



# REQUEST FOR QUALIFICATIONS (RFQ) PUBLIC ART PROJECT

CENTER OF EQUITY AND EXCELLENCE IN AVIATION

THE CITY & COUNTY OF DENVER / DENVER INTERNATIONAL AIRPORT



<b>ISSUE DATE:</b>	September 16, 2024
<b>ELIGIBILITY:</b>	International Artists/Artist Teams
<b>COMMISSION VALUE:</b>	\$200,000.00
<b>LOCATION:</b>	Center of Equity and Excellence in Aviation (CEEA)
<b>DEADLINE:</b>	October 14, 2024

### **INTRODUCTION**

The City and County of Denver (City) seeks a Request for Qualifications (RFQ) to commission an artist or artist team to create an original public artwork(s), for the Center of Equity and Excellence in Aviation (CEEA) at Denver International Airport (DEN), as part of the completion phase of the Great Hall Project in Denver, Colorado. A selection panel comprised of community representatives, arts and cultural professionals and civic leaders has been assembled to identify public art opportunities within the project, review applications and ultimately recommend an artist or artist team for the commission. The selection panel has identified the **West Terminal Entrance** for the inclusion of public artwork(s) for the allocated total budget up to \$200,000.00 USD.

### **DENVER INTERNATIONAL AIRPORT OVERVIEW**

Since opening on Feb. 28, 1995, DEN has become one of the world’s busiest airports. In 2023, nearly 78 million passengers passed through DEN, making DEN the world’s 6th-busiest and the 3<sup>rd</sup>-busiest airport in the U.S. DEN is Colorado’s primary economic engine, generating \$36.4 billion in annual economic impact for the state.

### **DEN PUBLIC ART PROGRAM**

Denver’s Public Art Program was established in 1988 as an Executive Order. The order, enacted into Ordinance by Denver City Council in 1991, directs that any capital improvement project equal to or over \$1 million undertaken by the city, 1% of the overall project budget must be set aside for the inclusion of public art. Over the past 30 years, the city of Denver has invested more than \$40 million in public art amassing over 300 works in the collection.

The permanent art collection at DEN today consists of 34 public artworks by local, national, and international artists that can be found along Peña Blvd., Jeppesen Terminal, all three concourses, the Westin Hotel, DEN Plaza, and the RTD A-Line platform. DEN’s art collection has been heralded as one of the most innovative airport art collections in the world.

### **CITY AND COUNTY OF DENVER VALUES**

The values of equity, diversity, inclusivity, accessibility, and sustainability are inherent to the City’s strategy to develop and maintain prosperous communities. Accordingly, these values are imbedded into all the City’s procurement processes to ensure competitive procurements that offer equitable opportunities for all potential Proposers, including greater contracted and significant participation for historically underutilized multicultural businesses to ensure Denver’s long-term economic, social, and environmental health. Through equitable procurements, the City is committed to working to remove barriers and increase access to City contracting opportunities for all historically underutilized and small businesses including those owned by minorities, women, veterans, LGBTQ+, and individuals living with disabilities as well as those in economically distressed or redlined neighborhoods. It is a primary value to promote economic equity by engaging a more diverse and inclusive community of Proposers and contractors, both as prime and sub-contractors to address racial, socioeconomic and gender disparities. Through this promotion of equity, diversity, and inclusion, the City strives to improve opportunities that ensure fair and just access to jobs, housing, education, mobility options, and healthier communities. It is the City’s expectation that all successful Proposers demonstrate their commitment to these City values through their procurement responses.

Each procurement opportunity is to be approached with ethical and honest behavior. The City will solicit, evaluate, and award contracts based upon the Proposer’s alignment with the City’s values as it relates to its approach, proven experience, ability to perform work, costs, and pricing. DEN is looking for Proposers that demonstrate a history of equity,

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diversity, integrity, stewardship, innovation, and humanity. The City is looking for Proposers that have equity, diversity, and inclusion (EDI) embedded in their policies, procedures, practices, initiatives, and exhibit actionable results and ensures that of those that they partner with.

DEN plays a unique role as a gateway to the world for the region, our passengers, our communities, and our partners. As such, DEN has a generation of operators, concessionaires, designers, builders, planners, and small businesses that are stronger and more successful because of this work. DEN has also helped build new businesses that have flourished and grown into mature industry leaders. As part of its new [Vision 100](#) plan, DEN intends to expand this legacy by looking to the community that has succeeded in the past at DEN to bring the next generation forward.

CEEA is an integral piece to implementing DEN’s Vision 100 strategic plan, which will prepare the airport for 100 million annual passengers in the next eight to 10 years. Programming of CEEA will focus on business development and training, career pathways, research and innovation to serve the community, DEN employees and our aviation partners.

Overarching Goals:

- Serve the as accelerator for economic and workforce development.
- Grow access for underserved communities to build equity into prosperity opportunities.
- Support small, minority and women-owned small businesses to increase generational wealth.
- Prepare current and future employees for a career pathway in the aviation industry.
- Create more opportunities for minority-, women- and veteran-owned businesses to do business as DEN.
- Advance aviation research and innovation that drives best practices with a global impact.

The center will be constructed on Level 4 of the Hotel and Transit Center as part of the [Great Hall completion phase](#). Learn more about CEEA’s programming areas, goals and project updates by visiting [Flydenver.com](#).



Figure 1:CEEA Rendering, Research & Innovation Lab



Figure 2: CEEA Rendering, Hall of Equity

**ARTWORK SITE**

Within the CEEA Project, the selection panel has identified the **West Terminal Entrance** on level 5 for the inclusion of public art. As part the project, a passage will be built to connect the Jeppesen Terminal, outdoor Plaza and CEEA directly. At the west entrance, visitors will be guided to enter towards the lobby utilizing a single-story staircase or elevator.

Artists or artist teams have the opportunity to activate this multi-story entrance with suspended, wall applied or multi-disciplinary artwork(s). The artwork site is approximately 35’ L x 13’ W, x 24’ H.

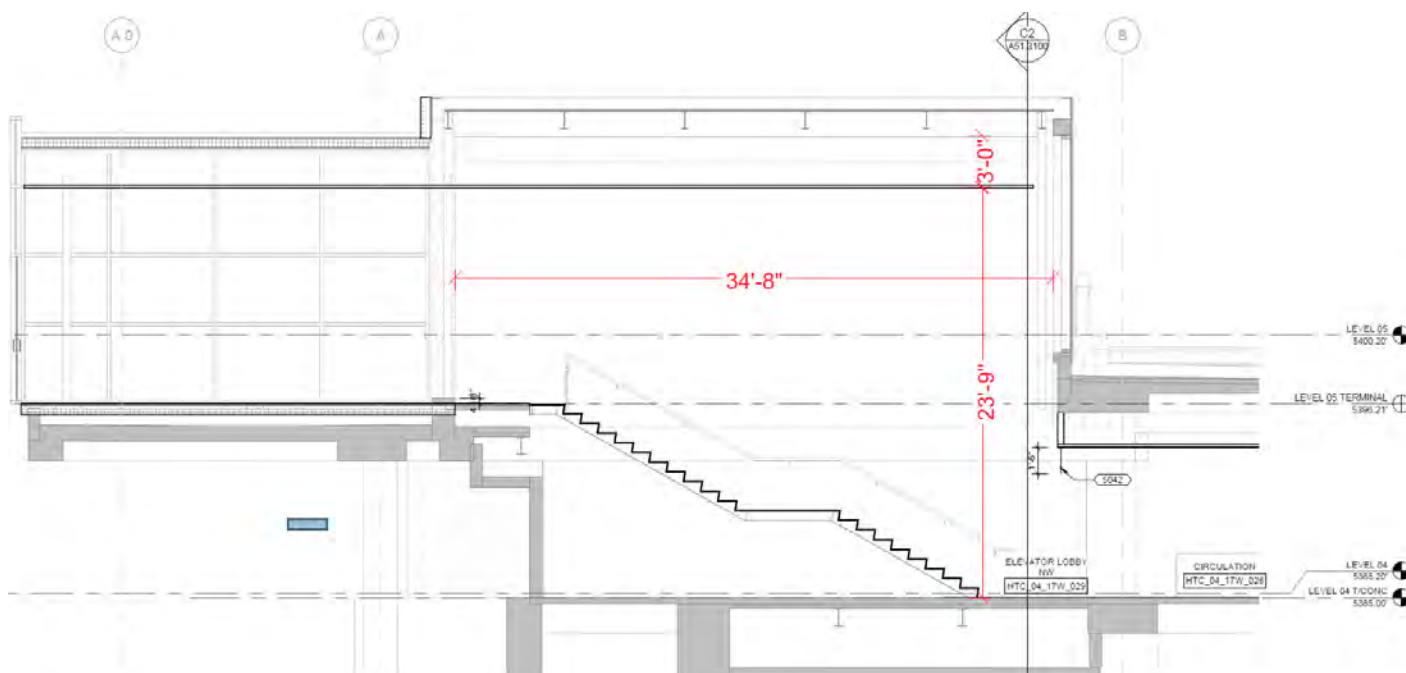


Figure 3: CEEA Terminal Entrance Artwork Site



*Figure 4: Level 5, view from inside Jeppesen Terminal Connector, looking south towards staircase.*



*Figure 6: Level 4, looking north towards staircase.*



### PROJECT GOALS

The City has set forth specific goals and parameters for this public art project with the hope of creating memorable, exciting, and inspiring artwork(s) for our passengers, the community and employees at CEEA. The work should:

- Speak to the international audience of DEN while also highlighting the vibrant culture of Denver and the unique State of Colorado.
- Create a memorable first impression for visitors to CEEA.
- Designed with an emphasis on longevity and sustainability as the work will be on permanent display in a high-volume environment.
- Artwork should engage an intergenerational audience of all ages.
- Spark imagination and passion for the endless possibilities of flight, innovation and exploration.
- DEN is interested in artworks with themes of:
  - Aviation and transportation
  - Intersection of science, technology, engineering, arts and mathematics (STEAM)
  - Future development
  - Storytelling of many perspectives
- Highlight the importance of promoting equitable access, representation, and opportunities within the aviation industry, fostering an inclusive environment that embraces diversity and empowers individuals from all backgrounds to pursue their aspirations.
- Collaborative, multidisciplinary artist groups and teams are encouraged to apply.

### MEDIA & MATERIALS

Artworks may be created using diverse media. Artists may consider audio, visual, sculptural, interactive, and tactile applications. Durability and ease of maintenance is important at this site. DEN is open to artworks in a variety of media and materials suitable for the space.

### MAINTENANCE & DURABILITY

This artwork will become a permanent addition to DEN and the City's Public Art Collection. All applicants must prioritize long-term conservation and maintenance of public art, along with time and budget. This will be a major consideration of the panel as DEN is seeking art that is low maintenance and will provide longevity. Public art projects should be fabricated of highly durable, low-maintenance materials. Finalists are encouraged to consult with a professional fabricator and/or conservator prior to the submission of a final proposal. Artist proposals awarded contracts will be reviewed by the City's Public Art Committee to ensure conformity with city standards of maintenance, durability and accessibility.

### ELIGIBILITY

This project is open to all artists internationally. Applicants may apply as a single artist or multi-person collaborative group. If applying as a team, please submit one résumé for the team, with no more than one page per team member.

