

FUNDING AND ASSIGNMENT AGREEMENT

THIS FUNDING AND ASSIGNMENT AGREEMENT (the “Agreement”), by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **DENVER BOTANIC GARDENS, INC.**, a Colorado nonprofit corporation (the “DBG”), each a “Party” and collectively the “Parties.”

RECITALS

WHEREAS, the qualified and registered voters of the City approved referred question 2A on November 2, 2021, approving the issuance of general obligation bonds (the “**Bonds**”) by the City in the aggregate principal amount of ONE HUNDRED FOUR MILLION FORTY THOUSAND DOLLARS AND ZERO CENTS (\$104,040,000.00) for the purpose of financing the cost of critical infrastructure improvements and other facility repairs to the Denver Facilities System; and

WHEREAS, the DBG intends to complete deferred maintenance projects and the City desires to make a part of the proceeds, totaling an amount not to exceed THREE MILLION DOLLARS AND ZERO CENTS (\$3,000,000.00) of the Bonds (the “**Proceeds**”), available to fund costs associated with the above-stated improvements to the buildings and grounds all as more fully described below (the “**Project**”), in accordance with the terms and conditions of this Agreement; and

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

WHEREAS, the undertaking of this Project is in accordance with the Cooperative Agreement dated April 5, 1991, as particularly amended by the First Amendment to Cooperative Agreement dated June 26, 1995, the Second Amendment to Cooperative Agreement dated July 26, 2005, the Third Amendment to Cooperative Agreement dated November 12, 2008, and the Fourth Amendment to Cooperative Agreement dated February 16, 2017 (collectively and as may be further amended or restated, the “**Cooperative Agreement**”), by which the City has designated DBG as the City’s agent to develop, manage, control, administer, and be in charge of the City-owned Denver Botanic Gardens; and

WHEREAS, the City and DBG desire to specify the conditions upon which these funds, including the Proceeds, will be used by DBG for the purposes of completing the Project.

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

1. **The Project**: The "Project," as used herein, refers to the deferred maintenance improvements to be designed, constructed, and installed by DBG at the Denver Botanic Gardens in accordance with a design plan to be submitted by DBG to the City for approval, and as generally described in **Exhibit A**. The Project will be funded, at least in part, by the Proceeds, to the extent such Proceeds are made available hereunder. DBG will perform or cause to be performed all work items and provide all supplementary funds necessary to satisfactorily complete the Project in accordance with the terms and conditions of this Agreement. DBG is to notify the Manager, as that term is defined in Section 2.A, below, of any scope or budget revisions to **Exhibit A** for prior review and approval; any scope or budget revisions to **Exhibit A** shall only be incorporated into this Agreement pursuant to an amendment approved and executed by the Parties in the same manner as this Agreement.

2. **Coordination and Liaison**:

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

B. The Chief Executive Officer of DBG is DBG's authorized representative under this Agreement and, as such, is responsible for overseeing the satisfactory completion of the Project, in accordance with the terms and conditions of this Agreement. DBG may change its authorized representative at any time by providing written notice to the City of such change.

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

A. As consideration for the performance of DBG under this Agreement and in order to enhance the ability of DBG to perform the functions and services set forth in the Cooperative Agreement, the City agrees to pay the Proceeds towards the cost of completing the Project. All other expenditures required to complete the Project or other costs associated with the Project are solely the responsibility of DBG and shall be paid by DBG. If the City utilizes on-call

City contracts to complete work on the Project, the value of that work shall be deducted from the Proceeds available to reimburse DBG. The estimated costs of the Project are included in **Exhibit A**.

Unless otherwise specified herein, the Proceeds shall be made available to DBG to be expended to pay capital costs incurred in completing the Project including, but not limited to, costs associated with design, construction, Project management, furnishings, and equipment. DBG may reallocate the Proceeds among the Project components described on **Exhibit A** from time to time. DBG will not utilize the Proceeds for operating or other working capital expenditures. DBG shall submit to the Manager any use of Proceeds for furniture, fixtures, and equipment for prior review and approval.

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

C. Upon final completion of the Project, DBG shall provide to the City an accounting of all Proceeds and other funds expended on the Project and shall attach all required or requested supporting documentation. Such accounting, including supporting documentation, shall be sufficient to demonstrate that the Proceeds have been expended only for actual eligible costs associated with the completion of the Project and in accordance with the terms and conditions of this Agreement. The accounting shall itemize the expenditure of the Proceeds for Project design cost, construction cost, project management cost, furnishing cost, equipment cost, or other administrative cost category, and must also provide a total of all expenditures, to date, for each referenced category, regardless of the source of funds.

D. The Parties agree that the obligation of the City for all or any part of its payment obligation hereunder, whether direct or indirect, shall extend only to the payment of the Proceeds that are duly and lawfully appropriated by the City Council for the purpose of this Agreement.

