Request for Proposals for NFT Service Provider

Date Issued: March 23, 2022

Response Deadline: April 19, 2022 – 5:00 PM MT

Contact:

Andrew Lindley
Sr. Manager, Corporate Partnerships
Denver Arts & Venues
1345 Champa Street
Denver, CO 80202
720-865-4325
andrew.lindley@denvergov.org

Signature constitutes acceptance of all Terms and Conditions listed on this form and all documents attached AND TO ACCEPT ALL OF THE MANDATORY TERMS IN THE SAMPLE CONTRACT AS DESCRIBED ON PAGE 9 OF THIS RFP.

_____________________________________________ _________________________
Print Name         Date

_____________________________________________
Signature
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INTRODUCTION

Denver Arts & Venues (A&V) is seeking an NFT service provider to provide customized Red Rocks Amphitheatre NFT’s, provide access to their marketplace for release, consult on a comprehensive go-to market strategy, and potentially create a white label marketplace. The eventual contract, if any, will be for a maximum of three years and will be between the City and County of Denver (the “City”) and the selected proposer.

About Denver Arts & Venues (A&V): Denver Arts & Venues is a division of the City & County of Denver. A&V’s mission is to amplify Denver’s quality of life and economic vitality through our premier public venues, public art collection, and free entertainment events and programs.

Any contract entered as a result of this request will be subject to A&V’s sponsorship policy and any other applicable City agreements.

The selected proposer shall be sensitive to the City’s mission to “create a world-class City where everyone matters.”

For further information regarding Denver Arts & Venues visit: www.artsandvenuesdenver.com

Further Information
For more information on Denver Arts & Venues facilities and programs, visit our website at www.artsandvenuesdenver.com.

QUESTIONS

The RFP is issued by the City of Denver, Arts & Venues Division. All questions regarding this bid process and proposal content may be addressed to Andrew Lindley via email Andrew.Lindley@denvergov.org. Question deadline shall be April 16th, 2022 by 5pm MT.
RFP CONDITIONS AND PROVISIONS

All participating proposers, by their signature hereunder, shall agree to comply with all of the conditions, requirements and instructions of this RFP as stated or implied herein. Any alteration, erasure or interlineation by a proposer in this proposal shall constitute cause for rejection by A&V. Proposers may not include exceptions or deviations to the requirements set forth in this RFP in its proposal pages; rather, any proposed exceptions or deviations must be made separately on proposer’s letterhead and accompany its proposal. Any exceptions or deviations to the requirements of this RFP proposed by a proposer will be taken into consideration when evaluating proposals submitted; however, any such exceptions or deviations are offered for discussion purposes only and the City reserves the right to accept, reject, or further negotiate any or all proposed modifications.

All proposers are required to complete all information requested in this RFP. Failure to do so may result in the disqualification of a proposal.

The City reserves the right to postpone or cancel this RFP, or reject all proposals, if in its judgment it deems it to be in the interest of the City to do so.

The City reserves the right to waive any technical or formal errors or omissions and to reject any and all proposal(s), or to award a contract for the items herein, either in part or whole, if he or she deems it to be in the interest of the City to do so.

The City shall not be liable for any costs incurred by a proposer in the preparation of proposals or for any work performed in connection therewith.

GRATUITIES AND KICKBACKS

It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee (within six months of termination from City employment), or for any employee or former employee (within six months of termination from City employment) to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding of application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime vendor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
In the event that any gratuities or kickbacks are offered or tendered to any City and County of Denver employee, the proposal shall be disqualified and shall not be reinstated.

**NON-COLLUSIVE PROPOSER CERTIFICATION**

By the submission of this proposal, the proposer certifies that:

A. The proposal has been arrived at by proposer independently and has been submitted without collusion with any other proposer.

B. The contents of the proposal have not been communicated by proposer, nor, to its best knowledge and belief, by any of its employees or agents, to any person not an employee or agent of the proposer or its surety on any bond furnished herewith, and will not be communicated to any such person prior to the official opening of the proposal.

