

A G R E E M E N T

THIS AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), and **DOWNTOWN DENVER PARTNERSHIP, INC.**, a Colorado nonprofit corporation, whose address is 1515 Arapahoe St., Tower 3, Ste 100, Denver, Colorado 80202 (the “Contractor”), jointly “the parties”.

The parties agree as follows:

1. COORDINATION AND LIAISON: The Contractor shall fully coordinate all services under the Agreement with the Executive Director of Denver Economic Development & Opportunity (“Executive Director”) or the Executive Director’s Designee.

2. SERVICES TO BE PERFORMED:

a. As the Executive Director directs, the Contractor shall diligently undertake, perform, and complete all of the services and produce all the deliverables set forth on **Exhibit A, the Scope of Work**, to the City’s satisfaction.

b. The Contractor is ready, willing, and able to provide the services required by this Agreement.

c. The Contractor 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 the Agreement and in accordance with the terms of the Agreement.

3. TERM: The Agreement will commence on February 1, 2022, and will expire on December 31, 2025 (the “Term”). Subject to the Executive Director’s prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term will extend until the work is completed or earlier terminated by the Executive Director.

4. COMPENSATION AND PAYMENT:

a. Budget: The City shall pay and the Contractor shall accept as the sole compensation for services rendered and costs incurred under this Agreement the line item amounts set forth in the budget contained in **Exhibit B**. Amounts billed may not exceed the budget set forth in Exhibit B.

b. Reimbursable Expenses: There are no reimbursable expenses allowed under this Agreement. All of the Contractor’s expenses are contained in the budget in **Exhibit B**.

c. **Invoicing:** The Contractor shall provide the City with a monthly invoice in a format and with a level of detail acceptable to the City including all supporting documentation required by the City. The City's Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under this Agreement.

d. **Maximum Contract Amount:**

(1) Notwithstanding any other provision of this Agreement, the City's maximum payment obligation will not exceed **THREE MILLION DOLLARS AND NO CENTS (\$3,000,000.00)** (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by the Contractor beyond that specifically described in **Exhibit A**. Any services performed beyond those in **Exhibit A** are performed at the Contractor's risk and without authorization under this Agreement.

(2) The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of this Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. This Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

5. **STATUS OF CONSULTANT:** The Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Contractor nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

6. **TERMINATION:**

a. The City has the right to terminate this Agreement with cause upon written notice effective immediately, and without cause upon thirty (30) days prior written notice to the Contractor. However, nothing gives the Contractor the right to perform services under this Agreement beyond the time when its services become unsatisfactory to the Executive Director.

b. Notwithstanding the preceding paragraph, the City may terminate this Agreement if the Contractor or any of its officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Contractor's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

c. Upon termination of this Agreement, with or without cause, the Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement.

d. If this Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in the Contractor's possession, custody, or control by whatever method the City deems expedient. The Contractor shall deliver all documents in any form that were prepared under this Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and materials are the property of the City. The Contractor shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE".

7. **EXAMINATION OF RECORDS:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Contractor's performance pursuant to this agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. The Contractor shall cooperate with City representatives and City representatives shall be granted access to the forgoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under this Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant

to this paragraph shall require the Contractor to make disclosures in violation of state or federal privacy laws. The Contractor shall at all time comply with D.R.M.C. 20-276.

8. WHEN RIGHTS AND REMEDIES NOT WAIVED: In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Contractor. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of this Agreement constitutes a waiver of any other breach.