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

contractors engaged in connection therewith. The Project must be designed, planned, and constructed in accordance with master plans adopted by DBG and approved by the Manager in accordance with the Cooperative Agreement.

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

A. Before any phase of the work is commenced, DBG shall submit design plans and specifications for such work for the written approval of said documents to the Manager and the Executive Director of the City's Department of Parks and Recreation (the "**Executive Director**") for the written approval of said documents.

a. DBG shall be responsible for seeking qualifications, competitively selecting, and retaining qualified and licensed design professionals, construction professionals, installers, surveyors, or other necessary consultants according to the needs of the Project who will prepare the design, construction and/or installation documents for the Project; and for bidding and letting out the work to qualified, licensed and experienced contractors.

b. DBG shall provide Interim Project Plans (approximately 50% design development) for review, comment and approval by the Executive Director or designee, which shall be provided within thirty (30) days. Any deficiencies in Interim Project Plans shall be remedied by DBG, to the reasonable satisfaction of the Manager and the Executive Director, or designee, prior to the commencement of construction.

c. DBG shall provide Final Project Plans (100% design development) for review and approval by the Executive Director or designee, which shall be provided within thirty (30) days. Any deficiencies in Final Project Plans shall be remedied by DBG, to the reasonable satisfaction of the Manager and the Executive Director, or designee, prior to the commencement of construction.

d. Design review will include a review for safety engineering purposes by City's insurance carrier and the City's Risk Management office, which review and recommendation will be reported to the Program Manager of the City's Department of Transportation and Infrastructure.

B. DBG shall submit fiscal quarterly draw requests that anticipate the Proceeds and other funds needed for the coming annual fiscal quarter. With each draw request, the DBG

shall provide: (1) an updated Project schedule; (2) a schedule of values; (3) a cash flow and detailed report of anticipated future expenditures for the next quarter and for the full Project, showing projected expenditures compared to the budget for the Project; and (4) a detailed report of the expenditures made in the past on the Project, showing past expenditures compared to the budget for the Project including, without limitation, proof of payment on expenditures using Proceeds. Failure to provide such documents as requested may result in a delay by City of providing Proceeds requested in a particular draw request.

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

D. DBG shall at all reasonable hours ensure right of entry to any City inspector or other authorized agent of the City to the Project work site to conduct tests and evaluations to determine that the work performed and materials used are of good quality and in conformance with the approved design plans and specifications. If the City determines that the work is not otherwise being performed in accordance with this Agreement, the Manager may order that DBG cease to conduct the work until there is satisfactory evidence that the work will be performed in accordance with this Agreement.

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

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

G. In addition to compliance with the above-mentioned laws, DBG shall be governed and controlled by all limitations and provisions that are imposed upon the City's Department of Transportation and Infrastructure by the Charter or ordinances of the City. Specifically, such work shall be performed in compliance with the provisions:

- a. for competitive procurement set forth in the Denver City Charter at 2.3.3(A)(i) and Section 20-56 of the Denver Revised Municipal Code (as may be revised from time to time, “**DRMC**”);
- b. for payment of minimum wages set forth in Sections 20-82 through 20-84, DRMC;
- c. for payment of prevailing wages set forth in Sections 20-76 through 20-79, DRMC;
- d. for public art in Sections 20-85 through 28-90, DRMC (the “**Public Art Ordinance**”);
- e. and for small business enterprise (“**SBE**”), equal employment opportunity, and minority and women business enterprise (“**MWBE**”) participation as set forth in the Professional Service and Construction Ordinance, DRMC Chapter 28, Article III; the Goods and Services Ordinance, Article V; and the Small Business Enterprise Ordinance, Article VII (altogether, the “**DSBO Ordinances**” and as further described below in Section 5.BB),

as the same may be amended or re-codified from time to time. The commencement and continuation of Project shall be dependent upon DBG establishing to the City’s reasonable satisfaction through the course of the Project that these Charter and ordinance requirements have been fully and appropriately satisfied. DBG shall fully cooperate with City officials, including the City Auditor, in assuring compliance with these requirements. Failure to comply with the requirements of this subsection G. shall be legal grounds under this Agreement for work to be ordered to cease or to be restricted, as deemed appropriate by the Executive Director, Manager or the City Auditor, until compliance is achieved and any unpaid claims or other remedial measures are resolved to the reasonable satisfaction of the City.