C. No proposer shall submit more than one proposal for this RFP. It shall be the responsibility of each proposer to obtain the prior written permission of the Director of A&V before proposal opening in every situation in which the proposer, due to corporate association or other affiliation, may be found to be impermissibly associated with another vendor. Failure to observe this requirement could result in all such affiliated proposals being rejected.

**DISCLOSURE OF CONTENTS OF PROPOSALS**

All proposals become a matter of public record and shall be regarded as Public Records, with the exception of those specific elements in each proposal which are designated by the proposer as Business or Trade Secrets and plainly marked “Trade Secrets”, “Confidential”, “Proprietary”, or “Trade Secret”. Items so marked shall not be disclosed unless disclosure is otherwise required under the Open Records Act. If such items are requested under the Open Records Act, the City will use reasonable efforts to notify the proposer, and it will be the responsibility of the proposer to seek a court order protecting the records, and to defend, indemnify, and hold harmless the City from any claim or action related to the City’s non-disclosure of such information.

**PROOF OF REGISTRATION WITH THE COLORADO SECRETARY OF STATE**

If the successful proposer is a corporation or limited liability company, it will be required to furnish a Certificate of Good Standing from the Colorado Secretary of State’s Office, as proof that it is properly registered to do business in the State of Colorado, prior to finalization of award and contracting.
SCOPE OF WORK

Denver Arts and Venues manages Red Rocks Amphitheatre.

The NFT Service Provider will be familiar with best practices for NFT’s, NFT marketplaces, and go-to market strategies.

Contractor Requirements:

Excellent planning and management skills, excellent customer service, detail oriented, and strong planning skills. Ability to process credit/debit cards for payments. Back-end creation, minting, and deployment of NFTs,

SCOPE OF WORK

Beginning on the contract execution date, the NFT Service Provider will assist Arts & Venues with the development, go-to market strategy, and deployment of customized Red Rocks NFTs and may include the following services but not limited to:

- Comprehensive go-to market strategy.
- Provide support and development for NFT creative process.
- Administration of back-end minting process.
- Provide managed wallet solution for storage of Red Rocks NFTs.
- Provide marketplace for NFT sales.
- Allow for migration of Red Rocks NFTs to OpenSea and other second party NFT marketplaces.
- Provide API integration for any VIP or enhanced benefits.
- Provide credit/debit card processing for sales process.
- Provide reporting and analytic tools for sales and accounting.
- Provide hands on customer service from creation thru sales process.
- Red Rocks annual commemorative ticket
- Red Rocks digital venue trading cards
- Denver Arts & Venues partnership commemorations

RFP RESPONSE INSTRUCTIONS

PROPOSAL REQUIREMENTS

To be considered, each proposer shall provide a detailed proposal structured as specified below.

1. The NFT Partner Plan should identify specific partner strategy plans. The NFT Partner Plan represents an opportunity for each proposer to provide examples of its innovation,
promotional ideas, and understanding of Red Rocks as well as differentiating factors of their marketplace.

2. Respondents are required to provide details of their proposed Product/Service Plan as specified below:

   a. **Service:** The proposal should provide an overview of the respondent’s service, including but not limited to creation, minting, and deployment of NFT’s and NFT Collectible Tickets. The proposal should include how the NFT will reside on the blockchain.

   b. **Marketing & Promotions:** Respondent shall outline intended efforts to support the marketing and sale of Red Rocks NFTs in all distribution channels. Please outline proposed marketing and promotional support.

3. Respondents are required to provide Pricing Proposals in line with the following headings:

   a. Fee Structure
   b. Additional Financial Compensations (if applicable)
   c. Product or Service Trade (if applicable)
   d. Available payment methods to A&V (i.e. US currency, cryptocurrency, etc.)

   Respondents are required to provide supporting assumptions and explanation of their pricing proposals to enable evaluation of value for money.