9. INSURANCE:

a. General Conditions: The Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. The Contractor shall keep the required insurance coverage in force at all times during the term of this Agreement, including any extension thereof, and during any warranty period. 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 require notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. 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, the Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. The Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

b. Proof of Insurance: The Contractor may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. The Contractor certifies that the certificate of insurance attached as **Exhibit C**, preferably an ACORD form, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the certificate of insurance. 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 Agreement shall not act as a waiver of the Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

c. Additional Insureds: For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), the Contractor and subContractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

d. Waiver of Subrogation: For all coverages required under this Agreement, with the exception of Professional Liability, Contractor's insurer shall waive subrogation rights against the City.

e. Subcontractors and Subconsultants: The Contractor shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) procure and maintain coverage as approved by the Contractor and appropriate to their respective primary business risks considering the nature and scope of services provided.

f. Workers' Compensation/Employer's Liability Insurance: The Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 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.

g. Commercial General Liability: The Contractor shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate.

h. Personal Automobile Insurance: The Contractor shall ensure personal automobile insurance is in force with current state minimum limits for all vehicles used in performing services under this Agreement. The Contractor represents, as material representations upon which the City is relying, that the Contractor does not own any fleet vehicles and that in performing Services under this Agreement, the Contractor's owners, officers, directors, and employees use their personal vehicles. The Contractor shall ensure that any person operating a motor vehicle in performing Services under this Agreement shall keep in full force Personal Auto Liability coverage with minimum required limits.

10. DEFENSE AND INDEMNIFICATION:

a. The Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of the Contractor or its subcontractors either passive or active, irrespective of fault, including the City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.

b. The Contractor's duty to defend and indemnify the City shall arise at the time written notice of the Claim is first provided to the City regardless of whether Claimant has filed suit on the Claim. The Contractor's duty to defend and indemnify the City shall arise even if the City is the only party sued by claimant and/or claimant alleges that the City's negligence or willful misconduct was the sole cause of claimant's damages.

c. The Contractor will defend any and all Claims which may be brought or threatened against the City and will pay on behalf of the City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of the City shall be in addition to any other legal remedies available to the City and shall not be considered the City's exclusive remedy.

d. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

e. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

11. TAXES, CHARGES AND PENALTIES: The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* The Contractor shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under this Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

12. ASSIGNMENT; SUBCONTRACTING: The Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Executive Director's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and will be cause for termination of this Agreement by the City. The Executive Director has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate this Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign.

13. INUREMENT: The rights and obligations of the parties to this Agreement inure to the benefit of and shall be binding upon the parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of this Agreement.

14. NO THIRD PARTY BENEFICIARY: Enforcement of the terms of this Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in this Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Contractor receiving services or benefits pursuant to this Agreement is an incidental beneficiary only.

15. NO AUTHORITY TO BIND CITY TO CONTRACTS: The Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters

that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

16. SEVERABILITY: Except for the provisions of this Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of this Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the parties can be fulfilled.

17. CONFLICT OF INTEREST:

a. No employee of the City shall have any personal or beneficial interest in the services or property described in this Agreement. The Contractor shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

b. The Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under this Agreement. The Contractor 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 Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate this Agreement if it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

18. NOTICES: All notices required by the terms of this Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to the Contractor at the address first above written, and if to the City at:

Executive Director of Denver Economic Development & Opportunity or Designee
101 W. Colfax Ave. Suite 850
Denver, CO 80202

With a copy of any such notice to:

Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

19. NO EMPLOYMENT OF A WORKER WITHOUT AUTHORIZATION TO PERFORM WORK UNDER THE AGREEMENT:

a. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”).

b. The Contractor certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement, nor will it knowingly employ or contract with a worker without authorization to perform work under this Agreement in the future.

(2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., and confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

(3) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

(4) It is prohibited from using either the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under this Agreement, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contracts

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

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

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

20. DISPUTES: All disputes between the City and Contractor arising out of or regarding this Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Executive Director as defined in this Agreement.

21. GOVERNING LAW; VENUE: This Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into this Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action

relating to this Agreement will be in the District Court of the State of Colorado, Second Judicial District (Denver District Court).

22. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of work under this Agreement, the Contractor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Contractor shall insert the foregoing provision in all subcontracts.

