused on account of the revocation for good cause of access authorization of any person.

34.3 **Security Status.** The security status of the Airport is subject to change without notice. If the security status of the Airport changes at any time during the term of this Agreement, the Artist shall take immediate steps to comply with security modifications that occur as a result of the changed status. The Artist may at any time obtain current information from the Airport Security Office regarding the Airport's security status in relation to the Artist's operations at the Airport.

34.4 Return Access Authorization. The Artist shall return to the City at the expiration or termination of this Agreement, or upon demand by the City, all access keys or access badges issued to it or any subcontractor for any restricted or non-restricted area of the Airport. If the Artist fails to do so, the Artist shall be liable to reimburse the City for all the City's costs for work required to prevent compromise of the Airport security system. The City may withhold funds in the amount of such costs from any amounts due and payable to the Artist under this Agreement.

35. **SAFETY:**

35.1 Federal Requirements. The Artist shall operate at all times under this Agreement in compliance with the Occupational Safety and Health Act.

35.2 Artist's Supervision. For all operations requiring the placement and movement of the Artist's equipment, the Artist shall observe, exercise, and compel its employees to observe and exercise all necessary caution and discretion so as to avoid injury to persons, damage to property of any and all kinds, and annoyance to or undue interference with the movement of the public and City personnel.

36. **COLORADO OPEN RECORDS ACT:**

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

37. **COUNTERPARTS OF THIS AGREEMENT:**

This Agreement shall be executed in two (2) counterparts, each of which shall be deemed to be an original of this Agreement.

38. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:**

The Artist 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 this Agreement in the form of an electronic record, 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.

39. **CITY EXECUTION OF AGREEMENT:**

This Agreement is expressly subject to and shall not be or become effective or binding on the City until it has been approved by City Council, if so required by law, and fully executed by all signatories of the City and County of Denver.

**[END OF PAGE]**



Contract Control Number: PLANE-201310482-00

Contractor Name: KAHN NED

By: Ned M. Kahn

Name: NED M. KAHN  
(please print)

Title: Partner  
(please print)

ATTEST: [if required]

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

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

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



**Contract Control Number:** PLANE-201310482-00

**Contractor Name:** KAHN NED

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:

DOUGLAS J. FRIEDNASH, Attorney  
for the City and County of Denver

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



## APPENDIX NO. 1

### STANDARD FEDERAL ASSURANCES AND NONDISCRIMINATION

NOTE: As used below the term "Contractor" shall mean and include the second party to the contract, and the term "sponsor" shall mean the "City".

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

1. **Compliance with Regulations.** The Contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, and Title 14, CFR, Part 152, Subpart E, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. **Nondiscrimination.** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, creed, color, national origin, or sex in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Title 49, Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. **Information and Reports.** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the sponsor of the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance.** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

- a. Withholding of payments to the Contractor under the contract until the Contractor complies, and/or
- b. Cancellation, termination, or suspension of the contract, in whole or in part.

6. **Incorporation of Provisions.** The Contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

7. The Contractor for itself, representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this agreement for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Contractor shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

8. The Contractor for itself, representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land: (1) that no person on the grounds of race, color, sex, creed or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, sex, creed or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Contractor shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

#### **9. NONDISCRIMINATION IN AIRPORT EMPLOYMENT OPPORTUNITIES**

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

It is unlawful for airport operators and their lessees, tenants, concessionaires and consultants/contractors to discriminate against any person because of race, color, national origin, sex, creed, or handicap in public services and employment opportunities.

APPENDIX NO. 2

**DISADVANTAGED BUSINESS ENTERPRISES - REQUIRED STATEMENTS**

Policy. It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this agreement.

DBE Obligation. The City and its contractors agree to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The City and its contractors shall not discriminate on the basis of race, color, sex, creed or national origin in the award and performance of DOT-assisted contracts.

49 CFR 26.5 defines a DOT-assisted contract as “any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees.” “Contractor” means one who participates through a contract or subcontract (at any tier) in a DOT-assisted highway, transit, or airport program.

## **EXHIBIT A : SCOPE OF WORK**

### **Ned Kahn Studios: STRP Plaza Art Project (Design, fabrication and installation)**

GENERAL DESCRIPTION: Designs, fabricates and installs a work of art for the Plaza area of the South Terminal Project.

#### **General Responsibilities:**

- Attends meetings with DIA staff and other stakeholders at the artwork site, at DIA offices, and by phone/video conference.
- Provides necessary information for DIA staff to properly track, approve, and communicate about the artwork at all phases of the project. Accommodates studio visits as needed by DIA staff.
- Acquires a DIA security badge, and conforms to all regulations and requirements for employment by DIA.

#### **1. Execution of Contract**

#### **2. Preliminary Design**

**Contractor** is to deliver further develop Preliminary Design (based on Proposal delivered March 1, 2013 for a three-dimensional artwork in the Plaza area of the new STRP Public Transit Center.