4. Respondents are required to provide details regarding their sustainability plan.

5. Please submit the name, address and phone number of at least three references.

6. Complete and submit Diversity and Inclusiveness Form.

SUBMISSION DEADLINE: April 19th, 2022 - 5:00 PM (MST)

SUBMIT FILES TO:

Andrew Lindley  
Sr. Manager, Corporate Partnerships  
Denver Arts & Venues  
Andrew.Lindley@denvergov.org

720-865-4325
DIVERSITY AND INCLUSIVENESS REQUIREMENT

Using the attached form, entitled “Diversity and Inclusiveness in City Solicitations Information Request Form”, please state whether you have a diversity and inclusiveness program for employment and retention, procurement and supply chain activities, or customer service and provide the additional information requested on the form. The information provided on the Diversity and Inclusiveness in City Solicitations Information Request Form will provide an opportunity for City contractors/consultants to describe their own diversity and inclusiveness practices. Contractors/consultations are not expected to conduct intrusive examinations of its employees, managers, or business partners in order to describe diversity and inclusiveness measures. Rather, the City simply seeks a description of the contractor/consultant’s current practices, if any.

Diversity and Inclusiveness information provided by City contractors/consultants in response to City solicitations for services or goods will be collected, analyzed, and made available in reports consistence with City Executive Order No. 101. However, no personally identifiable information provided by or obtained from contractors/consultants will be in such reports.
THIS AGREEMENT is made between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado (the “City”) and ________________, a ________________, [with its principal place of business located at/ doing business at] ___________________________ (the “Contractor”), collectively “the parties”.

The parties agree as follows:

1. COORDINATION AND LIAISON: The Contractor shall fully coordinate all services under the Agreement with the Director of Denver Arts and Venues, (“Director”) or, the Director’s Designee.

2. SERVICES TO BE PERFORMED:
   a. As the 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. The Contractor agrees that it will furnish all of the technical, administrative, professional and other labor; all supplies and materials, equipment, vehicles, travel, office space and facilities, testing and analyses, calculations, permits fencing and securing the site, and any other facilities or resources required to perform and complete the work.
   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 the date of the City’s signature (the “Effective Date”) of this Agreement and will expire on ________________ (the “Term”).
a. **Initial Term.** The Agreement will commence on ___, 202_ (the “Effective Date”) of this Agreement and will expire on ___, 202_ (the “Initial Term.”)

b. **Renewal Terms.** The City shall automatically renew the Initial Term for up to ____ (_) additional one-year terms subject by appropriation of sufficient amounts for the subsequent year by City Council. The first Renewal Term shall be from ___, 202_to ___, 202_; and the second Renewal Term shall be from ___, 202____, 202_ (each an “Annual Renewal.”)

c. **Renewal Procedures; Non-Renewal.** The Maximum Payment shall be payable only if funds are appropriated by the City Council and for which an encumbrance has been made in each year for the ensuing fiscal year. The option of the City to renew the Initial Term, or any subsequent Annual Term shall have been deemed to have been exercised upon the City making such appropriation and encumbrance for the next fiscal year. Absent any notice of non-appropriation or any notice delivered in accordance with this section the Agreement shall be deemed to have been renewed for the subsequent Annual Renewal Term. If such appropriation and encumbrance is not made for a future fiscal year, during which such Renewal Term occurs, then, the City shall be deemed to have failed to exercise its option to renew this Agreement for a subsequent Renewal Term, whereupon this Agreement will expire and terminate on the expiration date of the then current Initial Term or Renewal Term. It is expressly understood and agreed that if the City exercises its option to renew this Agreement for a Renewal Term, the City’s obligation to make payments to the Consultant shall only extend to monies appropriated and encumbered for the purposes and amounts covered by this Agreement.