23. COMPLIANCE WITH ALL LAWS: The Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

24. LEGAL AUTHORITY: The Contractor represents and warrants 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. Each person signing and executing this Agreement on behalf of the Contractor represents and warrants that he has been fully authorized by the Contractor to execute this Agreement on behalf of the Contractor and to validly and legally bind the Contractor to all the terms, performances and provisions of this Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of either the Contractor or the person signing this Agreement to enter into this Agreement.

25. NO CONSTRUCTION AGAINST DRAFTING PARTY: The parties and their respective counsel have had the opportunity to review this Agreement, and this Agreement will not be construed against any party merely because any provisions of this Agreement were prepared by a particular party.

26. ORDER OF PRECEDENCE: In the event of any conflicts between the language of this Agreement and the exhibits, the language of this Agreement controls.

27. INTELLECTUAL PROPERTY RIGHTS: The City and the Contractor intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, URLs, domain names, music, sketches, web pages,

plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the Contractor and paid for by the City pursuant to this Agreement, in preliminary or final form and on any media whatsoever (collectively, “Materials”), shall belong to the City. The Contractor shall disclose all such items to the City and shall assign such rights over to the City upon completion of the Project. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, *et seq.*, the Materials are a “work made for hire” and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a “work made for hire,” the Contractor (by this Agreement) sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity.

28. SURVIVAL OF CERTAIN PROVISIONS: The terms of this Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of this Agreement survive this Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Contractor’s obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

29. ADVERTISING AND PUBLIC DISCLOSURE: The Contractor shall not include any reference to this Agreement or to services performed pursuant to this Agreement in any of the Contractor’s advertising or public relations materials without first obtaining the written approval of the Executive Director. Any oral presentation or written materials related to services performed under this Agreement will be limited to services that have been accepted by the City. The Contractor shall notify the Executive Director in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

30. CONFIDENTIAL INFORMATION:

a. City Information: The Contractor acknowledges and accepts that, in performance of all work under the terms of this Agreement, the Contractor may have access to Proprietary Data or confidential information that may be owned or controlled by the City, and that the disclosure of such Proprietary Data or information may be damaging to the City or third parties.

The Contractor agrees that all Proprietary Data, confidential information or any other data or information provided or otherwise disclosed by the City to the Contractor shall be held in confidence and used only in the performance of its obligations under this Agreement. The Contractor shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent consultant would to protect its own proprietary or confidential data. "Proprietary Data" shall mean any materials or information which may be designated or marked "Proprietary" or "Confidential", or which would not be documents subject to disclosure pursuant to the Colorado Open Records Act or City ordinance, and provided or made available to the Contractor by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

31. CITY EXECUTION OF AGREEMENT: This Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

32. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS: This Agreement is the complete integration of all understandings between the parties as to the subject matter of this Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in this Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of this Agreement or any written amendment to this Agreement will have any force or effect or bind the City.

33. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: The Contractor 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.

34. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: The Contractor consents to the use of electronic signatures by the City. This Agreement, and any other documents requiring a signature under this Agreement, 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 this 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, 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.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK;
SIGNATURE PAGES FOLLOW.]**

Contract Control Number:
Contractor Name:

OEDEV-202262318-00
DOWNTOWN DENVER PARTNERSHIP, INC.

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

SEAL**CITY AND COUNTY OF DENVER:**

ATTEST:

By:

APPROVED AS TO FORM:

Attorney for the City and County of Denver

By:

REGISTERED AND COUNTERSIGNED:

By:

By:

Contract Control Number:
Contractor Name:

OEDEV-202262318-00
DOWNTOWN DENVER PARTNERSHIP, INC.

By: _____

DocuSigned by:

Kourtney Garrett

D722FCEGA0B349G...