The contractor will deliver a Preliminary Design synopsis summarizes the artistic approach and explains the technical principles and includes a text of intention, drawings, images, essential diagrams, general map, mock up, etc.

Preliminary Design must take into account the comments/changes requested by client (Design Team, Art Committee and Design Review Committee and others as needed). DIA Design Review Committee and the DIA Art Committee must approve Preliminary Design/Creative study before proceeding to next phase of contract.

#### **3. Final Design**

**Contractor** carries out further design development with **Design Team** and the **Prime Contractor / Project Engineer** to realize a full final design, engineering, budget and schedule for installation.

**Contractor** supplies to the **client** within the framework of the final design:

- The definition of the type of materials & equipment to be used
- Full set of design documents
- An detailed budget estimate for the project
- Tentative schedule for installation
- This final design will require the stamped approval of an engineer or other expert certified to do business in Colorado.

At the end of this phase, Final Design/Finalized Study must be submitted for review and approval by the client. Changes to Preliminary Design may be requested, and contractor will respond to change requests and re-submit for approval. DIA Design Review Committee and the DIA Art Committee before proceeding to next phase of contract.

#### **4. Fabrication Of Artwork**

**Contractor** Fabricates components of artwork that fully meets the specifications described in the final design. Artist may be required to submit milestone reports and other reporting documents during this phase.

**5. Installation of Artwork**

**Contractor** installs or oversees the installation of the components of his/her artwork. Artwork installation will meet the specifications described in the final design.

**6. Final Acceptance of project**

**Contractor**, having overseen the installation of the artwork, must officially approve the work done and the client must also give final approval of the artwork in writing. Final as-built information, maintenance recommendations and other documentation for the project may be requested at this time.

7. **Public Appearance (s):** at some point during the design development and final installation of this project, the lead artist or a designee (to be approved by the client) will make at least one of public appearance in Denver, on behalf of the project as a means of promoting the project and the studio's work. This could take the form of a public presentation, or panel discussion or a series of outreach events, TBD.

**EXHIBIT B**

ARTIST'S FINAL DESIGN



**CITY AND COUNTY OF DENVER  
CERTIFICATE OF INSURANCE FOR DEPARTMENT OF AVIATION**

Original COI

Advice of Renewal

Change

Party to Whom this Certificate is Issued:

Name and Address of Insured:

CITY AND COUNTY OF DENVER  
Attn: Risk Management, Suite 8810  
Manager of Aviation  
Denver International Airport  
8500 Peña Boulevard, Room 8810  
Denver CO 80249

**CONTRACT NAME & NUMBER TO WHICH THIS INSURANCE APPLIES: 201310482 – STRP Plaza Art Project**

**I. MANDATORY COVERAGE**

**Colorado Workers' Compensation and Employer Liability Coverage**

**Coverage:** COLORADO Workers' Compensation

**Minimum Limits of Liability (In Thousands)**

WC Limits: \$100, \$500, \$100

And Employer's Liability Limits:

**Any Policy issued under this section must contain, include or provide for the following:**

1. All States Coverage or Colorado listed as a covered state for the Workers' Compensation
2. Waiver of Subrogation and Rights of Recovery against the City and County of Denver (the "City"), its officers, officials and employees.

**Commercial General Liability Coverage**

**Coverage:** Commercial General Liability (coverage at least as broad as that provided by ISO form CG0001 or equivalent)

**Minimum Limits of Liability (In Thousands):**

Each Occurrence:	\$1,000
General Aggregate Limit:	\$2,000
Products-Completed Operations Aggregate Limit:	\$2,000
Personal & Advertising Injury:	\$1,000
Fire Damage Legal - Any one fire:	\$1,000

**Any Policy issued under this section must contain, include or provide for the following:**

1. City, its officers, officials and employees as additional insureds, per ISO form CG2010 and CG 2037 or equivalents.
2. Coverage for defense costs of additional insureds outside the limits of insurance, per CG0001.
3. Liability assumed under an Insured Contract (Contractual Liability).
4. The full limits of coverage must be dedicated to apply to this project/location, per ISO form CG2503 or equivalent.
5. Waiver of Subrogation and Rights of Recovery, per ISO form CG2404 or equivalent.
6. Separation of Insureds Provision required
7. General Aggregate Limit Applies Per: Policy \_\_\_ Project \_\_\_ Location \_\_\_, if applicable

**Business Automobile Liability Coverage**

**Coverage:** Business Automobile Liability (coverage at least as broad as ISO form CA0001)

**Minimum Limits of Liability (In Thousands):** Combined Single Limit \$1,000

**Any Policy issued under this section must contain, include or provide for the following:**

1. Symbol 1, coverage for any auto. If no autos are owned, Symbols 8 & 9, (Hired and Non-owned) auto liability.
2. If this contract involves the transport of hazardous cargo such as fuel, solvents or other hazardous materials may occur, then Broadened Pollution Endorsement, per ISO form CA 9948 or equivalent and MCS 90 are required.