### DIVERSITY AND INCLUSIVENESS

*Denver Executive Order No. 101* establishes strategies between the City and private industry to use diversity and inclusiveness to promote economic development in the City and County of Denver and to encourage more businesses to compete for City contracts and procurements. The Executive Order requires, among other things, the collection of certain information regarding the practices of the City's contractors and consultants toward diversity and inclusiveness and encourages / requires City agencies to include diversity and inclusiveness policies in selection criteria where legally permitted in solicitations for the City services or goods. Diversity and inclusiveness means inviting values, perspectives,

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and contributions of people from diverse backgrounds and integrates diversity into its hiring and retention policies, training opportunities, and business development methods to provide an equal opportunity for each person to participate, contribute, and succeed within the organization’s workplace. “Diversity” encompasses a wide variety of human differences including differences such as race, ethnicity, age, gender, gender identity, sexual orientation, ethnicity, physical disabilities, appearance, historically under marginalized and disadvantaged persons, as well as social identities such as religion, marital status, socio-economic status, lifestyle, educations, parental status, geographic background, language ability, and veteran status.

#### **APPLYING FOR THIS OPPORTUNITY**

In response to this RFQ, applicants must submit the following items via [www.callforentry.org](http://www.callforentry.org) (CaFÉ™)

1. Up to 6 digital images of past public artwork
2. Résumé
3. Statement of interest no longer than 2,000 characters
4. Diversity and Inclusiveness Form (attachment 1)
5. Proposal Acknowledgement Letter (attachment 2)
6. Disclosure of Legal and Administrative Proceedings and Financial Condition Form (attachment 3)

#### **BUDGET**

The budget for this commission is approximately \$200,000.00 which will be allocated to the artist/team selected. The funds for this public artwork come from the City of Denver's 1% Percent for Public Art Ordinance, designated at Denver International Airport. This contract amount is inclusive of all costs associated with the art project including, but not limited to: the artist's design fee, other consultation fees such as structural engineering consultation, insurance (including Colorado Workers Compensation), tools, materials, fabrication, permits, transportation, any building or site modification required (structural support, lighting, mechanical adjustments, etc.), travel to and from the site, per diem expenses, project documentation, a contingency to cover unexpected expenses, and any other associated costs. Installation for this project will take place during off-peak operation hours including nights and weekends. All finalists must stay on budget and complete work in an approved time frame.

The services being requested in this project may involve services that are covered pursuant to Article IV of Chapter 20, D.R.M.C., which is designed to address the issue of wage equity and cost of living affordability in the City & County of Denver. Proposer agrees that any contract with DEN shall include a requirement that Proposer will comply with the provisions of D.R.M.C. relating to living, minimum and prevailing wages, including, but not limited to, paying all covered workers no less than the City Minimum Wage for all covered services rendered in connection with the resulting contract. Additionally, Proposer agrees that the contract shall require compliance with all current and future federal and state laws and City ordinances.

#### **DIVISION OF SMALL BUSINESS OPPORTUNITY (DSBO)**

DSBO supports the growth, capacity, and sustainability of small, disadvantaged, minority, and women-owned businesses. DSBO's mission is to be the bridge that promotes and improves the participation and engagement of small businesses through the creation and implementation of programs, thereby achieving an equitable Denver economy. This project may be subject to DSBO Goals. Following artist and artwork selection, the project will be submitted to DSBO for evaluation during contracting.

#### **PROJECT SELECTION PANEL**

According to Denver’s Public Art policy, the project selection panel plays an active role in the acquisition of public art for the City. The CEEA selection panel is comprised of eleven voting members and additional non-voting technical advisors.

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The selection panel is responsible for reviewing the site, establishing criteria for a request for qualifications, reviewing applications, selecting and interviewing finalists, and ultimately to recommend an artist or artist team for the commission.

#### SELECTION PROCESS

1. Three to five artists/artist teams will be selected as finalists. Those selected will receive more specific information regarding the sites to create a site-specific proposal. The finalists will receive an honorarium and present their proposals either in person or virtually.
2. The selection panel will review the proposals, interview the finalists, and recommend an artist/artist team for the commission.
3. The final recommendation of the selection panel will be presented to the Public Art Committee, the Denver Commission on Cultural Affairs, and the mayor of Denver and Denver City Council for final approval.

\*All decisions of the City are final.

#### MEETING FORMAT

All meetings are held virtually via the Microsoft Teams platform. Selected artists and artist teams will be expected to download the free Microsoft Teams app and schedule platform testing prior to any presentations and interviews.

#### MATERIALS TO BE SUBMITTED

Incomplete applications will NOT be considered. The applicant's name must appear on all materials submitted.

All materials must be submitted online, via the CaFÉ™ website ([www.callforentry.org](http://www.callforentry.org)) There is no application fee to apply or to use the CaFÉ™ online application system.

#### 1. DIGITAL IMAGES

To be considered for this project, the applicant must electronically submit six digital images of previously completed artworks through the online CaFÉ™ system. Artists who wish to submit kinetic, sound or media works must submit a complete CaFÉ™ application and will have the opportunity to upload one video file.

**IMPORTANT:** if submitting audio or video files, do not use them as your very first image. They must be submitted last in your image sequence.

#### 2. STATEMENT OF INTEREST

Please submit a brief statement (2,000 character maximum) outlining the following:

- Your interest in Denver International Airport and the Center of Equity and Excellence in Aviation;
- Your design approach;
- Your experience working on public art projects at airports or similar environments; and
- Your experience working with diverse communities and stakeholders.

#### 3. RÉSUMÉ

Submit a current résumé via CaFÉ™ that highlights your professional accomplishments as an artist. Please name your résumé file accordingly: *Last name.First initial (i.e. Smith.J.pdf)*. Limit your résumé to no longer than two pages. If applying as a team, please submit one résumé with no more than one page per team member.

#### 4. DIVERSITY AND INCLUSIVENESS FORM (ATTACHMENT 1)

All proposers must complete the electronic version of the "Diversity and Inclusiveness City Solicitations Information Request Form", then save an electronic copy of the completed form to be included within your application on CaFÉ™.



5. **PROPOSAL ACKNOWLEDGEMENT LETTER (ATTACHMENT 2)**

All proposers must complete the "Proposal Acknowledgement Letter" attachment form and save an electronic copy of the completed form to be included with your application on CaFÉ™.

6. **DISCLOSURE OF LEGAL AND ADMINISTRATIVE PROCEEDINGS AND FINANCIAL CONDITION FORM (ATTACHMENT 3)**

All proposers must complete the "Disclosure of Legal and Administrative Proceedings and Financial Condition" attachment form and save an electronic copy of the completed form to be included with your application on CaFÉ™.

7. **REFERENCES**

Selected finalists will be required to provide three professional references.

**ADMINISTRATIVE INFORMATION FOR PROPOSERS**

i. **WITHDRAWAL OF PROPOSAL**

A Proposer may withdraw its proposal by submitting to DEN a written request signed by the Proposer's authorized representative. The withdrawal of a proposal does not prejudice the right of the Proposer to submit future proposals.

ii. **DIVERSITY AND INCLUSIVITY IN CITY SOLICITATIONS**

Each Proposer shall, as a condition of responsiveness to this solicitation, complete and return the "Diversity and Inclusiveness in City Solicitations Information Request Form" with their proposal. Using the "Diversity and Inclusiveness in City Solicitations Information Request Form," please state whether your firm has 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 DEN contractors to describe their own diversity and inclusiveness practices. Proposers are not expected to conduct intrusive examinations of its employees, managers, subcontractors or business partners in order to describe diversity and inclusiveness measures. Rather, DEN simply seeks a description of the Proposer's current practices, if any.

Diversity and Inclusiveness information provided by Proposers in response to DEN solicitations for services or goods will be collated, analyzed and made available in reports consistent with the Mayor's Executive Order No. 101. However, no personally identifiable information provided by or obtained from Proposers will be in such reports.

For DEN to consider a proposal, Proposers must complete the electronic version of the Diversity and Inclusiveness in City Solicitations Form – then **save an electronic copy of the completed form and include the electronic copy as part of its proposal. A proposal or response to a solicitation by a Proposer that does not include this completed form shall be deemed non-responsive.** The form is found at:

<https://us.openforms.com/Form/57f3a8ea-39b7-4115-be17-1770f38d3cf6>

The Diversity and Inclusiveness Form is separate from the requirements established by the Division of Small Business Opportunity (DSBO) and must always be completed – regardless of whether there are any DSBO goals assigned to this project.

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**iii. RIGHTS OF DEN**

DEN reserves the rights to cancel or modify this RFQ at any time and to reject any or all proposals for any reason or for no reason. This RFQ is an open and equitable invitation for proposals, and each proposal constitutes an offer to contract that DEN may consider in its sole and absolute discretion. Any errors or omissions in a proposal may result in the rejection and disqualification of the entire proposal. Errors, omissions, and other acts that may result in proposal rejection and disqualification include, but are not limited to, failure to strictly comply with the RFQ requirements or any applicable ordinances, rules, or policies; the submission of any inaccurate or false information; any improper communications or collusion involving Proposers; default or termination for cause of any public or private contracts within the past five years; delinquent arrearages owed to DEN; and failure to submit proof of licensing or franchise authority and any related exclusivity requirements.

Notwithstanding the broad rights reserved to DEN to reject and disqualify any or all proposals, DEN may waive any immaterial deficiencies in proposals and may allow Proposers to cure any such deficiencies if an opportunity to cure is determined by DEN to be in DEN's best interests. If given an opportunity to cure, Proposers will be notified of the allotted time to correct the identified deficiency; failure to correct the deficiency in the time allotted may result in proposals being deemed non-responsive and disqualified. DEN's waiver of an immaterial deficiency will in no way modify the RFQ or excuse Proposers from full compliance with all RFQ specifications. DEN may exercise the foregoing rights at any time without notice and without any liability whatsoever to any Proposer or other party. By responding to this RFQ, each Proposer is deemed to accept and agree to all of these terms and conditions and to waive any rights to challenge DEN's determinations regarding proposal deficiencies in accordance with this section.

During the evaluation process, DEN reserves the right to request additional information from any Proposer, to seek clarification of information provided, to conduct its own due diligence with respect to any Proposer or proposal, including Self-Guided Tours of a Proposer's other operations, reference checks, credit checks, health department checks, or any other investigations deemed necessary.

**iv. CONFIDENTIALITY OF RECORDS**

Documents submitted pursuant to this RFQ will be subject to the Colorado Open Records Act, C.R.S. §§ 24-72-201, *et seq.* Information clearly marked as confidential and proprietary will be kept confidential by City, unless otherwise provided by law. City will attempt to notify the Proposer if a request is made for pages of documents clearly marked as confidential and proprietary so that the Proposer may take any action it deems necessary to defend the request. The Proposer, not the City, shall be the entity responsible for defending against Colorado Open Records Act disclosures for any records claimed by the Proposer to be confidential and proprietary.