4. **COMPENSATION AND PAYMENT:**

a. **Fee:** The City shall pay and the Contractor shall accept as the sole compensation for services rendered and costs incurred under the Agreement ________ Dollars $_________ per Initial and Renewal Terms. Payments shall be made upon completion of the milestone described on **Exhibit B** and approval of a corresponding invoice. Amounts billed may not exceed the rates [budget] set forth in **Exhibit B**.

b. **Reimbursable Expenses:** All of the Contractor’s expenses are contained in the rates [budget] in Exhibit B.
c. **Invoicing:** 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 the Agreement, the City’s maximum payment obligation, if all Renewal Terms are effected will not exceed _________________ ($_______) (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 Contractor beyond that specifically described in Exhibit A. Any services performed beyond those in Exhibit A are performed at Contractor’s risk and without authorization under the 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 the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The 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 CONTRACTOR:** 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. [Without limiting the foregoing, the parties specifically acknowledge that: the Contractor is not entitled to unemployment insurance benefits (unless unemployment compensation coverage is provided by the Contractor or some other entity besides the City); the Contractor is not entitled to workers’ compensation benefits from the City; and the Contractor is obligated to pay federal and state income taxes on any monies earned pursuant to this Agreement].

6. **TERMINATION:**

   a. The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon twenty (20) days prior written notice to the
Contractor. However, nothing gives the Contractor the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Director.

b. Notwithstanding the preceding paragraph, the City may terminate the 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 the 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 the 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 the 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 AND AUDIT**: 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. Contractor 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 Contractor to make disclosures in violation of state or federal privacy laws. Contractor shall at all times comply with D.R.M.C. 20-276.

8. **COLORADO GOVERNMENTAL IMMUNITY ACT**: In relation to the Agreement, the City is relying upon and has not waived the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101, *et seq.*

9. **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 the Agreement constitutes a waiver of any other breach.

10. **INSURANCE**:

   a. **General Conditions**: 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. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, including any extension thereof, during any warranty period and for three (3) 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 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, 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. 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:** Contractor may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. 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 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, excess/umbrella liability (if required), auto liability, Contractor’s and subcontractor’s insurer 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 Sub-consultants:** 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:** 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: 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. Automobile Liability: Contractor shall maintain Business Automobile Liability with limits of $1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

[i. Excess/Umbrella Liability: Contractor shall maintain excess liability limits of [redacted]. Coverage must be written on a “follow form” or broader basis. Any combination of primary and excess coverage may be used to achieve required limits.

j. Professional Liability (Errors & Omissions): Contractor shall maintain minimum limits of $1,000,000 per claim and $1,000,000 policy aggregate limit. The policy shall be kept in force, or a Tail policy placed, for three (3) years for all contracts.]

11. DEFENSE AND INDEMNIFICATION

a. 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 Contractor or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

b. Contractor will further indemnify, defend and hold the City harmless from and against any claims, losses, damages, liabilities or expenses (including reasonable attorneys’ fees and expenses) arising out of or resulting from any third party claim that the Work, when used by
city the in accordance with this Agreement, infringes, misappropriates or violates any United States patent issued as of the date hereof, copyright, trademark, trade secret or other intellectual or proprietary right of any third party. If an injunction or order is obtained against the City’s use of the Works by reason of a claim of the type described above, or if in Contractor’s opinion, the Work is likely to become the subject of such a claim, Contractor shall take all necessary action to correct any such infringement or misappropriation to give the City the right to continue using the Work.

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

d. Contractor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of 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 City shall be in addition to any other legal remedies available to City and shall not be considered City’s exclusive remedy.

e. 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.

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

12. 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 the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.
13. **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 Director’s prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and shall be cause for termination of this Agreement by the City. The Director has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the 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.

14. **INUREMENT:** The rights and obligations of the parties to the 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 the Agreement.

15. **NO THIRD PARTY BENEFICIARY:** Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the 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 the Agreement is an incidental beneficiary only.

16. **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.

17. **SEVERABILITY:** Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the 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.

18. **CONFLICT OF INTEREST:**

   a. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement; and 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 the Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest, including 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 the Agreement in the event it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

19. NOTICES: All notices required by the terms of the 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 Contractor at the address first above written, and if to the City at:

Director of Denver Arts and Venues

1345 Champa Street, First Floor

Denver, Colorado 80204

Email: publicart@denvergov.org

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.

20. 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:

i. 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.

ii. 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.

iii. It will 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.

iv. 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.

v. 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 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.

vi. 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.

c. The Contractor is liable for any violations as provided in the Certification Ordinance. If the 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 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.

21. **DISPUTES:** All disputes between the City and Contractor arising out of or regarding the 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 Director as defined in this Agreement.