Name: _____

Kourtney Garrett

(please print)

Title: _____

President & CEO

(please print)

ATTEST: [if required]

By: _____

Name: _____

(please print)

Title: _____

(please print)

EXHIBIT A**Scope of Work
Downtown Denver Partnership****16th Street Mall Reconstruction
Small Business Impact Mitigation & Stabilization Support Program****INTRODUCTION**

As the 16th Street Mall begins reconstruction in the spring of 2022 and continuing until 2025, the Downtown Denver Partnership (DDP) will work with Denver Economic Development and Opportunity (DEDO) to design and administer a program to support small businesses anticipated to be impacted by the reconstruction project¹. Assistance will include direct financial assistance and business engagement and support. The direct financial assistance will include an early-stage impact mitigation grant to help businesses prepare for construction and a later-stage revenue stabilization grant to alleviate financial losses during the time of construction. Coordination and payment of the expense for the required removal, storage and replacement of patio fixtures and railings in the public right-of-way portion of the active construction zone (ACZ) also will be provided.

A 16th Street Mall Reconstruction Small Business Impact Mitigation & Stabilization Support Program Working Guide (“Working Guide”) will be created jointly by DDP and DEDO to serve as the reference document for this Scope of Work and may be relied upon for program details and procedures.

The timing of the two grant opportunities will be aligned with the project construction schedule:

- *Mitigation Grants* –prior to construction start or during construction of each block to provide up-front funds that eligible businesses as defined in the Working Guide may use to prepare for and mitigate impending construction impacts, aided by the distribution of a toolkit with information on relevant state and local technical assistance programs to support small businesses.
- *Stabilization Grants* – after construction start to provide funds that eligible businesses as defined in the Working Guide may use to partially alleviate revenue losses since the start of construction, as can be demonstrated in financial documents verified by program administrators.

Based on the projected construction schedule, it is anticipated that a new block (moving southeast from Market to Broadway, 13 blocks) will begin the 18-month construction phases every five to six weeks meaning half of the mall blocks will be under some phase of construction (Phase 1, 13 months; Phase 2, two months; Phase 3, three months) throughout the entire construction period of spring 2022 to December of 2024.

The program will also provide small business support in the form of coordination and payment of the pre-approved expense for the required removal, storage, and replacement of outdoor patio fixtures and railings within the public right-of-way portion of the ACZ:

¹ The Finding of No Significant Impact (FONSI) required the project partners to form a Business Impacts Working Group. The collaborative effort among DEDO, DDP and the City’s Department of Transportation & Infrastructure to address business impacts will satisfy this requirement.

EXHIBIT A

- *Table/Chair/Railing (TCR) Removal Support* – reconstruction of the 16th Street Mall will mandate the removal, storage and ultimately the re-installation of tables, chairs and railings owned by the patio lease holders in the public right-of-way portion of the ACZ. This process and pre-approved expense will be coordinated and managed on behalf of the businesses by DDP as a reimbursable expense as detailed in the Working Guide.

Six- and twelve-months after construction completion (extending into mid-2025), Stabilization Grant recipients will be surveyed to identify changes in revenues, changes in full-time equivalent employees (FTEs) and their level of satisfaction with the Small Business Impact Mitigation and Stabilization Support Program.

RESPONSIBILITIES

This Scope of Work sets forth the requirements for DDP to administer the Small Business Impact Mitigation and Stabilization Support Program as part of its larger business support efforts related to the 16th Street Mall Reconstruction.