**v. PROPOSER AGREEMENTS**

Proposers may submit proposed agreements of any form (contracts or documents) that contain supplemental terms and conditions that the Proposer desires to be considered by the City for inclusion in the contract. Such forms may include Proposer's software licensing agreements, maintenance contracts, and technical support agreements. By accepting delivery of these items, DEN is not bound to accept them as part of an ensuing contract. DEN may negotiate such supplemental terms and conditions that do not materially conflict with the contract terms and conditions detailed in this RFQ and do not materially change the nature of this solicitation or adversely affect competition. If the parties cannot agree on the terms of the contract, including any terms desired by Proposer, DEN may terminate negotiations with the Proposer and enter into a contract with another responsive Proposer. **Attachment 4** is a sample agreement and, as such is subject to revision or modification by DEN at any time. DEN reserves the right to modify any term or condition of this Sample Agreement, and to add, delete, or modify terms and conditions, as DEN's interests may require, prior to execution of a final agreement.



***Certain of DEN's contract provisions are required by Federal, State and/or City laws and policies and are not subject to modification.***

**vi. DISCLOSURE OF LEGAL AND ADMINISTRATIVE PROCEEDINGS AND FINANCIAL CONDITION**

A. The Proposer shall submit (at time of submittal) a statement which shall disclose all legal or administrative proceedings that involve a civil claim in excess of Fifty Thousand Dollars (\$50,000) in which the Proposer, its principals or key personnel were a party in the last five years. The Proposer shall include in the statement:

1. The caption of the action naming all parties;
2. The case number, jurisdiction and the date the action was filed;
3. A brief description of the action, the amount of the claim and whether the action involved performance under any public or private construction contract; and
4. The outcome or disposition of the action.

B. The Proposer shall submit (at time of submittal) a statement which shall disclose whether Proposer has filed for protection under the laws of the U. S. Bankruptcy Code within the last ten (10) years.

C. The Proposer shall submit (at time of submittal) a statement as to whether the Proposer, its principals or key employees presently, or in the past, are or have been involved in any debarment or suspension proceedings. Please include a description of any proceedings which prohibited or limited the Proposer from bidding or entering into any contract with any federal, state or local government entity. Include a brief description of the reason(s) for such action having been taken, the effective dates thereof and the governmental agency.

If the Proposer is a partnership or joint venture, please include a statement disclosing the information listed in subparagraph A and B, above, for each partner or member of the joint venture. If the Proposer is fifty percent (50%) or greater owned by another entity or individual, please include a statement disclosing the above information for such entity or individual.

D. The Proposer shall submit (at time of submittal) a statement as to whether the Proposer, its principals or key employees have been convicted of any crime related embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, fraud, unfair trade practices, violation of state or federal antitrust statutes, or other law indicating a lack of business integrity or business honesty or have been convicted of any other felony in any jurisdiction within the last five (5) years. Include the current status of any such principal or key employees.

E. The Proposer shall submit (at time of submittal) its Dun & Bradstreet identification number. If the Proposer is a partnership or joint venture, it must submit the Dun & Bradstreet identification number for each partner of a joint venture.

F. If the Proposer is a publicly held company, it shall submit (at the time of submittal) a list of any holders of ten percent (10%) or more of its stock.

G. During contract negotiations or at any time during the term of the executed contract, the Proposer may be asked to submit the following:

1. An audited statement of overhead rates, payroll taxes and operating (profit) margin used to calculate hourly billing rates for DEN and approval. If the Proposer does not have audited overhead rates, a Core



Staff Labor Rates for Professional Services sheet, may be requested for each entity without audited overhead rates. This statement shall cover the Proposer’s most recently completed fiscal year and shall be signed by a certified public accountant as a Certified Audited Statement in which the accountant expresses his or her opinion as to the fairness with which the statement represents the Proposer’s financial position, results of operations and changes in financial position.

2. If the Proposer is a partnership or joint venture, a Certified Audited Statement is required for each partner or joint venture. If the Proposer does not have audited overhead rates, a Core Staff Labor Rates Sheet, may be requested for each entity without audit overhead rates. If any individual owns thirty-two percent (32%) or more of the Proposer, a Certified Audited Statement is required for each such individual or if a Certified Audited Statement is not available, then the individual must supply copies of his or her federal tax returns for the prior two (2) years.
3. If a Proposer is a small business as defined by the United States Small Business Administration, the Proposer may elect to submit copies of its Federal tax return for the prior two (2) years and prepare a Core Staff Labor Rates Sheet, in lieu of a Certified Audited Statement.

A signed statement certifying that no material or significant changes have occurred since the date of completion of the Certified Audited Statement, or the filing of the Federal tax return and the date of the proposal.

**vii. GOVERNMENTAL IMMUNITY**

Proposers and subcontractors understand and agree that the City, its officers, officials and employees are relying on, and do not waive or intend to waive by any provisions of this Contract, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 - 120, C.R.S., or otherwise available to the City, its officers, officials and employees.

**viii. SECURITY**

After receiving an executed contract, the Proposer shall be deemed a Contractor of DEN. The Contractor (or subcontractor) requiring access to the Controlled Area, Sterile Area or Secured Area shall become a “Participant” in the Airport Security Program and remain in good standing in order to retain Airport Security privileges.

After receiving an executed contract, the Proposer shall be deemed a Contractor of DEN. The Contractor (or subcontractor) requiring access to the Controlled Area, Sterile Area or Secured Area shall become a “Participant” in the Airport Security Program and remain in good standing in order to retain Airport Security privileges.

Participant guidelines are outlined in DEN Rules and Regulations Part 20. A Contractor must be sponsored by an Air Carrier, Tenant or by the City. Once a Contractor company has been sponsored, they must designate an Authorized Signatory.

The sponsorship establishes that a Contractor (or subcontractor) has legitimate business at the Airport. All construction Contractors must submit a Participant Sponsorship form signed by their sponsor. A company sponsoring a Participant shall immediately notify Airport Security when any sponsorship is terminated.

A subcontractor company working under its own entity must be sponsored by a Contractor company. The subcontracting company must designate its own Authorized Signatory(ies).



Each Participant shall designate an Authorized Signatory to ensure the Participant's compliance with the Airport Security Program and act as the point of contact between the Participant and Airport Security. The Authorized Signatory shall be designated in writing to Airport Security by the Participant.

The Authorized Signatory is responsible for entering and verifying information on the online Badging applications. It is the Authorized Signatory's responsibility to ensure that Airport Security maintains valid contact information. The Authorized Signatory must maintain a current and valid Airport Identification Badge (ID Badge).

The security status of the Airport is subject to change without notice. Should the security status of the Airport change at any time during the term of the Contract, a written notice shall be issued to the Contractor, detailing all applicable security modifications. The Contractor must take immediate steps to comply with those security modifications.

The Contractor shall return to DEN, upon Contract completion or termination, or upon demand by DEN, all access keys and Airport ID Badges issued to it by DEN to Controlled Areas, Sterile Areas or Secured Areas of the Airport. If the Contractor fails to return any such Airport ID Badge(s) or Airport Security Key(s) at Contract completion or termination or upon demand by the DEN, the Contractor shall be liable to the DEN for all DEN's costs, including the DEN's labor costs for re-coring doors and any other work which is required to prevent compromise of any Airport Security system. In order to collect such costs hereunder, the DEN may withhold funds in such amount from any amounts due and payable to the Contractor under the Contract.

Airport Security must be immediately notified if an Airport ID badge or security key is lost or stolen and must be notified immediately upon the termination of an individual's employment. Pursuant to 49 C.F.R. Part 1520.04-10(d) a fee shall be assessed against any employer who fails to return an Airport ID badge or security keys upon the termination of an individual's employment, transfer, or completion of a project or contract. An additional fee may be requested to cover the administrative cost of processing a lost badge or security key.

**ix. CONFLICTS OF INTEREST**

An organizational conflict of interest occurs when, because of the relationship between two organizations or one organization (including its subsidiaries or related organizations) performing or proposing for multiple scopes of work, there is or could be in the future a lack of impartiality, impaired objectivity, an unfair advantage over one or more firms competing for the work, or a financial or other interest in other scopes of work.

If the Submitter currently has existing contracts with the City for work at DEN, including any contracts held by Proposer's parent, affiliates or subsidiary corporations, this could pose a conflict of interest and could place your Proposal in jeopardy of being rejected for conflict of interest. If the Proposer believes a conflict of interest may exist but can be mitigated, please describe the steps it proposes that it will take to mitigate the conflict.

If the City identifies a conflict of interest that is not identified by the Proposer in its response, the City may find the Proposer to be non-responsive. If the City identifies a conflict during the course of the contract and the Proposer failed to disclose such conflict, the City may terminate the contract for cause or convenience at the discretion of the City.

**x. TITLE VI SOLICITATION NOTICE**

The City, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded



full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

**xi. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (“ADA”)**

Vision 100 is DEN’s strategic plan that serves as a blueprint to align decision-making and enable accountability so DEN can thoughtfully prepare to serve 100 million passengers. To achieve the goals set forth in Vision 100 proposers shall prioritize equity for people with disabilities by ensuring accessibility including requirements set forth by the Americans with Disabilities Act (42 USC § 12101, et seq) (“ADA”) (and any subsequent amendments to the statute) as well as any related federal, state, and local disability requirements, supporting DEN’s efforts to ensure accessibility in airport facilities and programs.

Proposer shall provide the services specified in this RFQ in a manner that complies with the ADA and related requirements. Proposer shall not discriminate against disabled persons in the provision of services, benefits or activities resulting from this RFQ and further agrees that any violation of this prohibition on the part of Proposer, its employees, agents or assigns may result in a disqualification of the entire proposal. Proposer shall, at minimum, review the ADA’s implementing regulations (28 CFR parts 35 and 36) and other federal, state, and local accessibility requirements. in preparing any proposals submitted pursuant to this RFQ.

If requested by City, Proposer shall engage a qualified disability consultant, as part of the overall contract budget, to review Proposer’s work for compliance with the ADA (and any subsequent amendments to the statute) and all related federal, state, and local disability requirements.

**RESOURCES:**

Please direct all questions about the project to Samantha Weston, DEN Public Art Program Manager  
[Samantha.Weston@flydenver.com](mailto:Samantha.Weston@flydenver.com) / 303-817-7266

- City & County of Denver’s Public Art Collection: <https://denverpublicart.org/>
- Assistance in using the CaFÉ™ system is available here: <https://www.callforentry.org/artist-help-cafe/>
- Instructions on how to format images to CaFÉ™ specifications can be found at : <https://www.callforentry.org/artist-help-cafe/uploading-media/>



# **ATTACHMENT 1**

## Diversity and Inclusiveness in City Solicitations





## Diversity and Inclusiveness in City Solicitations

For the City or the City Agency to consider a bid/proposal, Proposers must complete the on-line Diversity and Inclusiveness in City Solicitations Form – then **save an electronic copy of the completed form and include the electronic copy as part of its proposal. A proposal or response to a solicitation by a Proposer that does not include this completed form shall be deemed non-responsive.**

**Click on the following link to access the on-line form:**

<https://us.openforms.com/Form/57f3a8ea-39b7-4115-be17-1770f38d3cf6>

Using the form found in link above, 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 Form will provide an opportunity for City Proposers to describe their own diversity and inclusiveness practices. Proposers are not expected to conduct intrusive examinations of their employees, managers or business partners in order to describe diversity and inclusiveness measures. Rather, the City simply seeks a description of the Proposer's current practices, if any. Diversity and Inclusiveness information provided by City Proposers in response to City solicitations for services or goods will be collated, analyzed and made available in reports consistent with City Executive Order No. 101. However, no personally identifiable information provided by or obtained from Proposers will be in such reports.