22. **GOVERNING LAW; VENUE:** The 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 the 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 the Agreement will be in the District Court of the State of Colorado, Second Judicial District.

23. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under the 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.

24. **COMPLIANCE WITH ALL LAWS:**
a. 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.

b. Where the source of the funds, directly or indirectly for this Agreement is the Federal Government, the Contractor shall be responsible for determining which of the following terms are applicable to its products and/or services and agrees to the applicable provisions:


2. Davis-Bacon Act Compliance: Contractor agrees to comply with the Davis-Bacon Act (40 U.S.C. 3148 to 3148) as supplemented by Department of Labor regulations (29 CFR part 5);

3. Anti-Kickback Act Compliance: Contractor agrees to comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3);

4. Contract Work Hours and Safety Standards: Contractor agrees to comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5);

5. Rights to Inventions Made Under a Contract or Agreement: Contractor agrees to comply with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency;

6. Clean Air and Water Requirements: Contractor agrees to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et. seq.), and the Clean Water Act (33 U.S.C. 1251 et. seq.). Contractor agrees to report each violation of these
requirements to the City and understands and agrees that the City will, in turn, report each violation as required to the appropriate EPA regional office;

(7) Energy Conservation Requirements: The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. (42 U.S.C. 6201);

(8) No Suspension or Debarment: Contractor certifies that neither it nor its Principals or any of its subcontractors is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any Federal department or agency; and

(9) Byrd Anti-Lobbying: If the Maximum Contract Amount exceeds $100,000, the Contractor must complete and submit to the City a required certification form provided by the City certifying that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress in connection with obtaining any Federal contract grant of any other award covered by 31 U.S.C. 1352. Contractor must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

25. PREVAILING WAGES: Employees of the Contractor or his subcontractors may be subject to the payment of prevailing wages pursuant to D.R.M.C. 20-76, depending upon the nature of the Work. By executing this Agreement, the Contractor covenants that he or she is familiar with this Code Section and is prepared to pay or cause to be paid prevailing wages, if any, required by the scope of work of the Contractor’s or his subcontractor’s employees. A schedule of prevailing wage is attached as Exhibit D. The schedule of prevailing wage is periodically updated and Contractor is responsible for payment of then current prevailing wage. Exhibit D shall be
deemed replaced by updated schedules with out amendment to this Agreement. The Contractor may obtain an updated schedule of prevailing wage at any time from the Auditor’s Office.

26. **PAYMENT OF CITY MINIMUM WAGE**: Contractor shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City’s Minimum Wage Ordinance, Sections 20-82 through 20-84 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, Contractor expressly acknowledges that Contractor is aware of the requirements of the City’s Minimum Wage Ordinance and that any failure by Contractor, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

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

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

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

30. **INTELLECTUAL PROPERTY RIGHTS**: The City and 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 register such items in the name of the City and County of Denver unless the Director directs otherwise in writing.

31. **COMPLIANCE WITH PATENT, TRADEMARK AND COPYRIGHT LAWS.** The Contractor agrees that all work performed under this Agreement, shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the United States. The Contractor further agrees that it will not utilize any protected patent, trademark or copyright in performance of its work unless the Contractor has obtained proper permission and all releases and other necessary documents. If the Contractor specifies any material, equipment, process or procedure, which is protected, the Contractor shall disclose such patents, trademarks and copyrights in the construction drawings or technical specifications. Contractor agrees to release, indemnify and save harmless the City, its officers, agents and employees, pursuant to Article __________, DEFENSE AND INDEMNIFICATION, from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind or nature whatsoever, of or by anyone whomever, in any way resulting from, or arising out of, directly or indirectly, the performance or work under this Agreement which infringes upon any patent, trademark or copyright protected by law.

32. **SURVIVAL OF CERTAIN PROVISIONS:** The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the 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.

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

34. **CITY EXECUTION OF AGREEMENT**: The 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.

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

36. **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.

37. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS**: Contractor 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.

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Remainder of page left intentionally blank.

Signatures follow.