H. Insurance requirements.

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

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

If any policy is in excess of a deductible or self-insured retention, the City must be notified by DBG. DBG 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 DBG. If a policy provides higher limits of coverage the policy shall not limit the City’s coverage as an additional insured to the minimum limits stated in this Agreement. DBG 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:** DBG shall provide a copy of this Agreement to its insurance agent or broker. DBG shall provide proof of required insurance to the City, through a certificate of insurance or other proof of insurance as required by the City’s Risk Management Office. The parties agree that if DBG provides an Accord (paper) Certificate it will satisfy the proof of insurance requirement under this paragraph. Each policy shall contain a valid provision or endorsement stating “Should any of the above-described policies be canceled or should any coverage be reduced before the expiration date thereof, the issuing company shall send written notice to the Denver Risk Administrator, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202 by certified mail, return receipt requested. Such written notice shall be sent thirty (30) days prior to such cancellation or reduction unless due to non-payment of premiums for which notice shall be sent ten (10) days prior.”

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

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

e. **Automobile Liability:** DBG shall maintain limits of \$1,000,000 for combined single limit applicable to all vehicles operating on City property and elsewhere which includes auto pollution liability coverage for any vehicle hauling cargo containing pollutants or contaminants.

f. **Crime/embezzlement:** DBG shall carry an endorsement to its general policy naming the City as a Joint Loss Payee for crime or employee dishonesty, with limits no less than the maximum amount of funds in DBG's care, custody and control at any one time.

g. **Additional Provisions:**

(i) For all general liability, the policies must provide the following:

- (a) Unlimited defense costs outside of policy limits;
- (b) Contractual liability covering the indemnification provisions of this Agreement;
- (d) A severability of interests provision;
- (e) Waiver of exclusion for lawsuits by one insured against another;
- (f) A provision that coverage is primary; and
- (g) A provision that coverage is non-contributory with other coverage or self-insurance provided by the City.

(ii) For all general liability, if the policy is a claims-made policy, then the retroactive date must be on or before the date of this Agreement.

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

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

I. DBG shall require the design and construction professionals, contractors and subcontractors (collectively as used in this subsection I and **Exhibit B**, “**Contractors**”) to obtain and maintain insurance in the amounts and types of coverages appropriate for the Project work, which shall include the City and DBG as additional insureds. The insurance requirements shall be those specified in **Exhibit B** attached to and incorporated by reference into this Agreement and specified in any design or construction contract entered by DBG with a Contractor. Failure to comply with the requirements of this subsection I shall be legal grounds under this Agreement for work to be ordered to cease or to be restricted, as deemed appropriate by the Executive Director, Manager, or the City’s Risk Management Office, until compliance is achieved and any unpaid claims are resolved to the reasonable satisfaction of the Executive Director, Manager and the City’s Risk Management Office. The obligations set out in this subsection I shall survive the expiration or termination of this Agreement.

J. Any agreement with a Contractor pertaining to any work on any part of City property shall include an indemnification and defense clause incumbent upon the Contractor, and approved by the City Attorney’s Office and inured to the benefit of the City and DBG, to protect both the City and DBG against all claims, actions, and demands arising from or related to the Project work performed by the Contractor. Similar indemnification and defense language, benefiting both the City and DBG, shall be included in the Performance and Payment Bond provided by the construction Contractor(s) under Section 5.k, below. After completion and full acceptance by the City of all work, DBG shall assign its rights under any contracts for the design and construction of the Project to the City, including but not limited to rights regarding actions or enforcement of rights against the Contractor for liability, damages, defense and indemnification. Such assignment shall not include any of DBG’s obligations, liabilities or duties owed to the Contractor unless specifically accepted by the City. The obligations set out in this Section 5.k shall survive the expiration or termination of this Agreement.

K. DBG shall obtain and maintain or require its contractor(s) and sub-contractor(s) to obtain and maintain, in advance and subject to approval by the Denver City Attorney’s Office, one hundred percent (100%) payment and performance bond(s) from an acceptable surety. The City and DBG shall be named as obligees on all bonds. Bonds provided by DBG or DBG’s contractor(s) and sub-contractor(s) must be conditioned: (1) that prompt payment shall be made for all amounts lawfully due to all contractors, subcontractors, and persons or entities

furnishing labor or materials used in the prosecution of the work on any phase of the Project; and (2) as guarantee of the obligation to complete the Project as provided in this Agreement. In addition, all design professionals, contractors and sub-contractors shall be required to include an indemnification and “hold harmless” clause, approved by and for the benefit of the City and DBG, to protect both parties against claims, actions, and demands arising from or related to the work performed by the design professionals, contractors and sub-contractors. The dollar amount of such bonds shall be modified, as needed, to reflect any change orders that modify the total value of the Project or part of the Project. In addition, DBG shall provide satisfactory evidence that all architects, engineers, designers, and other enrolled professionals have been fully paid. Failure to comply with the requirements of this subsection K shall be legal grounds under this Agreement for work to be ordered to cease or to be restricted, as deemed appropriate by the Executive Director, Manager or the City Attorney’s Office, until compliance is achieved and any unpaid claims are resolved to the reasonable satisfaction of the Executive Director, Manager and the City Attorney’s Office. The obligations set out in this subsection K shall survive the expiration or termination of this Agreement.