# **ATTACHMENT 2**

## Proposal Acknowledgement Letter



**Proposal Acknowledgement Letter**

**City and County of Denver**

**Denver International Airport**

Proposer: \_\_\_\_\_ Date: \_\_\_\_\_

Denver International Airport  
8500 Pena Boulevard  
Denver, Colorado 80249-6340

In response to the Request for Qualification (RFQ) dated September 16, 2024 the undersigned hereby declares that they have carefully read and examined the proposal documents and hereby proposes to perform and complete the work as required.

The undersigned agrees that this proposal constitutes a valid offer to negotiate a Contract with the City and County of Denver (City) to perform the work described in the proposal documents.

After final agreement on the terms of the Contract has been reached, the undersigned agrees to execute the Contract, which will be prepared by the City, in a timely manner.

The undersigned certifies that they have examined and is fully familiar with the proposal documents and has satisfied themselves with respect to any questions regarding the RFP which could in any way affect the undersigned's understanding of the Scope of Work or any estimate of the cost thereof.

Signature: \_\_\_\_\_

Type or print name: \_\_\_\_\_

Proposer's Business Address: \_\_\_\_\_

E-mail address: \_\_\_\_\_



## **ATTACHMENT 3**

### Disclosure of Legal and Administrative Proceedings and Financial Condition



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**Disclosure of Legal and Administrative Proceedings and Financial Condition**

**City and County of Denver  
Denver International Airport  
(Please use this form)**

If no disclosure required in accordance with Section VI, please sign affirmation statement.

The undersign affirms that \_\_\_\_\_ (Proposer) has not been involved in any legal or administrative proceedings which involve a claim in excess of Fifty Thousand Dollars (\$50,000.00); has not filed bankruptcy within the last ten (10) years; has not been debarred or suspended from bidding/proposing on any Federal, State or local government procurements; and neither the Proposer nor its key employees have been convicted of a bid/proposal-related crime, violation or felony in the last five (5) years.

Signature \_\_\_\_\_ Title \_\_\_\_\_

Print Name \_\_\_\_\_

Date \_\_\_\_\_

If disclosure is required in accordance with Section VI, please use the following space to provide information. If additional space is needed, please attach additional pages.

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# **ATTACHMENT 4**

## **Sample Agreement**

**AGREEMENT FOR PROFESSIONAL DESIGN, FABRICATION AND INSTALLATION SERVICES**

**THIS AGREEMENT FOR PROFESSIONAL DESIGN, FABRICATION AND INSTALLATION SERVICES** (“**Agreement**”) is made and entered into as of the date stated on the City’s signature page below (the “**Effective Date**”) by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado acting on behalf of its Department of Aviation (the “**City**”), and **ARTIST NAME**, a **Jurisdiction from the SOS website** corporation authorized to do business in the State of Colorado (“**Artist**”) (collectively the “**Parties**”).

**WITNESSETH:**

**WHEREAS**, the City owns, operates, and maintains Denver International Airport (“**DEN**” or “**Airport**”); and

**WHEREAS**, the City desires to obtain professional **CES description** services (“the **Work**”); and

**WHEREAS**, the City has undertaken a competitive process to solicit and receive proposals for such services via an open “**Call for Entry**”; and

**WHEREAS**, Artist will work with the DEN Public Art Team (“**DEN Arts**”) and DEN Design Review Committee (“**DEN DRC**”) on these Public Art Design Fabrication and Services (the “**Project**”), which will yield artwork at the Airport; and

**WHEREAS**, the Parties wish to reasonably promote and maintain the integrity and clarity of Artist’s ideas and statements as represented by the Work; and

**WHEREAS**, Artist is qualified, willing, and able to perform the services, as set forth in this Agreement in a timely, efficient, and economical manner; and

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

**1. LINE OF AUTHORITY:**

The Chief Executive Officer of the Department of Aviation or their designee or successor in function (the “**CEO**”), authorizes and directs all work performed under this Agreement. Until otherwise notified in writing by the CEO, the CEO has delegated the authority granted herein to the **DEN division**. The **Director/SVP/EVP** (the “**Choose an item.**”). will designate a Public Art Program Administrator (“**Project Manager**”) to coordinate professional services under this Agreement. Reports, memoranda, correspondence, and other submittals required of Artist hereunder shall be processed in accordance with the Project Manager’s directions.

**2. SCOPE OF WORK AND ARTIST RESPONSIBILITIES:**

**A. Scope of Work.** Artist shall provide professional services and deliverables for the City as designated by the CEO, from time to time and as described in the attached *Exhibit A*

(“**Scope of Work**”), in accordance with the schedules and budgets set by the City. The City may, through an authorization issued by the CEO, and signed by Artist, and without requiring amendment to this Agreement, make minor changes, additions, or deletions to the Scope of Work without change to the Maximum Contract Amount.

(i) As used in this Agreement, unless the context otherwise requires: “Work” means the design for a work of art as ultimately conceived, proposed, and designed by Artist from concept to final design. Artist shall be responsible for Project completion from the design phase, to fabrication and installation, including the final acceptance of the artwork.

(ii) Artist shall perform all services and furnish all supplies, material, and equipment as necessary for the conception and design of the Work, including but not limited to, payments for all necessary taxes, permits, insurance, small tools, any subconsultants, rental equipment, and all other items incidental to producing a complete and acceptable Work. The Work includes all design of the complete artwork including but not limited to associated foundations, landscaping material and hardscape, bases, or mounting brackets or devices, electronic components, video components and all other miscellaneous components necessary to complete the fabrication and installation of the artwork.

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

(iv) Artist shall provide a plaque at the designed site, according to the specifications set forth by DEN Arts. Plaque specifications will be determined during the Final Design phase.

(v) If Artist and team choose to travel to DEN for design purposes, the travel costs must be budgeted from the overall Maximum Contract Amount, as defined below. Artist may undertake travel to the Airport and visit proposed site(s) for the installation of artwork designed and submitted as part of the Work.

(vi) Artist shall, if applicable, comply with all the City and County of Denver Department of Transportation and Infrastructure, Standard Specifications for Construction (“**Yellow Book**”), incorporated herein by reference.

## **B. Phasing.**

(i) Phase I Notice to Proceed (“NTP”). Upon execution of this Agreement, the City shall issue a NTP to Artist. Once the NTP has been issued, Artist may begin the next phase of the agreement.

(ii) Phase II Site and Design Research. Sixty (60) days following the NTP, Artist shall undertake site and design research. Artist shall review all design items, including but not limited to BIM Models, architectural drawings, engineering documents,



site plans and design specifications of the site, and coordinate any necessary meetings with DEN Arts or other stakeholders to develop the Work design. Upon Artist's request, the City shall furnish all readily available information about the location(s) of any potential site and aid in contacting stakeholders to facilitate meetings. Once the site is selected and agreed upon between Artist and the City, the Director will notify the Artist that the City has approved the site selection and that the Artist shall commence the Preliminary Design phase.

(iii) Phase III Preliminary Design. Artist shall develop and submit a minimum of one (1) and maximum of three (3) Preliminary Designs, which may be accepted or rejected in City's sole discretion. Artist shall prepare and submit to the Project Manager detailed working drawings of the Work, including site specific information, initial preliminary costs and other materials as reasonably requested by the City. Following initial review, the Director may request up to two (2) material revisions to the proposed Preliminary Design, which shall be updated and re-submitted for approval as the Final Design. The City may request revisions for other practical, safety and nonaesthetic reasons. DEN DRC and DEN Arts must approve the Preliminary Design before the Director notifies the Artist that the City has approved the Preliminary Design and that the Artist may proceed to the Final Design phase.

(iv) Phase IV Final Design. Artist shall have sixty (60) days following City's approval of the Preliminary Design to submit a Final Design for review and approval by the City. The Final Design shall have a stamped approval of structural integrity by a professional engineer – or another relevant expert, as directed by the City – certified or licensed to practice in Colorado. The Final Design shall include a definition of the type of materials and equipment to be used, a full set of design documents, – including the plaque design created according to the specifications outlined in **Exhibit D** – a budget including all costs for Artist to complete the Work and a tentative fabrication and installation schedule.

Artist shall include in the budget all estimated costs for design, execution, fabrication, insurance, permitting, contingencies, consultant fees, and any other costs associated with the Work to be approved by the City. The Final Design shall also include a written statement detailing anticipated regular and routine maintenance, in accordance with Section 5.A of this Agreement. The total budget for completion of the Project, including the work under this Agreement and the work in the forthcoming Successor Contract shall not exceed **Contract Amount** Dollars and **Amount** Cents (\$**Click here to enter numbers**.00).

Upon review, the Director may request material changes to the Work, such as scope, design, color, size, material, or texture. If such changes are required, Artist shall have sixty (60) days to submit an amended Final Design. Upon final acceptance by the City, the Final Design cannot be materially changed. The City shall, in its sole discretion, determine whether material changes exist. The Final Design shall be incorporated herein as **Exhibit E**. Upon the City's approval of the Final Design, the Director shall notify the Artist of such approval and that the Artist may proceed to the Project Installation and Safety Plan phase.

(v) Phase V Project Installation and Safety Plan. Artist shall provide an Installation and Safety Plan (“**Plan**”) to the City for the Work. This Plan must include:

- a. How Artist will integrate the work into the agreed upon site;
- b. Timeline of fabrication and installation sequencing;
- c. Budget breakdown of sequencing; and
- d. Progress reports schedule.

Artist shall work with DEN Art Team, DEN Architecture, Operations, Ground Transportation, Transportation Security Administration (“**TSA**”), Federal Aviation Administration (“**FAA**”) and any other necessary stakeholders in development of the Plan. If deemed necessary at the City’s sole discretion, the Yellow Book and any Special Conditions modifying the provisions thereof, which shall be provided by the City, shall be incorporated in the Plan. The approved Plan shall be incorporated herein as **Exhibit F** (“**Installation and Safety Plan with Progress Reports**”) and may be amended in writing and upon mutual agreement between the City and Artist without requiring formal amendment to this Agreement. Artist shall comply with all provisions of the Installation and Safety Plan with Progress Reports in pursuing completion of the Work. Upon the City’s approval of the Installation and Safety Plan with Progress Reports, the Director shall notify the Artist of such approval and that the Artist may proceed to the Fabrication phase.

(vi) Phase VI Fabrication. Artist shall begin the fabrication process per the approved sequencing schedule and in accordance with all requirements within **Exhibit F**. The City shall have the right to review the Work at reasonable times during the fabrication. Artist shall submit to the City progress reports acceptable to the City. Artist shall complete the fabrication of the Work in conformity with the approved Final Design. For any mid-point fabrication requirements, Artist shall notify the City, in writing, of the progress and in accordance with **Exhibit F**. Any significant changes in scope, design, color, size, materials or texture of the Work must be presented to the City in writing for the City’s review and approval at the City’s sole discretion. The City shall in its sole discretion determine whether any change is a significant change. Once the Artist has completed fabrication of the Work, Artist shall notify the City and the Director shall notify the Artist that the Artist may proceed to the Delivery and Installation phase.

(vii) Phase VIII Delivery and Installation. Artist shall coordinate with DEN Arts, Operations, Ground Transportation, Airline partners, FAA, TSA, and any other necessary stakeholders for the installation process. The fabricated Work shall be delivered to the site and installed in compliance with **Exhibit F**. Artist shall provide a plaque at the Site, according to **Exhibit D** (“**Plaque Specifications**”). Once the Artist has completed delivery and installation of the Work, the Artist shall notify the City and the Director shall notify the Artist that the Artist may proceed to the Final Acceptance phase.