DDP RESPONSIBILITIES

1. Work with DEDO to develop program details and procedures to be included in the Working Guide. This will include details on grant eligibility criteria, program priorities, grant amounts and other procedures, including but not limited to:
 - Minimum application eligibility requirements for the two grant opportunities and minimum percentage gross revenue loss thresholds for Stabilization Grant eligibility.
 - Program priorities to ensure grant funding is allocated to those with the greatest need.
2. Create an Outreach Plan with detailed timeframes that includes, but is not limited to:
 - Promotion of the Mitigation and Stabilization grant opportunities among businesses-potentially eligible as defined in the Working Guide. Promotion will be aligned with each block of construction.
 - Responding to media inquiries about the program and its beneficiaries in collaboration with the appropriate City agency Mar/Comms teams and the public relations consultant team.
 - Coordination with the reconstruction project managers to ensure that potentially eligible businesses are informed and engaged with the phases of construction.
3. Coordination and payment of pre-approved expenses related to the required removal of patio tables, chairs and railings (TCR), as well as their ultimate storage and replacement.
4. Administer the Mitigation Grant, including but not limited to:
 - Promoting the grant opportunity to potentially eligible businesses.
 - Conducting a technical review to verify business meets threshold eligibility criteria and other application requirements as defined in the Working Guide.
 - Providing direct assistance to eligible businesses to complete the application process.
 - Processing the applications, including issuing 1099s to award recipients and distributing funds, according to the process identified in the Working Guide.
5. Administer the Stabilization Grant, including but not limited to:
 - All steps under the Mitigation Grant responsibilities above.
 - Conducting a financial review of business applicant's revenue and related financial documentation comparing pre-construction and during construction gross revenues to determine percentage revenue decline.

EXHIBIT A

- Processing the applications and presenting to DEDO a proposed awardee list for approval as each application round is concluded.
7. Collect and document relevant data to evaluate the effectiveness of the Small Business Impact Mitigation and Stabilization Support Program, at minimum:
 - Distribution and processing of the 6-month and 12-month post-Stabilization Grant surveys.
 - Number of businesses contacted.
 - Number of Mitigation Grant and Stabilization Grant applicants and recipients.
 - Stabilization Grant recipients by type of business, number of employees retained through the construction period, and year-over-year revenues comparing those submitted for the grant application at the time of construction impact with those documented in the follow-up surveys.
 - Additional data collection and reporting as required for the creation of the Final Report.
 8. Convene bi-weekly check-ins with DEDO to report on the status of the contract deliverables, including implementation of the Outreach Plan and administration of the two grant programs. DEDO will have final approval of established criteria, program priorities, award amounts, the Outreach Plan and proposed expenditures.

DEDO RESPONSIBILITIES

1. Work with DDP to complete the Working Guide.
2. Share its online application tool to support DDP solicitation and processing of applications for both grant programs.
3. Share its existing online technical review process to support the DDP recommendation for minimum threshold eligibility.
4. Share its existing online financial review tool for DDP to ascertain percentage revenue decline and grant amount as identified in the Working Guide.
5. Train DDP staff on the use of all application and review tools. All these tools and online platforms will be modified appropriately to this program and will be built in Zengine by DEDO staff.
6. Conduct all approval responsibilities in a timely manner.

DELIVERABLES & ASPIRATIONAL GOALS

DDP will provide DEDO with the following deliverables:

- Recommendations for criteria, program priorities, grant amounts and other program procedures for inclusion in the Working Guide.
- Outreach Plan for pre-construction, construction, and post-construction engagement.
- 6-month Stabilization Grant Survey and resulting data.
- 12-month Stabilization Grant Survey and resulting data.
- List of businesses contacted with grant opportunities.
- List of Mitigation Grant applicants, with detail on types of business, number of employees.
- List of Stabilization Grant applicants, with detail on the types of business, number of employees, and self-reported owner demographics.
- List of TCR Removal Support beneficiaries.

DDP and DEDO will strive to achieve the following aspirational goals.

- In the aggregate, no negative net job loss.
- In the aggregate, no negative net business loss among BIPOC and LGBTQIA+ business owners

EXHIBIT A

(if applicants voluntarily self-report this identification in the Stabilization Grant application).

- Client satisfaction rating (Goal: 90%).
- Businesses remaining open after six months and 12 months of receiving a Stabilization Grant (Goal: 100%).

BUDGET

See Exhibit B – Budget Narrative

DATA COLLECTION & REPORTING

DDP will provide bi-weekly reports to DEDO documenting the status of the program deliverables, as well as a final report at the end of the stabilization grant survey period (mid-2025). The contents of the bi-weekly report and final report are as follows.