L. DBG shall obtain, exercise and enforce warranties and guarantees for all work it contracts and shall designate the City as an additional express beneficiary for enforcing all warranties and guarantees. After completion of the work and acceptance by the City, all such warranties shall be transferred to the City. DBG shall ensure that such warranties are transferrable. DBG’s obligations to transfer warranties to the City under this subsection L shall survive the expiration or termination of this Agreement, but only if warranties are not transferred before expiration or termination of this Agreement.

M. Prior to authorizing the commencement of the Project under the construction contract(s) with the construction contractor(s) and subcontractor(s), DBG shall submit to the Manager a letter affirming that the construction contract(s) in connection with the construction of the Project are or will be in full compliance with this Section 5 of the Agreement.

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

obligations set out in this subsection N shall survive the expiration or termination of this Agreement. The Parties acknowledge that DBG is a nonprofit corporation formed under Section 501(c)(3) of the Internal Revenue Service Code and nothing in this Agreement requires DBG to pay taxes for any activities for which it is tax-exempt.

O. DBG shall not permit any mechanic's or materialman's liens or any other liens to be imposed and remain for more than ninety (90) days upon any City-owned property, or any part thereof, by reason of any Project work or labor performed or materials or equipment furnished by any person or legal entity to or on behalf of DBG, either pursuant to C.R.S. § 38-26-107, as may be amended, or by any other authority. DBG shall promptly pay when due all bills, debts and obligations incurred in connection with this Agreement and shall not permit the same to become delinquent. DBG shall not permit any lien, mortgage, judgment, execution or adjudication of bankruptcy which will in any way impair the rights of the City under this Agreement. DBG's obligations set out in this subsection O shall survive the expiration or termination of this Agreement.

P. DBG and its construction contractor(s) and subcontractor(s) shall obtain all federal, state, and local environmental permits necessary for the work to be performed and shall comply with all applicable federal, state, and local environmental permit requirements applicable to the work. DBG and its construction contractor(s) and subcontractor(s) shall comply with all applicable local, state, and federal environmental guidelines, rules, regulations, statutes, laws, and orders applicable to the work (collectively, "**Environmental Requirements**"), including but not limited to Environmental Requirements regarding the storage, use, transportation, and disposal of Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment. The term "**Hazardous Materials**" shall mean asbestos, asbestos contaminated soils, and asbestos-containing materials, special wastes, polychlorinated biphenyls (PCBs), any petroleum products, natural gas, radioactive source material, pesticides, any hazardous waste as defined at 42 U.S.C. § 6903(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42 U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act, and chemical substance as defined at 15 U.S.C. § 2602(2) of the Toxic Substances Control Act, and any guidelines issued and rules or regulations promulgated pursuant to such statutes, or any other applicable federal or state statute. DBG's obligations set out above in this subsection N shall survive the expiration or termination of this Agreement. If asbestos

containing material is discovered within the Project site, the cost of remediation shall be equally shared by DBG and the City. DBG's contractor shall have a materials handling protocol pre-approved by the Denver Department of Environmental Health in place during the Project work.

Q. DBG shall take all reasonable measures to minimize and control noise, water and air pollution, water discharges, and soil erosion resulting from work and activities associated with the Project and to avoid adverse impacts to City-owned property and surrounding property, wherever possible, as a result of noise, water and air pollution, water discharges, and soil erosion resulting from the Project work and activities.

R. 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**"). DBG certifies that:

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

b. It will participate in the E-Verify Program, as defined in § 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.

c. It will not enter into a contract with a subconsultant or subcontractor that fails to certify to DBG that it shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

d. It is prohibited from using 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.

e. 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. DBG 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 the 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.

f. It will comply with a 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.

DBG is liable for any violations as provided in the Certification Ordinance. If DBG 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, DBG shall be liable for actual and consequential damages to the City. Any termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying DBG from submitting bids or proposals for future contracts with the City.

S. DBG shall ensure that all improvements are constructed in accordance with approved plans and specifications and that no material changes to these plans and specifications will occur during construction, unless approved in advance and in writing by the Manager. Failure to request approval or to comply with rejections for material changes shall be legal grounds under this Agreement for construction work to be ordered to cease or to be restricted, as deemed appropriate by the Manager until such approval is obtained or the unapproved work is corrected. The City shall remain a part of the Project team to provide input, recommendations and oversight. The City shall provide advanced notice to DBG if additional review and approval is required for any part of the Project.

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

U. If, for any reason, construction of any phase of the Project is delayed or halted while in process for more than twenty-one (21) days, DBG shall take reasonable measures to protect the existing Project site and buildings from weather damage, vandalism and other similar threats and to protect public safety on and around the Project.