(viii) Phase IX Final Acceptance. Within thirty (30) days after installation of the Work, Artist at its sole expense shall furnish the City with full copies of any photographic

or video documentation in digital format of the completed installed Work. At a minimum, Artist shall provide thirteen (13) digital photographs:

- a. Ten (10) images of the Work installed taken from different viewpoints and distances; at least three (3) of these images should be suitable for reproduction and print use, utilizing uncompressed .tiff tiles of 300 dpi or higher resolution; and
- b. Three (3) images taken of the Site prior to the installation of the Work.

Artist shall, prior to Final Acceptance of the Work by the City, provide the City with lien and/or claim releases from contractor, subcontractors, and suppliers on the Project and shall otherwise comply with the provisions of C.R.S. §38-26-107. Having overseen the installation of the Work, Artist must officially approve the work done, and the City must also give final approval of the Work in writing, which will be incorporated as **Exhibit H** (“**Acceptance Letter**”).

(ix) **Public Appearance.** The Primary Artist, as defined in Section 2.G. below, or designee shall make at least one public appearance in Denver, on behalf of the Project as a means of promoting the Project and the Artist’s work. This could take the form of a public presentation, a panel discussion, a series of outreach events, or other similar type of event as agreed upon by the Parties. The City shall endeavor to arrange for publicity for the completed Work art publications and otherwise as may be determined between the City and Artist as soon as practicable.

**C. Ownership of Work Products.** The City, at its option, or in the event that this Agreement is terminated, may retain all plans, drawings, slides, photographs, submittals, studies, designs, maquettes and models, and other documents, including Preliminary and Final Designs, submitted to the City by Artist. These items, when submitted, become and are the property of the City, and the City may, without restriction, make use of such documents for educational, public relations, arts promotional and other non-commercial purposes. Artist shall not be liable for any damage which may result from any use of said documents for purposes other than those described in this Agreement.

**D. Standard of Performance.** Artist shall faithfully perform the work required under this Agreement in accordance with the standard of care, skill, efficiency, knowledge, training, and judgment provided by highly competent professionals who perform work of a similar nature to the work described in this Agreement.

**E. Time is of the Essence.** Artist acknowledges that time is of the essence in its performance of all work and obligations under this Agreement. Artist shall perform all work under this Agreement in a timely and diligent manner.

**F. Subcontractors.**

(i) In order to retain, hire, and/or contract with an outside subcontractor that is not identified in this Agreement for work under this Agreement, Artist must obtain the prior written consent from DEN Arts. Artist shall request approval in writing and shall

include a description of the nature and extent of the services to be provided; the name, address and professional experience of the proposed subcontractor; and any other information requested by the City.

(ii) DEN Arts shall have the right to reject any proposed outside subcontractor deemed by the DEN Arts to be unqualified or unsuitable for any reason to perform the proposed services. DEN Arts shall have the right to limit the number of outside subcontractors and/or to limit the percentage of work to be performed by them.

(iii) Any final agreement or contract with an approved subcontractor must contain a valid and binding provision whereby the subcontractor waives any and all rights to make any claim of payment against the City or to file or claim any lien or encumbrance against any City property arising out of the performance or non-performance of this Agreement and/or the subcontract.

(iv) Artist is subject to Denver Revised Municipal Code (“**D.R.M.C.**”) § 20-112, wherein Artist shall pay its subcontractors in a timely fashion. A payment is timely if it is mailed to the subcontractor no later than seven (7) days after receipt of any payment from the City. Any late payments are subject to a late payment penalty as provided in the Denver Prompt Payment Ordinance (D.R.M.C. §§ 20-107 through 20-118).

(v) This Section, or any other provision of this Agreement, shall not create any contractual relationship between the City and any subcontractor. The City’s approval of a subcontractor shall not create in that subcontractor a right to any subcontract. The City’s approval of a subcontractor does not relieve Artist of its responsibilities under this Agreement, including the work to be performed by the subcontractor.

#### **G. Personnel Assignments.**

(i) Artist or its subcontractor(s) shall assign all key personnel identified in this Agreement to perform work under this Agreement (“**Key Personnel**”). In the event that Artist is a legal entity rather than a natural person, one or more natural person(s) shall be identified as the primary artist(s) in *Exhibit A* (individually and collectively, “**Primary Artist**”) and such Primary Artist shall be included as Key Personnel. Only Key Personnel shall perform work under this Agreement, unless otherwise approved in writing by DEN Arts or their authorized representative. In the event that replacement of Key Personnel is necessary, the City in its sole discretion shall approve or reject the replacement, if any, or shall determine that no replacement is necessary.

(ii) It is the intent of the Parties that all Key Personnel perform their specialty for all such services required by this Agreement. Artist and its subcontractor(s) shall retain Key Personnel for the entire Term of this Agreement to the extent practicable and to the extent that such services maximize the quality of work performed.

(iii) If, during the Term of this Agreement, the Director determines that the performance of any Key Personnel or other personnel, whether of Artist or its subcontractor(s), is not acceptable or that any such personnel is no longer needed for

performance of any work under this Agreement, the Director shall notify Artist and may give Artist notice of the period of time which the Director considers reasonable to correct such performance or remove the personnel, as applicable.

(iv) If Artist fails to correct such performance, then the City may revoke its approval of the Key Personnel or other personnel in question and notify Artist that such Key Personnel or other personnel will not be retained on this Project. Within ten (10) days of receiving this notice, Artist shall use its best efforts to obtain adequate substitute personnel who must be approved in writing by DEN Arts. Artist's failure to obtain approval shall be grounds for Termination for Cause in accordance with this Agreement.

### **3. OWNERSHIP AND DELIVERABLES:**

Upon payment to Artist, all records, data, deliverables, and any other work product prepared by Artist or any custom development work performed by Artist for the purpose of performing this Agreement on or before the day of the payment, whether periodic or final payment, shall become the sole property of the City. Upon request by the City, or based on any schedule agreed to by Artist and the City, Artist shall provide the City with copies of the data/files that have been uploaded to any database maintained by or on behalf of Artist or otherwise saved or maintained by Artist as part of the services provided to the City under this Agreement. All such data/files shall be provided to the City electronically in a format agreed to by the Parties. Artist also agrees to allow the City to review any of the procedures Artist uses in performing any work or other obligations under this Agreement, and to make available for inspection any and all notes, documents, materials, and devices used in the preparation for or performance of any of the scope of work, for up to three (3) years after termination of this Agreement. Upon written request from the City, Artist shall deliver any information requested pursuant to this Section within ten (10) business days in the event a schedule or otherwise agreed-upon timeframe does not exist.

### **4. OWNERSHIP AND REPRODUCTION RIGHTS:**

**A. Title.** Title to the Work shall pass to the City upon final acceptance.

**B. Waiver of Rights under Visual Artists Rights Act of 1990 ("VARA").** Artist understands and agrees that, as to their rights in the Work, the provisions of this Agreement shall supersede the provisions of VARA, 17 U.S.C. §101 et. seq., as amended, including but not limited to §106A(a) and §113, as to the Work, and that execution of this Agreement by Artist shall constitute a waiver by Artist, as permitted in 17 U.S.C. §106A(e), as amended, of any and all rights or protections in the Work, and any uses of the Work whatsoever, set out in or otherwise granted by 17 U.S.C. §101, et seq., as amended, including but not limited to §106A(a) or §113, or otherwise in the nature of "Droit Moral" under which artists claim an interest in their work. Artist understands that, despite the City's commitment not to intentionally damage, alter, or modify the Work without the prior written approval of Artist, removal of the Work from the Site may subject the Work to destruction, distortion, mutilation, or other modification, by reason of its removal.

**C. Artist's Remaining Rights in the Work.** Artist therefore retains: (i) all other right, title and interest in the Work, including all copyrights, but expressly excluding any rights in the Work under VARA, or otherwise in the nature of "Droit Moral" under which artists claim a

continuing interest in their products and in the maintenance or modification of their products; and (ii) all rights expressly granted in this Agreement. Artist's waived rights as described above are, insofar as such rights are transferable, assigned to the City.

In view of the intention that the Work in its final dimension shall be unique, Artist shall not make any additional exact duplicate, two or three-dimensional reproductions of the final Work, including but not limited to miniatures or jewelry applications, nor shall Artist grant permission to others to do so except with the written permission of the City. The City is unable to grant permission of any kind for political use of the Work. The restriction for duplication or reproduction shall not apply to Artist's use of photographic reproductions of the Work in portfolio or in critical and scholarly writings. Artist grants to the City and its assigns an irrevocable license to make two-dimensional reproductions of the Work for non-commercial purposes, in the sole discretion of the City and its assigns, including but not limited to reproductions used in advertising brochures, media publicity, and catalogues or other similar publications. Artist further grants to the City and its assigns an irrevocable license to make two-dimensional reproductions of the Work for commercial purposes, which shall include reproductions used on calendars, postcards, posters, or similar items. Any additional commercial uses of the Work will need to be negotiated in a separate agreement by the Parties to this Contract.

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

**E. Credit to the City.** Artist shall give a credit reading substantially, "an original work owned and commissioned by the City and County of Denver," in any public showing under Artist's control of reproduction of the Work.

**F. Registration.** Artist shall, at its expense, register a copyright of the Work in Artist's name with the United States Register of Copyrights.

**G. Display Period.** The City may at its discretion not display the Work and will store the Work in a proper manner during these times. For operational reasons the city may turn off any lights on the Work. At the end of this display period, the City shall notify Artist of any future actions taken with the Work including but not limited to those outlined in Section 5.D. The City shall make every reasonable effort to engage with Artist for recommendations at the end of the display period.

**H. Third-Party Infringement.** The City is not responsible for any third-party infringement of Artist's copyrights, and is not responsible for protecting the intellectual property rights of Artist.

**I. Filming of Artwork.** Artist understands and acknowledges that the City pursuant to applicable Denver International Airport Rules and Regulations ("**DEN Rules and Regulations**") often issues film permits to persons and entities wishing to film at the airport, whether still, motion picture, or otherwise. Notwithstanding any other provision any other provision of this Contract, Artist recognizes and permits the City to issue such permits to persons and entities, to include the Work and surrounding Site, and Artist holds the City harmless. Artist

will not hold or seek to hold the City liable in any way for the acts of any person or entity utilizing such a film permit, or their filming or use of the Work.

**J. Risk of Loss.** The risk of loss or damage to the Work shall be borne by Artist until Final Acceptance of the installed Work by the City, and Artist shall take such measures as are necessary to protect the Work from loss or damage until such final acceptance. The Parties recognize that the City is self-insured and possesses immunities pursuant to C.R.S. §24-10-101, et seq.

## 5. ARTIST'S RIGHTS:

Subject to and consistent with the provisions of Article 4 above, Artist understands and agrees that it is, therefore, granted the following rights in the Work pursuant to this Agreement.

**A. Maintenance and Repair.** The City shall have the right to determine, in its sole discretion, after consultation with a professional conservator selected by the City, when and if maintenance, repairs, and restorations to the Work will be made. To the extent practical, Artist shall, at no cost to the City and only during the Principal Artist's lifetime, be given the opportunity to consult on significant repairs or restorations. All repairs and restorations shall be made in accordance with recognized principles of conservation.

