

## AMENDATORY AGREEMENT

**THIS AMENDATORY AGREEMENT** is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City"), **CLIFF GARTEN and ASSOCIATES, INC.**, a California corporation, doing business as **CLIFF GARTEN STUDIO**, , whose address is 1315 Preston Way Venice, CA 90291 (the "Artist").

### WITNESSETH:

**WHEREAS**, the City and the Artist previously entered into an Agreement dated May 25, 2023 (the "Agreement") to design, execute, fabricate, deliver and install a work of art consisting of a suspended aluminum and blown glass sculpture (the "Work"), such Work to be integrated into Lobby D of the Colorado Convention Center located at 700 14<sup>th</sup> Street, Denver, Colorado (the "Site"), after consultation with Denver Arts and Venues (DAV), Site designers, and Department of Transportation and Infrastructure personnel; and

**WHEREAS**, the decision has been made to increase the size of the artwork since the contract was originally executed so additional funds are needed to accomplish the expanded work;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and obligations herein set forth, the parties agree as follows:

1. The Scope of Work as revised for the additional work is attached hereto and incorporated herein as **Exhibit A-1** and all references to "**Exhibit A**" are hereby amended to read "**Exhibits A and A-1**"

2. Subparagraph 1.4(b) of Article 1 of the Agreement entitled "Work to Be Performed" is amended to read:

b. The submission shall also include a budget, not to exceed One Million Seven Hundred Thousand Dollars (\$1,700,000.00), as described herein, that includes all costs for design, engineering, execution, fabrication, transportation, delivery, installation, insurance, contingencies, consultant fees, fees and permits, and any other costs associated with the Work, and the Artist's fee.

3. That subparagraph 4.1 of Article 4 of the Agreement entitled "Payment" is amended to read:

**4. PAYMENT:**

4.1 Fee. The Artist agrees to accept, and the City agrees to pay, as full and complete compensation for completion of all the items of work contained in this Agreement a fixed fee of One Million Seven Hundred Thousand Dollars (\$1,700,000.00), which shall constitute full compensation for all services and materials whatsoever to be performed and furnished by the Artist under this Agreement. It is agreed that the City has no obligations regarding commission, or any agreements with galleries or agents with whom the Artist may have contracted. **The fee shall be paid in the following installments, subject to receipt by the City of acceptable periodic invoices and supporting documentation from the Artist, each installment to represent full and final payment for all services and materials provided by the Artist prior to the submittal of such periodic invoice for the specific phase of performance:**

a.	Execution of Contract	\$ 60,000.00
b.	Preliminary Design Review	\$ 120,000.00
c.	Final Design Review	\$ 420,000.00
d.	Mid-Point Fabrication	\$ 600,000.00
e.	Post Installation	\$ 470,000.00
f.	Final Acceptance and Close Out	<u>\$ 30,000.00</u>

Total Contract Amount Not to Exceed (100%) \$1,700,000.00

The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of all travel by the Artist and the Artist’s agents and employees necessary for the proper performance of the services required under this Agreement and for all other miscellaneous charges hereunder. Nothing contained in this Agreement shall entitle the Artist to retain funds paid by the City hereunder in the event that the Artist fails to fabricate, transport and install a satisfactory Work in accordance with this Agreement, and nothing contained in this Agreement shall prevent or prohibit the City from seeking damages or reimbursement from the Artist in the event of the Artist’s breach or default of this Agreement.

4. That subparagraph 4.3 of Article 4 of the Agreement entitled “Payment” is amended to read:

4.3 Maximum Amount Payable. The maximum amount payable by the City under this Agreement shall not exceed One Million Seven Hundred Thousand Dollars (\$1,700,000.00).

5. Except as herein amended, the Agreement is revived, affirmed and ratified in each

and every particular.

*Remainder of page left intentionally blank.*

**Contract Control Number:** THTRS-202476846-01/THTRS-202366409-01  
**Contractor Name:** CLIFF GARTEN AND ASSOCIATES 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:**

THTRS-202476846-01/THTRS-202366409-01  
CLIFF GARTEN AND ASSOCIATES INC

By:  EC39F074287144E...

Name: Cliff Garten  
(please print)

Title: President  
(please print)

ATTEST: [if required]

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

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

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

"Exhibit A-1"

**Scope of Work: Expansion of Artwork in D Lobby, Colorado Convention Center**

**1. Artwork Extension**

- Extend the existing artwork to cover a more significant portion of the D Lobby, enhancing its visual impact and integration within the space.

**2. Removal of Existing Light Fixtures**

- Remove the current light fixtures above the escalators that obstruct the view of the artwork.

**3. Installation of New Lighting Fixtures**

- Install new lighting fixtures that align with the current lighting code requirements, ensuring adequate illumination of the escalators and surrounding area without obstructing the artwork.

**4. Compliance and Safety**

- Ensure all work complies with safety and code standards for lighting and construction in the lobby area.

**5. Project Coordination**

- Coordinate with relevant contractors, electricians, and safety inspectors to complete the work efficiently and with minimal disruption to the convention center's operations.