V. Claims related to the design, construction and installation of the Project as addressed by this Agreement, including but not limited to design deficiencies, construction defects, deficient workmanship, failure to comply with environmental requirements, failures to make

payment, and other claims under DBG's contracts with its contractors or consultants for the Project work shall be reported to the City immediately upon discovery. DBG shall, where applicable, delegate responsibility and liability for the Project work by contract to the contractor or consultant retained by DBG to perform the Project work. Contracts executed by DBG for Project work shall contain indemnity provisions requiring the contractor or consultant indemnify the City as well as DBG. DBG shall require of the contractors and consultants the insurance set forth in **Exhibit B**, and the bond requirements under Section 5.K, above, and require that the contractor or consultant include the City as an additional insured to any insurance policies. This subsection V in no way modifies the indemnification obligations and requirements under Section 5.J, above. Claims under this subsection V do not include claims related to the City's rights after DBG completes the Project to the City's satisfaction including City ownership, operation and maintenance, and does not affect the City's rights to any warranties.

W. In the event of any material default by DBG's contractor(s) or sub-contractor(s) under any contracts or otherwise, DBG agrees to diligently pursue any remedies available against said parties, and to timely advise the City as to DBG's efforts in this regard and to allow the City's participation, if the City so requests. The City has the option, but not the obligation, to handle any claims, suits, proceedings or settlement on behalf of DBG. In such case, and upon mutually agreed-upon terms and conditions entered into between the Parties, DBG shall be required to assign its rights under any contracts to the City.

X. DBG shall provide the Manager with complete, final and unconditional waivers or releases of all lien and claim rights from each contractor, sub-contractor, and supplier for all labor, equipment, and materials used or furnished by each for the Project.

Y. DBG shall provide the Manager with written notification of substantial completion in order that the City may participate in all punch list reviews and sign off on the Project. DBG shall provide the Manager with written notification of final completion in order that the City may inspect all improvements as constructed and verify that the improvements have been constructed in accordance with approved plans and specifications for the Project and this Agreement without any material deviations, and the Project work is at final completion. Upon determination that the requirements set forth in this subsection Y have been fully satisfied, the Manager shall arrange with the Executive Director to issue a Notice of Final Acceptance letter

accepting the improvements described for the Project. Detailed and stamped “as-built” plans will be provided to the Manager within sixty (60) days following the City’s final inspection.

Z. DBG shall complete the Project within three (3) years of the date of the first draw of Proceeds by DBG, in accordance with the terms and conditions of this Agreement.

AA. DBG agrees that any Proceeds received from the City may not be invested, if at all, at a rate greater than the rate to be provided by the City’s Department of Finance at the time of disbursement of the Proceeds to DBG. DBG agrees to provide evidence of compliance with this responsibility at the time the investment, if any, occurs. DBG agrees to monitor the deposit and any investment of Proceeds pending disbursement to a third party and provide the City with copies of all bank statements relating to the investment and expenditure of such amounts.

BB. Provisions for SBE and MWBE Requirements.

a. As a material condition of this Agreement, DBG shall comply with all DSBO Ordinances, requirements of, and applicable rules and regulations promulgated by the City’s Division of Small Business Opportunity (“**DSBO**”). DBG shall require its contractors of all tiers to comply with the DSBO Ordinances for SBE and MWBE participation. Subject to the DSBO Ordinances and the DSBO director’s authority under the DSBO Ordinances, DBG as well as DBG’s contractors shall confer and cooperate with DSBO with regard to establishing goals or implementation of other DSBO requirements. DBG shall notify and coordinate with DSBO on its upcoming Project procurements, required procurement language and forms, scoring criteria and evaluation panelists. All procurement documents, including, without limitation, invitations to bid, requests for qualifications and requests for proposals, shall be submitted to DSBO at least thirty (30) days’ prior to advertisement or publication. Applicable DSBO provisions and clauses shall be included in all procurement documents, agreements or contracts related to the Project work. DBG shall promptly provide to DSBO copies of all Project proposals or bids it receives in response to advertised procurements to allow DSBO to evaluate such Project proposals or bids for responsiveness. DBG shall ensure that as a material condition of any of its contracts related to the Project, contractors will have an ongoing, affirmative obligation to maintain for the duration of DBG’s contract for work, at a minimum, compliance with the SBE or MWBE participation established by DSBO and as generally described in this Section 5.BB.

b. DBG is required to monitor its contractors’ work and activities related to the Project to ensure that such contractors in fact comply with applicable DSBO

requirements throughout the life of the contract. DBG shall identify and provide a liaison for DSBO to assist with such monitoring work, and DBG shall also require its contractors to provide one or more similar liaison(s) to DSBO. The City acknowledges that the contractors' liaison(s) may be more knowledgeable than the DBG liaison regarding the specific Project work and its compliance with the DSBO Ordinances. The liaisons shall be responsible for, without limitation, obtaining and coordinating: 1) contact information of all contractors and DBG personnel directly related to the applicable Project work, 2) submittals, 3) invoicing and payment information, and 4) reporting information and interfacing with DSBO, all to address various issues or concerns related to Project compliance with the applicable DSBO requirements. DSBO shall perform and assist with compliance monitoring oversight to ensure compliance with the DSBO Ordinances.