(i) **Maintenance Manual.** Artist shall provide a Maintenance Manual which will be incorporated herein as **Exhibit G**, with a description of all materials, products, and fabrication methods used in the Work and the required care and upkeep involved, including:

- a. Product data sheets for any material or finish used;
- b. Measures to be taken by Artist to protect and preserve the integrity of the Work, including but not limited to protective coatings;
- c. Names and contact information of relevant manufacturers or producers; and
- d. Copies of manufacturer's warranty, if such warranties exist.

**B. Damage.** Subject to Section 5.D. below, the City agrees that it will not intentionally damage, alter or modify the Work without the prior written approval of Artist.

**C. Notification.** The City shall endeavor to notify Artist of any proposed alteration of the Site or Work that would affect the intended character of the Work and shall endeavor to consult with Artist in the planning and execution of any such alteration and shall make a reasonable effort to maintain the integrity of the Work, subject to DEN operational, security, and maintenance needs.

**D. Removal, Relocation, Sale, Donation or Destruction.** Nothing in this Agreement shall preclude any right of the City, in its sole discretion, (i) to remove the Work from public display, (ii) to move or relocate the Work to another location selected solely by the City for public

display, or (iii) to donate or sell the Work to a third person or entity, or (iv) to destroy the Work. In addition, Artist will have the right of final refusal as to any sale of the Work.

Artist understands that due to the dynamic nature of a large international airport the City has the right to move the Work for any reason. If the City decides to donate or sell the Work, the donee or buyer of the Work will assume all of the City's duties toward Artist stated herein, will be obligated to defend and indemnify the City with respect to such duties, and will take the Work subject to all of Artist's rights as stated herein, and the donee or buyer shall be given a copy of this executed Agreement at the time of donation or sale. The City will endeavor to notify Artist of such donation and sale and of the identity of the donee or buyer.

If the City shall at any time decide to destroy the Work, it shall by notice to Artist offer Artist a reasonable opportunity to recover the work at no cost to Artist, except for an obligation of Artist to indemnify and reimburse the City for the amount by which the cost to the City of such recovery exceeds the costs to the City of the proposed destruction as determined solely by the City. Artist agrees that their her rights in connection with the destruction of the Work are as described in this Section; as set out above, Artist waives any rights which he or she might have in connection with the removal or destruction of the Work under VARA, 17 U.S.C. §101 et. seq., as amended, including but not limited to §106A(a) and §113.

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

**F. Artist's Address.** Artist shall notify the City of changes in its address. The failure to do so, if such failure prevents the City from locating Artist, shall be deemed a waiver by Artist of the rights granted to or retained by Artist in this Section 5, the exercise of which requires response by Artist. A mailing of notice by the City by certified mail with return receipt requested to the address of Artist or of its attorney currently on file with the City at the time of such mailing shall be deemed to be an adequate notification effort by the City hereunder.

**G. Surviving Covenants.** The covenants and obligations set forth in this Section 5 shall be binding upon the Parties, their heirs, legatees, executors, administrators, assigns, transferees, and all their successors in interest and the City's covenants do attach and run with the Work and shall be binding to and until twenty (20) years after the death of Artist. However, the obligations imposed upon the City by Sections 5.B through 5.D shall terminate on the death of Artist. Upon death, notifications in Sections 5.B through 5.D shall go to Artist's appointed beneficiary. The City shall give any subsequent owner of the Work notice in writing of the covenants herein providing such owner with an executed copy of this Agreement.

**H. Event of Artist's Death or Incapacity.**

(i) An event of Artist's death or incapacity will not be deemed a breach of this Agreement or an event of default. Artist has the right to appoint a successor artist to complete the Work in the event of his incapacity or death. The successor artist is subject to approval of the City at the time of the signing of the contract and shall be bound to complete the Work under the same terms and budget. However, the successor artist shall be



automatically given a sixty-day extension to complete the Work. Artist shall be paid only for that portion of work or services satisfactorily completed at the time of incapacity or death with remaining payments to be made to the successor artist. The Work shall pass to the City and all copyrights described under this Agreement shall remain with Artist. Artist shall provide a copy of this Agreement to the successor artist and the successor artist shall provide a written acknowledgement to the City of the successor artist's agreement to abide by the terms of this Agreement.

(ii) In the event of Artist's death or incapacity, where no successor artist has been appointed or where an appointed successor artist does not complete the Work, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by Artist under this Agreement shall become the City's property, except for copyrights which shall remain with Artist. If the Work was at mid-point of fabrication or beyond at the time of death or incapacity, the City retains the rights to select a successor artist to finish the Work at the City's expense. If the Work was not at mid-point of fabrication or beyond at the time of death or incapacity, the City retains possessory rights to the Work as then in existence and to exhibit the Work with the designation that it is "unfinished." Artist, or their estate, shall be paid only for that portion of Work or services satisfactorily completed at the time of incapacity or death.

## 6. TERM AND TERMINATION:

**A. Term.** The Term of this Agreement shall commence on the Effective Date and shall expire **Term Length** from the Effective Date, unless terminated in accordance with the terms stated herein (the "**Expiration Date**"). **[The Term of this Agreement may be extended for Click here to enter text., on the same terms and conditions, by written notice from the CEO to Artist. However, no extension of the Term shall increase the Maximum Contract Amount stated below.]**

**B.** If the Term expires prior to Artist completing the work under this Agreement, subject to the prior written approval of the CEO, this Agreement shall remain in full force and effect until the completion of any services commenced prior to the Expiration Date. Artist has no right to compensation for services performed after the Expiration Date without such express approval from the CEO.

### **C. Suspension and Termination.**

(i) **Suspension.** The City may suspend performance of this Agreement at any time with or without cause. Upon receipt of notice from the Director, Artist shall, as directed in the notice, stop work, and submit an invoice for any work performed but not yet billed. Any milestones or other deadlines contained in this Agreement shall be extended by the period of suspension unless otherwise agreed to by the City and Artist. The Expiration Date shall not be extended as a result of a suspension.

(ii) **Termination for Convenience.** The City may terminate this Agreement upon thirty (30) days-notice without cause upon written notice to Artist.

(iii) Termination for Cause. In the event Artist fails to perform any provision of this Agreement, the City may either:

- a. Terminate this Agreement for cause with ten (10) days prior written notice to Artist; or
- b. Provide Artist with written notice of the breach and allow Artist an Opportunity to Cure.

(iv) Event of Artist's Default. The City may, by written Notice of Default to Artist, terminate the whole or part of this Agreement in the event that Artist or any of Artist's 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, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature, in connection with Artist's business. In the event of default, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by Artist under this Agreement shall become the City's property, at its sole option, including the right to fabricate or execute the Work.

(v) Opportunity to Cure. Upon receiving the City's notice of breach pursuant to Section 6(C)(iii)(b), Artist shall have five (5) days to commence remedying its defective performance. If Artist diligently cures its defective performance to the City's satisfaction within a reasonable time as determined by the City, then this Agreement shall not terminate and shall remain in full force and effect. If Artist fails to cure the breach to the City's satisfaction, then the City may terminate this Agreement pursuant to Section 6(C)(iii)(a).

(vi) Compensation for Services Performed Prior to Suspension or Termination Notice. If this Agreement is suspended or terminated, the City shall pay Artist the reasonable cost of only those services performed to the satisfaction of the CEO prior to the notice of suspension or termination. Artist shall submit a final invoice for these costs within thirty (30) days of the date of the notice. Artist has no right to compensation for services performed after the notice unless directed to perform those services by the City as part of the suspension or termination process or as provided in Section 6(C)(vii) below.

(vii) Reimbursement for Cost of Orderly Termination. In the event of Termination for Convenience of this Agreement pursuant to Section 6(C)(ii), Artist may request reimbursement from the City of the reasonable costs of orderly termination associated with the Termination for Convenience as part of its submittal of costs pursuant to Section 6(C)(vi). In no event shall the total sums paid by the City pursuant to this Agreement, including Sections 6(C)(vi) and this Section (C)(vii), exceed the Maximum Contract Amount.

(viii) Event of Artist's Death or Incapacity. An event of Artist's death or incapacity will not be deemed a breach of this Agreement or an event of default. However, Artist shall be paid only for that portion of work or services satisfactorily completed at the time of incapacity or death.

(ix) No Claims. Upon termination of this Agreement, Artist shall have no claim of any kind against the City by reason of such termination or by reason of any act incidental thereto. Artist shall not be entitled to loss of anticipated profits or any other consequential damages as a result of termination.

(x) Disqualification. Any termination of this Agreement may also, at the discretion of the City, constitute grounds for disqualifying Artist from submitting bids or proposals for future contracts with the City.

**D. Remedies.** In the event Artist performs services under this Agreement in violation of any provision herein, Artist shall be liable to the City for all costs of correcting the work without additional compensation, including but not limited to additional costs incurred by the City, its tenants, or its other contractors arising out of Artist's defective work. These remedies are in addition to, and do not limit, the remedies available to the City in law or in equity. These remedies do not amend or limit the requirements of Section 8 and Section 9 otherwise provided for in this Agreement.

## 7. COMPENSATION AND PAYMENT:

**A. Maximum Contract Amount.** Notwithstanding any other provision of this Agreement, the City shall not be liable under any theory for payment for services rendered and expenses incurred by Artist under the terms of this Agreement for any amount in excess of the sum of **Contract Amount Dollars and Amount Cents** ([\\$Click here to enter numbers.00](#)) ("**Maximum Contract Amount**"). Artist shall perform the services and be paid for those services as provided for in this Agreement up to the Maximum Contract Amount.

**B. Limited Obligation of City.** The obligations of the City under this Agreement shall extend only to monies appropriated and encumbered for the purposes of this Agreement. Artist acknowledges and understands the City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. The City is not under any obligation to make any future encumbrances or appropriations for this Agreement nor is the City under any obligation to amend this Agreement to increase the Maximum Contract Amount above.

**C. Payment Source.** For payments required under this Agreement, the City shall make payments to Artist solely from funds of the Airport System Fund and from no other fund or source. The City has no obligation to make payments from any other source.

**D. Basis for Artist's Fee.** Artist's fee is based on the time required by its professionals to complete the services under this Agreement. The said rates are set forth in **Exhibit B** ("**Agreement Milestones**") and vary according to the experience and skill required.

**E. Payment Schedule.** Subject to the Maximum Contract Amount, for payments required under this Agreement, the City shall pay Artist's fees and expenses in accordance with this Agreement and the Agreement Milestones, as set out in **Exhibit B**. Unless otherwise agreed to in writing, Artist shall invoice the City on a regular basis in arrears and the City shall pay each

invoice in accordance with Denver’s Prompt Payment Ordinance, D.R.M.C. § 20-107, et seq., subject to the Maximum Contract Amount.