Bi-weekly Report

- Progress with program deliverables for current timeframe.
- Overview of small business engagement and assistance provided.

Final Report (12 months after construction completion)

- List and # of businesses contacted and percentage non-responsive
- List and # of applicants and percentage deemed ineligible
- List and # of Mitigation Grants awarded
- List and # of Stabilization Grants awarded and detail on businesses by:
 - Self-identification as a BIPOC-, Woman- or Veteran-owned businesses (as voluntarily reported on the application form)
 - Business type
 - Years in business total
 - Years in business at current location
 - FTE count pre-/post-construction
 - Client satisfaction rating
 - List and # of awardees that remain active 6-months and 12-months post-construction

The final report will include a narrative to provide qualitative and anecdotal information. The bi-weekly reporting will reflect if the project is not on schedule or lagging in outcomes or aspirational goals.

EXHIBIT B**Budget Narrative
Downtown Denver Partnership****16th Street Mall Reconstruction
Small Business Impact Mitigation & Stabilization Support Program****A. Non-Personnel****PROGRAM EXPENSE**

As the 16th Street Mall begins reconstruction in the spring of 2022 and continuing until 2025, the Downtown Denver Partnership (DDP) will work with Denver Economic Development and Opportunity (DEDO) to design and administer a program to support small businesses anticipated to be impacted by the reconstruction project. Assistance will include direct financial assistance and business engagement and support. The direct financial assistance will include an early-stage impact mitigation grant to help businesses prepare for construction and a later-stage revenue stabilization grant to alleviate financial losses during the time of construction. Coordination and payment of pre-approved expense for the required removal, storage and replacement of patio fixtures and railings in the public right-of-way portion of the active construction zone (ACZ) also will be provided.

DDP will deploy direct cash grants to qualified businesses in two categories: early-stage impact mitigation grant and a later-stage revenue stabilization grant.

Subtotal: \$2,550,000

Fund availability is subject to City Council annual appropriation, with maximum amount of funds available for each program year to be anticipated as follows:

Program Year 2022: \$844,000
 Program Year 2023: \$1,406,000
 Program Year 2024: \$300,000

DDP will provide coordination and payment of pre-approved expense for the required removal, storage and replacement of patio fixtures and railings in the public right-of-way portion of the active construction zone (ACZ) for eligible businesses as a program delivery expense.

Subtotal: \$162,500

Program Year 2022: \$59,667
 Program Year 2023: \$77,000
 Program Year 2024: \$25,833

TOTAL PROGRAM EXPENSE: \$2,712,500

ADMINISTRATIVE EXPENSE

DDP will be compensated for administration of the cash grant program. As detailed in the scope of work DDP's administration of this program includes core elements of program development, outreach, managing the

EXHIBIT B

application and evaluation process, recommending the appropriate support, and deploying the approved support.

Subtotal: \$ 255,000 (10% of cash grants)

DDP will be compensated for the coordination of services and other associated tasks for the required removal, storage and replacement of patio fixtures and railings in the public right-of-way portion of the active construction zone (ACZ).

Subtotal: \$32,500 (20% of program delivery cost)

TOTAL ADMINISTRATIVE EXPENSE: \$287,500

TOTAL NON-PERSONNEL: \$3,000,000

TOTAL Amount Requested from DEDO: \$3,000,000

At DEDO's discretion, modifications to any services that require line-item budget changes which do not increase the total funding to the Contractor and do not modify the total maximum administration fee or type of support delivered, may be made.