c. If change orders or any other modifications to the applicable Project work are issued by DBG, then DBG shall have a continuing obligation to promptly inform DSBO in writing of any agreed-upon increase or decrease in the scope of work. If change orders or any other modifications to the applicable Project work are issued by the DBG contractor, then the DBG contractor shall have a continuing obligation to promptly inform DSBO in writing of any agreed-upon increase or decrease in the scope of work.

d. DBG's failure to comply with these provisions may be a material breach of this Agreement and may result in withheld future Proceeds payments by the City. A contractor's failure to comply with these provisions may subject the contractor to sanctions set forth in the DSBO Ordinances. Further information and guidance can be found at the following: <https://www.denvergov.org/Government/Agencies-Departments-Offices/Agencies-Departments-Offices-Directory/Economic-Development-Opportunity/Do-Business-with-the-City>, or from DSBO directly via email at DSBO@denvergov.org.

CC. If the Public Art Ordinance is applicable to the Project, then the calculation of funding required for public art pursuant to the Public Art Ordinance ("**Public Art Funding**") shall be determined based upon the value of the entire Project inclusive of: 1) the amount of Proceeds allocated to the Project; and 2) any other funding sources identified by DBG. All Public Art Funding, if any, shall be remitted to the City's Manager of Finance. Unless otherwise agreed upon by the City's Manager of Finance and DBG, which agreement shall not require an amendment to this Agreement, such Public Art Funding shall be remitted to the City from DBG no later than the final payment of Proceeds to DBG by the City hereunder.

6. **Reporting & Audits:**

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

B. 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 DBG's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. DBG shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require DBG to make disclosures in violation of state or federal privacy laws. DBG shall at all times comply with 20-276, DRMC.

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

7. **Term; Termination; Remedies:**

A. The term of this Agreement shall commence on the date above first written and shall terminate upon the Notice of Final Acceptance issued as provided in Section 5.Y, above, and except for the financial obligations of DBG set forth in Section 8, below, which shall continue until the City and DBG mutually agree that these obligations are satisfied; provided, however, termination of this Agreement may occur as provided in this Section 7.

B. This Agreement may be termination as follows:

1. In the event that DBG shall default or breach, on its part, in the performance or fulfillment of one or more material terms or conditions of this Agreement (“**DBG Default**”), and shall fail to cure such DBG Default within ninety (90) days following delivery of written notice from the Executive Director to DBG specifying the DBG Default, the Executive Director may, in the Executive Director’s reasonable discretion, terminate this Agreement. If the Executive Director decides to terminate the Agreement upon a DBG Default not being cured by the cure deadline date, then the Executive Director shall so notify DBG that the provisions of sub-subsection 7.B.5 below shall be effective on the termination date.

2. In the event that the City shall default or breach, on its part, in the performance or fulfillment of one or more material terms or conditions of this Agreement (“**City Default**”) and shall fail to cure such City Default within ninety (90) days following delivery of written notice from DBG to the Executive Director, DBG may, in its reasonable discretion, terminate this Agreement. If DBG decides to terminate the Agreement upon the City Default not being cured by the cure deadline date, then DBG shall so notify the Executive Director that the provisions of sub- subsection 7.B.5 below shall be effective on the termination date.

3. Upon mutual agreement of the Parties, the time to cure any DBG Default or City Default may be extended to a date certain and the manner and extent of cure may be modified. The deadline for any cure under this subsection 7.B shall not excuse the obligation of any defaulting Party to take timely and proper action to prevent, stop, mitigate, or alleviate any recent or impending damage to City-owned property or any existing or imminent threat to public health and safety.

4. Upon mutual written consent, the City and DBG may terminate this Agreement, with or without cause.

5. Upon termination of this Agreement, and to the extent necessary to enforce any remedies or judgments, DBG shall take all reasonable measures to turn over the portion of the City-owned property used by DBG under this Agreement to the City in a timely manner and in reasonably good condition. Unless consented to by the City, DBG shall remove all personal property belonging to or leased by DBG from the portion of the City-owned property used by DBG under this Agreement in a timely manner and without causing any damage. Failure by DBG to comply with this subsection may result in the City bringing a legal action against DBG to recover property and the costs of restoration resulting from damage caused by DBG, and, if successful, the

City shall be entitled to its attorney's fees and costs from DBG. Nothing contained herein shall relieve DBG of its reporting and audit obligations detailed in Section 6, above. True and correct copies of all audits and reports detailed in Section 6, above, related to the use of Proceeds for the Project shall be immediately turned over to the City upon termination of this Agreement, with any supplemental material to be immediately provided to the City from DBG in the event that any Proceeds were used by DBG past the effective date of termination of this Agreement.