## II. ADDITIONAL COVERAGE

### Umbrella Liability

Coverage:

<b>Umbrella Liability, Non Restricted Area</b>		
<b>Minimum Limits of Liability (In Thousands)</b>	Each Occurrence and aggregate	\$1,000

**Any Policy issued under this section must contain, include or provide for the following:**

1. City, its officers, officials and employees as additional insureds.
2. Coverage in excess of, and at least as broad as, the primary policies in sections WC-1, CGL-1, and BAL-1.
3. If operations include unescorted airside access at DIA, then a \$9 million Umbrella Limit is required.

### Professional Liability, Design, Engineering and Construction Supervision

Coverage: Professional Liability

<b>Minimum Limits of Liability (In Thousands)</b>	Per Claim	\$1,000
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**Any Policy issued under this section must contain, include or provide for the following:**

1. Coverage must extend, by endorsement or otherwise, to cover the full scope of any and all environmental work performed under the insured's contract with the City.
2. Coverage shall extend to cover the full scope of all cost estimating work performed under the insured's contract with the City.
3. Coverage shall apply for three (3) years after project is complete.
4. Coverage is to be on a primary basis, if other professional coverage is carried.

### Builders' Risk Insurance or Installation Floater

<b>Minimum Limits of Liability (In Thousands)</b>	Completed Value Basis
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Unless otherwise provided, the Insured shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, Builders' Risk Insurance in the amount of the initial Contract Sum, plus value of subsequent modifications, change orders, and cost of material supplied or installed by others, comprising total value of the entire Project at the site on a replacement cost basis.

- a. Policy must provide coverage from the time any covered property becomes the responsibility of the Insured, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site.
- b. Such Builders' Risk Insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until formal acceptance of the project by the owner (DIA) or the placement of permanent property insurance coverage, whichever is later.
- c. The Builders' Risk insurance shall include interests of the Denver International Airport and if applicable, affiliated or associate entities, the General Contractor, subcontractors and sub-tier contractors in the Project.
- d. The Builders Risk insurance shall be written on a **Special Completed Value** Covered Cause of Loss form and shall include theft, vandalism, malicious mischief, collapse, false-work, temporary buildings, transit, debris removal, demolition, increased cost of construction, flood (including water damage), earthquake, and if applicable, all below and above ground structures, piping, foundations including underground water and sewer mains, pilings including

the ground on which the structure rests and excavation, backfilling, filling and grading.

- e. The Builders' Risk shall include a Beneficial Occupancy Clause. The policy shall specifically permit occupancy of the building during construction. City and County of Denver Contractor shall take reasonable steps to obtain consent of the insurance company and delete any provisions with regard to restrictions within any Occupancy Clauses within the Builder's Risk Policy. The Builder's Risk Policy shall remain in force until acceptance of the project by the City.
- f. Equipment Breakdown Coverage (a.k.a. Boiler & Machinery) shall be included as required by the Contract Documents or by law, which shall specifically covers insured equipment during installation and testing (including cold and hot testing).

**The deductible shall not exceed \$25,000 and shall be the responsibility of the Contractor except for losses that involve all Acts of God such as flood, earthquake, windstorm, tsunami, or volcano.**

### III. ADDITIONAL CONDITIONS

It is understood and agreed, for the benefit of the City, that the following additional conditions shall apply to all coverage specified herein

- All coverage provided herein shall be primary and any insurance maintained by the City shall be considered excess.
- With the exception of professional liability and auto liability, a Waiver of Subrogation and Rights of Recovery against the City, its officers, officials and employees is required for each coverage period.
- The City shall have the right to verify or confirm, at any time, all coverage, information or representations contained herein, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City may elect to undertake.
- Advice of renewal is required.
- All insurance companies issuing policies hereunder must carry at least an A-VI rating from A.M. Best Company or obtain a written waiver of this requirement from the City's Risk Administrator.
- Compliance with coverage requirement by equivalent herein must be approved in writing by the City's Risk Administrator prior to contract execution.
- No changes, modifications or interlineations on this Certificate of Insurance shall be allowed without the review and approval of the Risk Administrator prior to contract execution.

### NOTICE OF CANCELLATION

It is understood and agreed that should any Policy issued hereunder be cancelled or non-renewed before the expiration date thereof, or sustain a material change in coverage adverse to the City, the issuing company or its authorized Agent shall give notice to the Department of Aviation in accordance with policy provisions.

**EXHIBIT D**

**APPROVED SCHEDULE**

**EXHIBIT E**

TRANSFER OF OWNERSHIP LETTER