B. Fee and Payment Schedule

1. The maximum budget for this contract is \$3,000,000 inclusive of (i) grants disbursed to grant recipients, (ii) program delivery of business assistance through coordination of services for the required removal, storage and replacement of patio fixtures and railings in the public right-of-way portion of the active construction zone (ACZ), and (iii) fees to DDP as further described herein and as set forth in the Fee Schedule below.
 - (i) Grant disbursements (up to \$2,550,000): Grant funds will be advanced to DDP based on minimum amounts needed for each application round as defined in the working guide, and be timed according to the actual, immediate cash requirement for disbursing the approved grants. Advance amounts will be determined by the total dollar amount of grants approved by DEDO for the respective application round. Each consecutive advance will only occur after a minimum of 85% of the previous advance has been granted to qualified businesses and disbursed by DDP, with the appropriate supporting documentation provided by DDP as set forth in the Working Guide. Adjustments can be made in the event disbursement is delayed, through no fault of the contractor, as outlined in the Working Guide.
 - (ii) Program delivery of business assistance for patio fixtures/railings (up to \$162,500): DDP may invoice periodically for pre-approved business assistance either self-performed or provided through approved subcontractors.
 - (iii) Fees (up to \$287,500): DDP may invoice for the administrative fees periodically. Effective the execution date of the agreement, DDP may invoice periodically up to 10% of the grant amounts disbursed and 20% of program delivery of business assistance provided as defined in the scope with the total administrative fee not to exceed \$287,500.
 - (iv) Upon the expiration or earlier termination of this Agreement, Contractor shall promptly return to the City any grant funds advanced to the Contractor but undistributed to grant recipients.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/21/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER IMA, Inc. - Colorado Division 1705 17th Street, Suite 100 Denver CO 80202	CONTACT NAME: IMA Denver Team PHONE (A/C, No, Ext): 303-534-4567 FAX (A/C, No): E-MAIL ADDRESS: DenAccountTechs@imacorp.com														
INSURED Downtown Denver Partnership, Inc 1515 Arapahoe St., Tower 3, Ste. 100 Denver CO 80202	INSURER(S) AFFORDING COVERAGE <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 80%;">INSURER</th> <th style="width: 20%;">NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A: *Starr Indemnity & Liability Company</td> <td>38318</td> </tr> <tr> <td>INSURER B: National Union Fire Insurance Company of Pittsburg</td> <td>19445</td> </tr> <tr> <td>INSURER C: *Pinnacol Assurance</td> <td>41190</td> </tr> <tr> <td>INSURER D: The Hanover Insurance Company</td> <td>22292</td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </tbody> </table>	INSURER	NAIC #	INSURER A: *Starr Indemnity & Liability Company	38318	INSURER B: National Union Fire Insurance Company of Pittsburg	19445	INSURER C: *Pinnacol Assurance	41190	INSURER D: The Hanover Insurance Company	22292	INSURER E:		INSURER F:	
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INSURER E:															
INSURER F:															

COVERAGES**CERTIFICATE NUMBER: 898443240****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> BI/PDDed:\$10,000 <input checked="" type="checkbox"/> Host Liquor Incl GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:			1000305183211	11/13/2021	11/13/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ Excluded PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			1000198340211	11/13/2021	11/13/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0			BE033264602	11/13/2021	11/13/2022	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	3044887	3/1/2022	5/1/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
D	Business Personal Property Tenants Improve & Betterments SPC Form/RC			RH4D18326005	3/1/2022	5/1/2023	Limit \$221,421 Limit \$2,500,000 Deductible \$1,000

Crime Coverage: Policy #34FA025332821

Effective: 03/01/21-05/01/22 Insurer: Hartford Fire Insurance Company

\$1,000,000 Employee Theft Limit; \$5,000 Deductible

\$1,000,000 Depositors Forgery or Alteration Limit; \$5,000 Deductible

\$1,000,000 Money, Securities and Other Property Limit; \$5,000 Deductible

As required by written contract, the City and County of Denver, its Elected and Appointed Officials, Employees and Volunteers are included as Additional Insureds on the General Liability Policy.

CERTIFICATE HOLDER**CANCELLATION**

City and County of Denver Office of Economic Development
 201 W. Colfax, Dept 1005
 Denver CO 80202
 USA

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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