6. The Parties agree that this Agreement may be enforced in law or in equity for specific performance, injunctive, or other appropriate relief, including actual damages, costs, expenses and attorney's fees (and including any obligations of DBG that are specified under Section 5 of this Agreement to survive termination), as may be available according to the laws and statutes of the State of Colorado. No provision of this Agreement may be enforced by the creation or recording of any type of lien against real property owned by the City, nor may any foreclosure process be utilized to recover any moneys owed by the City to DBG.

8. **Funding:**

A. The City shall provide to DBG the costs of the Project in an amount not to exceed the Proceeds. Any cost of the Project in excess of the Proceeds shall be paid by DBG, at its sole obligation. Notwithstanding any provision of this Agreement to the contrary, DBG agrees that the rights and obligations of the City under this Agreement are contingent upon all funds necessary for work or expenditures contemplated under this Agreement being budgeted, appropriated and otherwise made available by the City. DBG acknowledges that this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City, except to the extent that capital improvement funds that are lawfully appropriated can be lawfully carried over to subsequent years.

B. In no case shall the City's financial obligation under this Agreement exceed the Proceeds. This Agreement shall require approval of Denver City Council, as well as any subsequent proposal and amendment. Any amendment shall be approved and executed in the same manner as this Agreement.

C. Notwithstanding any provision of this Agreement to the contrary, the City agrees that the rights and obligations of DBG under this Agreement are contingent upon all funds necessary for work or expenditures contemplated under this Agreement being obtained and approved by DBG prior to the beginning of the design and construction phases as set forth in

Exhibit A, and, to the extent that the City has approval authority over such phases, such approval shall not be unreasonably withheld.

D. The Parties shall cooperate to budget for each phase of work in order to proactively manage costs and avoid overruns. In the event there are cost overruns to approved budgets, and subject to the limitations under Section 8.A, the Parties shall negotiate in good faith to address any Project financial shortfalls or overruns. In no event shall the City be required to fund the Project beyond the Proceeds.

9. **Title**: As provided in the Cooperative Agreement, upon completion of construction of any aspect of the Project, and upon approval and acceptance by the City, DBG shall be deemed to have conveyed to the City all right, title and interest in the improvements made as part of the Project. In accordance with Section 23, below, DBG shall execute such further or additional documents as may be needed or requested by the City to effectuate such a conveyance of title.

10. **No Discrimination in Employment**: In connection with the performance of work under the Agreement, DBG 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. DBG shall insert the foregoing provision in all subcontracts.

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

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

To the City:

City and County of Denver Bond Program
Project Implementation Project Manager
201 West Colfax Avenue, Dept. 506
Denver, CO 80202

Executive Director of Parks and Recreation
City and County of Denver

201 West Colfax Avenue, Dept. 601
Denver, Colorado 80202

Denver City Attorney's Office
1437 Bannock Street, Room 353
Denver, CO 80202

To DBG:

Brian Vogt, CEO
Denver Botanic Gardens
909 York Street
Denver, CO 80206

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

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

14. **No Third-Party Beneficiaries:** The Parties expressly agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and DBG; and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such agreements. The City and DBG expressly agree that any person other than the City and DBG receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

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

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

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

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

19. **Authority of DBG:** The scope of authority that DBG may exercise with respect to the Project shall be as expressly delegated, assigned, or allowed under, or necessarily implied in, this Agreement. DBG shall have no authority to avoid, modify or waive any applicable City ordinances or regulatory requirements enacted or adopted under the City's police or taxing powers. DBG has no authority to obligate the City to any contract or agreement with third parties without the City's consent. This Agreement is not intended, nor shall this Agreement be construed, to establish or constitute a joint venture between the City and DBG.

20. **Financial Interests:** The Parties agree and covenant that any financial interests created in, or used to secure financing and payment for the costs of, any work performed under this Agreement, including but not limited to any bonds (including, without limitation, the Bonds), certificates of participation, purchase agreements, and Uniform Commercial Code filings, shall expressly exclude, and not encumber, property title, rights and interests held by the City from such debt or financial security contained in such financial instruments. The terms and conditions of this Agreement must be expressly recognized in any such financial instrument(s), which must specifically acknowledge and affirm that any financial interests created by the financial instrument(s) are subordinate to this Agreement.

21. **Non-Waiver:** No Party shall be excused from complying with any provision of this Agreement by the failure of the other Party to insist upon or to seek compliance. No assent expressed or implied, to any failure by a Party to comply with a provision of this Agreement shall be deemed or taken to be a waiver of any other failure to comply by said Party.