**F. Invoices.** Artist shall submit to the City a milestone progress invoice for professional services rendered under this Agreement to be audited and approved by the City (“**Invoice**”). Each Invoice shall provide the basis for payments to Artist under this Agreement. In submitting an Invoice, Artist shall comply with all requirements of this Agreement and:

- (i) Include an executive summary and status report(s) that describe the progress of the services and summarize the work performed during the period covered by the Invoice;
- (ii) Include the relevant purchase order (“**PO**”) number related to the Invoice;
- (iii) Ensure that amounts shown on the Invoices comply with and clearly reference the relevant services;
- (iv) Submit an itemized Artist Budget Template, as depicted in *Exhibit A*;
- (v) Include the signature of an authorized officer of Artist, along with such officer's certification they have examined the Invoice and found it to be correct; and
- (vi) Submit each Invoice via email to [ContractAdminInvoices@flydenver.com](mailto:ContractAdminInvoices@flydenver.com) and [heather.kaufman@flydenver.com](mailto:heather.kaufman@flydenver.com).
- (vii) Late Fees. Artist understands and agrees interest and late fees shall be payable by the City only to the extent authorized and provided for in the City’s Prompt Payment Ordinance.
- (viii) Travel Expenses. Travel and any other expenses are not reimbursable.

**G. Disputed Invoices.** The City reserves the right to reject and not pay any Invoice or part thereof, including any final Invoice resulting from a Termination of this Agreement, where the **Choose an item**, or their authorized representative determines the amount invoiced exceeds the amount owed based upon the work satisfactorily performed. The City shall pay any undisputed items contained in an Invoice. Disputes concerning payments under this provision shall be resolved in accordance with procedures set forth in D.R.M.C. § 5-17.

**H. Carry Over.** If Artist's total fees for any of the services provided under this Agreement are less than the amount budgeted for, the amount remaining in the budget may be used for additional and related services rendered by Artist if the CEO determines such fees are reasonable and appropriate and provides written approval of the expenditure.

## **8. MWBE, WAGES AND PROMPT PAYMENT:**

### **A. Minority/Women Business Enterprise.**

(i) This Agreement is subject to Denver Revised Municipal Code (“**D.R.M.C.**”), Article III, Divisions 1 and 3 of Chapter 28, designated as §§ 28-31 to 28-40 and 28-51 to 28-90 (the “**MWBE Ordinance**”) and any Rules or Regulations promulgated pursuant thereto.

The contract goal for MWBE participation established for this Agreement by the Division of Small Business Opportunity (“**DSBO**”) is [Click here to enter number%](#).

OR

Artist shall comply with the Utilization Plan attached as *Exhibit I* (“**Utilization Plan**”) and as it may be modified in the future by the Division of Small Business Opportunity (“**DSBO**”) during performance of this Agreement.

OR

This Project has been reviewed by the Division of Small Business Opportunity (“**DSBO**”) and it has been determined that it is not subject to Denver Revised Municipal Code (“**D.R.M.C.**”), Article III, Divisions 1 and 3 of Chapter 28, designated as §§ 28-31 to 28-40 and 28-51 to 28-90 (the “**MWBE Ordinance**”) and any Rules or Regulations promulgated pursuant thereto, and therefore will not have an MWBE goal assigned. While the work performed under this Agreement is not subject to the MWBE Ordinance, the Director of DSBO encourages all participants in City Projects to seek independent partnerships with SBEs, MBEs, WBEs, and other business enterprises in supply chain activities, prime/subcontractor partnerships, and joint ventures for all contracts and purchase orders. The City reserves the right to reevaluate the work under this Agreement and apply the requirements of the MWBE Ordinance to this contract if DSBO determines that the MWBE Ordinance is applicable.

(ii) Under D.R.M.C. § 28-68, Artist has an ongoing, affirmative obligation to maintain for the duration of this Agreement, at a minimum, compliance with its originally achieved level of MWBE participation upon which this Agreement was awarded, unless the City initiates a material alteration to the scope of work affecting MWBEs performing on this Agreement through contract amendment, or other agreement modifications, or as otherwise described in D.R.M.C. § 28-70, Artist acknowledges that:

- a. If required by DSBO, Artist shall develop and comply with a Utilization Plan in accordance with D.R.M.C. § 28-63. Along with the Utilization Plan requirements, Artist must establish and maintain records and submit regular reports, as directed by DSBO, which will allow the City to assess progress in complying with the Utilization Plan and achieving the MWBE participation goal. The Utilization Plan is subject to modification by DSBO.
- b. If Agreement modifications are issued under the Agreement, Artist shall have a continuing obligation to immediately inform DSBO in writing of any agreed upon increase or decrease in the scope of work of such

agreement, upon any of the bases discussed in D.R.M.C. § 28-70, regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification.

- c. If amendments or other agreement modifications are issued under the Agreement that include an increase in the scope of work of this Agreement, which increases the dollar value of the Agreement, whether or not such change is within the scope of work designated for performance by an MWBE at the time of contract award, such amendments or modifications shall be immediately submitted to DSBO for notification purposes.
- d. Those amendments or other modifications that involve a changed scope of work that cannot be performed by existing project subcontractors are subject to the original goal. Artist shall satisfy the goal with respect to such changed scope of work by soliciting new MWBEs in accordance with D.R.M.C. § 28-70. Artist must also satisfy the requirements under D.R.M.C. §§ 28-64 and 28-73 with regard to changes in scope or participation. Artist shall supply to the DSBO Director all required documentation described in D.R.M.C. §§ 28-64, 25-70, and 28-73, with respect to the modified dollar value or work under the Agreement.
- e. Failure to comply with these provisions may subject Artist to sanctions set forth in D.R.M.C. § 28-76 of the MWBE Ordinance.
- f. Should any questions arise regarding DSBO requirements, Artist should consult the MWBE Ordinance or may contact the Project's designated DSBO representative at (720) 913-1999.

**B. Prompt Pay of MWBE Subcontractors.** For agreements of one million dollars (\$1,000,000.00) and over to which D.R.M.C. § 28-135 applies, Artist is required to comply with the Prompt Payment provisions under D.R.M.C. § 28-135, with regard to payments by Artist to MWBE subcontractors. If D.R.M.C. § 28-135 applies, Artist shall make payment by no later than thirty-five (35) days from receipt by Artist of the subcontractor's invoice.

**C. Prevailing Wage.** To the extent required by law, Artist shall comply with, and agrees to be bound by, all requirements, conditions and City determinations regarding the Payment of Prevailing Wages Ordinance, D.R.M.C. §§ 20-76 through 20-79, including, but not limited to, the requirement that every covered worker working on a City owned or leased building or on City-owned land shall be paid no less than the prevailing wages and fringe benefits in effect on the Effective Date of this Agreement.

- (i) Prevailing wage and fringe rates will adjust on, and only on, the anniversary of the Effective Date of this Agreement. Unless expressly provided for in this Agreement, Artist will receive no additional compensation for increases in prevailing wages or fringe benefits.

(ii) Artist shall provide the Auditor with a list of all subcontractors providing any services under the Agreement.

(iii) Artist shall provide the Auditor with electronically-certified payroll records for all covered workers employed under this Agreement.

(iv) Artist shall prominently post at the work site the current prevailing wage and fringe benefit rates. The posting must inform workers that any complaints regarding the payment of prevailing wages or fringe benefits may be submitted to the Denver Auditor by calling 720-913-5000 or emailing [auditor@denvergov.org](mailto:auditor@denvergov.org).

(v) If Artist fails to pay workers as required by the Prevailing Wage Ordinance, Artist will not be paid until documentation of payment satisfactory to the Auditor has been provided. The City may, by written notice, suspend or terminate work if Artist fails to pay required wages and fringe benefits.

**D. Compliance with Denver Wage Laws.** To the extent applicable to Artist's provision of Services hereunder, Artist shall comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the City's Minimum Wage and Civil Wage Theft Ordinances, D.R.M.C. §§ 58-1 through 58-26, including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, Artist expressly acknowledges that Artist is aware of the requirements of the City's Minimum Wage and Civil Wage Theft Ordinances and that any failure by the Artist, 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.

**E. City Prompt Pay.**

(i) The City will make milestone payments, as identified in *Exhibit B* and Section 7.E, to Artist for all services performed under this Agreement based upon Artist's milestone deliverable invoices or shall make payments as otherwise provided in this Agreement. The City's Prompt Payment Ordinance, D.R.M.C. §§ 20-107 to 20-118 applies to invoicing and payment under this Agreement.

(ii) Final Payment to Artist shall not be made until after the Project is accepted, and all certificates of completion, record drawings and reproducible copies are delivered to the City, and the Agreement is otherwise fully performed by Artist. The City may, at the discretion of the CEO, withhold reasonable amounts from billing and the entirety of the final payment until all such requirements are performed to the satisfaction of the CEO.

**9. INSURANCE REQUIREMENTS:**

**A.** Artist shall obtain and keep in force all of the minimum insurance coverage forms and amounts set forth in *Exhibit C* ("**Insurance Requirements**") during the entire Term of this Agreement, including any extensions of the Agreement or other extended period stipulations stated

in *Exhibit C*. All certificates of insurance and any required endorsements must be received and approved by DEN Risk Management before any airport access or work commences.

**B.** Artist shall ensure and document that all subcontractors performing services or providing goods hereunder procure and maintain insurance coverage that is appropriate to the primary business risks for their respective scopes of performance. At minimum, such insurance must conform to all applicable requirements of DEN Rules and Regulations Part 230 and all other applicable laws and regulations.

**C.** The City in no way warrants or represents the minimum limits contained herein are sufficient to protect Artist from liabilities arising out of the performance of the terms and conditions of this Agreement by Artist, its agents, representatives, employees, or subcontractors. Artist shall assess its own risks and maintain higher limits and/or broader coverage as it deems appropriate and/or prudent. Artist is not relieved of any liability or other obligations assumed or undertaken pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

**D.** In no event shall the City be liable for any of the following: (i) business interruption or other consequential damages sustained by Artist; (ii) damage, theft, or destruction of Artist's inventory, or property of any kind; or (iii) damage, theft, or destruction of an automobile, whether or not insured.

**E.** The Parties understand and agree that the City, its elected and appointed officials, employees, agents and volunteers are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations and any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 to 120, , or otherwise available to the City, its elected and appointed officials, employees, agents and volunteers.

## **10. DEFENSE AND INDEMNIFICATION:**

**A.** Artist hereby agrees to defend, indemnify, reimburse and hold harmless the 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 the City for any acts or omissions of Artist or its subcontractors either passive or active, irrespective of fault, including the City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.

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



**C.** Artist will defend any and all Claims which may be brought or threatened against the City and will pay on behalf of the City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation, including but not limited to time expended by the City Attorney Staff, whose costs shall be computed at the rate of two hundred dollars and no cents (\$200.00) per hour of City Attorney time. Such payments on behalf of the City shall be in addition to any other legal remedies available to the City and shall not be considered the City's exclusive remedy.

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

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

## **11. DISPUTES:**

All disputes arising under or related to this Agreement shall be resolved by administrative hearing under the procedures described in D.R.M.C. § 5-17 and all related rules and procedures. The Parties hereto agree that the CEO determination resulting from said administrative hearing shall be final, subject only to the right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106.

## **12. GENERAL TERMS AND CONDITIONS:**

**A. Status of Artist.** Parties agree that the status of Artist shall be an independent contractor retained on a contractual basis to perform professional or technical services for limited periods of time as described in § 9.1.1(E)(x) of the Charter of the City and County of Denver (the "**City Charter**"). It is not intended, nor shall it be construed, that Artist or its personnel are employees or officers of the City under D.R.M.C. Chapter 18 for any purpose whatsoever.

**B. Assignment.** Artist shall not assign, pledge or transfer its duties, obligations, and rights under this Agreement, in whole or in part, without first obtaining the written consent of the CEO. Any attempt by Artist to assign or transfer its rights hereunder without such prior written consent shall, at the option of the CEO, automatically terminate this Agreement and all rights of Artist hereunder.