22. **Conflict of Waiver:** DBG agrees that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein, and DBG further agrees not to hire or contract for services any official, officer or employee

of the City or any other person which would be in violation of the DRMC Chapter 2, Article IV, Code of Ethics, as amended, or City Charter provisions 1.2.9 and 1.2.12.

23. **Further Assurances:** From time to time, upon the reasonable request of a Party, the other Party agrees to make, execute and deliver or cause to be made, executed and delivered to the requesting Party any and all further instruments, certificates and documents consistent with the provisions of this Agreement as may, in the reasonable opinion of the requesting Party, be necessary or desirable in order to effectuate, complete or perfect the rights of said Party under this Agreement, provided said requesting Party is currently in full compliance with the provisions of this Agreement and has tendered or offered to tender any reciprocal instruments, certificates and documents to which the other Party is entitled under the Agreement.

24. **Contracting or Subcontracting:**

A. The authority delegated under this Agreement shall not be construed to grant DBG the right or power to bind, or to impose any liability upon, the City through any contracts or agreements DBG may make, unless the prior, written approval of the Executive Director is obtained, and the contract or agreement is in accordance with applicable law. Likewise, the City shall have no authority to bind, or to impose liability upon, DBG through any contracts or agreements the City may make, unless the prior, written approval of DBG is obtained.

B. Any work that is allowed to be contracted or subcontracted under this Agreement shall be subject, by the terms of the contract or subcontract, to every provision of this Agreement. Compliance with this provision shall be the responsibility of the Party who entered into the contract or authorized the subcontract. The City shall not be liable nor have a financial obligation to or for any contractor, subcontractor, supplier, or other person or entity with which DBG contracts or has a contractual arrangement.

25. **Claims:** In the event that any claim, demand, suit, or action is made or brought in writing by any person or entity against one of the Parties related in any way to this Agreement, the Party in receipt of same shall promptly notify and provide a copy of said claim, demand, suit, or action to the other Party.

26. **Entire Agreement:** This Agreement, including the exhibits which are hereby incorporated into this Agreement by reference, constitutes the entire agreement of the Parties regarding the Project. The Parties agree there have been no representations, oral or written, other

than those contained herein and that the various promises and covenants contained herein are mutually agreed upon and are in consideration for one another.

27. **No Assignment or Delegation:** No Party shall assign its rights or delegate its duties hereunder, with the exception of contracting and subcontracting as provided in this Agreement, without the prior written consent of the other Party.

28. **Severability:** Should any one or more provisions of this Agreement be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the Parties shall forthwith enter into good faith negotiations and due diligence to draft a legal term or condition that will achieve the original intent and purposes of the Parties hereunder.

29. **Amendment:** Except as otherwise expressly provided in this Agreement, this Agreement may be amended, modified, or changed, in whole or in part, only by written agreement executed by the Parties in the same manner as this Agreement.

30. **Headings for Convenience:** Headings and titles contained herein are intended for the convenience and reference of the Parties only and are not intended to combine, limit, or describe the scope or intent of any provision of this Agreement.

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

32. **Reserved**

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

Contract Control Number: FINAN-202263352-00
Contractor Name: DENVER BOTANIC GARDENS, INC.

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

SEAL **CITY AND COUNTY OF DENVER:**

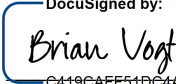
ATTEST: By: _____

APPROVED AS TO FORM: **REGISTERED AND COUNTERSIGNED:**
Attorney for the City and County of Denver
By: _____ By: _____

By: _____

Contract Control Number:
Contractor Name:

FINAN-202263352-00
DENVER BOTANIC GARDENS, INC.

By:  C419CAFF51DC4AD...

Name: Brian Vogt
(please print)

Title: CEO
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT A

PROJECT DESCRIPTION AND BUDGET

This project will provide funding for deferred maintenance at the Denver Botanic Gardens, which may include the redesign of gardens for accessibility, improved pathways, multiple roof repairs, and waterway improvements for water conservation and sustainability.

The planned deferred maintenance has a total cost estimated at \$3,000,000.

GO Bond contributions shall not exceed \$3,000,000 and may include the following components:

- Various Deferred Maintenance
- Public Art (if applicable)
- Project Contingency
- Costs associated with design, construction, project management, furnishings and equipment (as described in the Agreement)

EXHIBIT B

EXAMPLE OF CONSTRUCTION INSURANCE REQUIREMENTS

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

INSURANCE:

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

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

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

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

E. Subcontractors: All subcontractors, independent contractors, suppliers or other entities providing goods or services required by this Agreement shall be subject to all of the

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

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

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

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

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

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

J. Excess/Umbrella Liability: General Contractor shall maintain \$ ____ (TBD by Risk Management) excess/umbrella liability coverage.

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

L. Additional Provisions:

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

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

(b) For claims-made coverage:

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

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