**C. Compliance with all Laws and Regulations.** Artist and its subcontractor(s) shall perform all work under this Agreement in compliance with all existing and future applicable laws, rules, regulations, and codes of the United States, and the State of Colorado and with the City Charter, ordinances, Executive Orders, and rules and regulations of the City.

**D. Compliance with Americans with Disabilities Act ("ADA").** Artist shall provide the services specified in this Agreement in a manner that complies with the ADA. Artist shall not discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Artist,

its employees, agents or assigns will constitute a material breach of this Agreement. Artist shall cooperate with City and allow City to take reasonable steps to ensure that the artwork is accessible to the disabled, with respect to the elimination of both architectural and programmatic barriers. Such cooperation shall include assisting with modifications to the artwork, or preparing or authorizing tactile models, reproductions, or other materials necessary to provide access to the artwork. If requested by City, Artist shall engage a consultant, as part of the overall Project budget, to review the artwork for compliance with the ADA.

**E. Compliance with Patent, Trademark and Copyright Laws.**

(i) Artist agrees that all work performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the United States, as they may be amended from time to time. Artist will not utilize any protected patent, trademark or copyright in performance of its work unless it has obtained proper permission, all releases, and other necessary documents. If Artist prepares any documents which specify any material, equipment, process or procedure which is protected, Artist shall disclose such patents, trademarks and copyrights in such documents.

(ii) Pursuant to Section 10, Artist shall indemnify and defend the City from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings resulting from, or arising out of, directly or indirectly, the performance of work under this Agreement which infringes upon any patent, trademark, service mark, property rights by a third party or copyright protected by law.

**F. Warranties.**

(i) Warranties of Title. Artist represents and warrants to the City that:

- a. The Work is solely the result of the artistic effort of Artist;
- b. Except as otherwise disclosed in writing to the City prior to the time of execution hereof, the Work is unique and original and does not infringe upon any copyright;
- c. That neither the Work delivered hereunder, nor a duplicate thereof, has been accepted for sale elsewhere; and
- d. The Work is free and clear of any liens or claims from any source whatsoever.

(ii) Warranties of Quality and Condition. Artist further represents and warrants to the City that:

- a. The Work will be free of defects in design and draftsmanship, including any defects consisting of “inherent vice” or qualities which would cause or accelerate deterioration of the fabricated artwork.

(iii) Duration of Warranties; Breach. The warranties described herein shall survive for a period of two (2) years after the date of the City’s written notification to Artist of the final acceptance of the Work. The City shall give notice to Artist of any observed breach with reasonable promptness. Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by Artist utilizing artistic skill and which cure is consistent with professional conservation standards as determined solely by the City.

**G. Notices.**

(i) Notices of Termination. Notices concerning termination of this Agreement, shall be made as follows:

by Artist to:

Chief Executive Officer  
Denver International Airport  
Airport Office Building  
8500 Peña Boulevard, 9th Floor  
Denver, Colorado 80249-6340

And by the City to:

Vendor  
Address  
Attn:  
Email:

(ii) Delivery of Formal Notices. Formal notices of the termination of this Agreement shall be delivered personally during normal business hours to the appropriate office above or by prepaid U.S. certified mail, return receipt requested; express mail (Fed Ex, UPS, or similar service) or package shipping or courier service; or by electronic delivery directed to the person identified above and copied to the Director through the electronic or software system used at the City’s direction for any other official communications and document transmittals. Mailed notices shall be deemed effective upon deposit with the U.S. Postal Service and electronically transmitted notices by pressing “send” or the equivalent on the email or other transmittal method sufficient to irretrievably transmit the document. Either party may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed, delivered or emailed, but such substitutions shall not be effective until actual receipt of written or electronic notification thereof through the method contained in Subsection (G)(ii).

(iii) Other Correspondence. Other notices and day-to-day correspondence between the Parties may be done via email directed to the Project Manager or through the electronic or software system used for work-related communications and transmittals at the City’s direction.

**H. Rights and Remedies Not Waived.** In no event shall any payment by the City hereunder constitute or be construed to be a waiver by the City of any breach of covenant or default which may then exist on the part of Artist. The City making any such payment when any breach or default exists shall not impair or prejudice any right or remedy available to the City with respect to such breach or default. The City's assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of this Agreement shall not be deemed or taken to be a waiver of any other breach.

**I. No Third-Party Beneficiaries.** The Parties 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 Artist, and nothing contained in this Agreement shall give or allow any such claim or right of action by any third party. It is the express intention of the Parties that any person or entity other than the City or Artist receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only and shall not have any interest or rights under this Agreement.

**J. Governing Law.** This Agreement is made under and shall be governed by the laws of the State of Colorado. Each and every term, provision and condition herein is subject to the provisions of Colorado law, the City Charter, and the ordinances and regulations enacted pursuant thereto, as may be amended from time to time.

**K. Bond Ordinances.** This Agreement is in all respects subject and subordinate to any and all the City bond ordinances applicable to the Airport System and to any other bond ordinances which amend, supplement, or replace such bond ordinances.

**L. Venue.** Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.

**M. Cooperation with Other Contractors.**

(i) The City may award other contracts for additional work, and Artist shall fully cooperate with such other contractors. The City, in its sole discretion, may direct Artist to coordinate its work under this Agreement with one or more such contractors.

(ii) Artist shall have no claim against the City for additional payment due to delays or other conditions created by the operation of other contractors. The City will decide the respective rights of the various contractors in order to secure the completion of the work.

**N. Inurement.** The rights and obligations of the Parties herein set forth shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.

**O. Force Majeure.** The Parties shall not be liable for any failure to perform any of its obligations hereunder due to or caused by, in whole or in part, fire, strikes, lockouts, unusual delay by common carriers, unavoidable casualties, war, riots, acts of terrorism, acts of civil or military authority, acts of God, judicial action, or any other causes beyond the control of the

Parties. The Parties shall have the duty to take reasonable actions to mitigate or prevent further delays or losses resulting from such causes.

**P. Coordination and Liaison.** Artist agrees that during the term of this Agreement it shall fully coordinate all services that it has been directed to proceed upon and shall make every reasonable effort to fully coordinate all such services as directed by the **Choose an item.** or their authorized representative, along with any City agency, or any person or firm under contract with the City doing work which affects Artist's work.

**Q. No Authority to Bind City to Contracts.** Artist has no authority to bind the City on any contractual matters. Final approval of all contractual matters which obligate the City must be by the City as required by the City Charter and ordinances.

**R. Information Furnished by the City.** The City will furnish to Artist information concerning matters that may be necessary or useful in connection with the work to be performed by Artist under this Agreement. The Parties shall make good faith efforts to ensure the accuracy of information provided to the other Party; however, Artist understands and acknowledges that the information provided by the City to Artist may contain unintended inaccuracies. Artist shall be responsible for the verification of the information provided to Artist.

**S. Severability.** In case any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

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

**U. Environmental Requirements.** Artist, in conducting its activities under this Agreement, shall comply with all existing and future applicable local, state and federal environmental rules, regulations, statutes, laws and orders (collectively "**Environmental Requirements**"), including but not limited to Environmental Requirements regarding the storage, use and disposal of Hazardous or Special Materials and Wastes, Clean Water Act legislation, Centralized Waste Treatment Regulations, and DEN Rules and Regulations.

(i) For purposes of this Agreement the terms "Hazardous Materials" shall refer to those materials, including without limitation asbestos and asbestos-containing materials, polychlorinated biphenyls (PCBs), per – and polyfluoroalkyl substances (PFAS), oil or any other petroleum products, natural gas, source material, pesticide, and any hazardous waste, toxic substance or related material, including any substance defined or treated as a "hazardous substance," "hazardous waste" or "toxic substance" (or comparable term) in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sec. 9601 et seq. (1990)), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq. (1990)), and any rules and regulations promulgated pursuant to such statutes or any other applicable federal or state statute.

(ii) Artist shall acquire all necessary federal, state and local environmental permits and comply with all applicable federal, state and local environmental permit requirements.

(iii) Artist agrees to ensure that its activities under this Agreement are conducted in a manner that minimizes environmental impact through appropriate preventive measures. Artist agrees to evaluate methods to reduce the generation and disposal of waste materials.

(iv) In the case of a release, spill or leak as a result of Artist's activities under this Agreement, Artist shall immediately control and remediate the contaminated media to applicable federal, state and local standards. Artist shall reimburse the City for any penalties and all costs and expenses, including without limitation attorney's fees, incurred by the City as a result of the release or disposal by Artist of any pollutant or hazardous material.

### **13. RECORD RETENTION AND OTHER STANDARD CITY PROVISIONS:**

**A. Diversity and Inclusiveness.** The City encourages the use of qualified small businesses doing business within the metropolitan area that are owned and controlled by economically or socially disadvantaged individuals. Artist is encouraged, with respect to the goods or services to be provided under this Agreement, to use a process that includes small businesses when considering and selecting any subcontractors or suppliers.

**B. Non-Discrimination Policy.** In connection with the performance of services under this Agreement, Artist shall not refuse to hire, discharge, promote, demote, to discriminate in matters of compensation against any person otherwise qualified solely because of race, creed, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender variance, gender identity, gender expression, marital status, military status, source of income, protective hairstyle and/or physical or mental disability. Artist further agrees to insert this provision in all subcontracts hereunder.

**C. Advertising and Public Disclosures.** Artist shall not include any reference to this Agreement or to work performed hereunder in any of its advertising or public relations materials without first obtaining the written approval of the **Choose an item.** or their authorized representative. Any oral presentation or written materials related to DEN shall include only presentation materials, work product, and technical data which have been accepted by the City, and designs and renderings, if any, which have been accepted by the City. Artist shall notify the **Choose an item.** in advance of the date and time of any such presentations. Nothing herein, however, shall preclude Artist's transmittal of any information to officials of the City, including without limitation, the Mayor, the CEO, any member or members of Denver City Council, and the Auditor.

#### **D. Colorado Open Records Act.**

(i) Artist acknowledges that the City is subject to the provisions of the Colorado Open Records Act ("CORA"), C.R.S. §§ 24-72-201 et seq., and Artist agrees

that it will fully cooperate with the City in the event of a request or lawsuit arising under such act for the disclosure of any materials or information which Artist asserts is confidential or otherwise exempt from disclosure. Any other provision of this Agreement notwithstanding, all materials, records, and information provided by Artist to the City shall be considered confidential by the City only to the extent provided in CORA, and Artist agrees that any disclosure of information by the City consistent with the provisions of CORA shall result in no liability of the City.

(ii) In the event of a request to the City for disclosure of such information, time and circumstances permitting, the City will make a good faith effort to advise Artist of such request in order to give Artist the opportunity to object to the disclosure of any material Artist may consider confidential, proprietary, or otherwise exempt from disclosure. In the event Artist objects to disclosure, the City, in its sole and absolute discretion, may file an application to the Denver District Court for a determination of whether disclosure is required or exempted. In the event a lawsuit to compel disclosure is filed, the City may tender all such material to the court for judicial determination of the issue of disclosure. In both situations, Artist agrees it will either waive any claim of privilege or confidentiality or intervene in such legal process to protect materials Artist does not wish disclosed. Artist agrees to defend, indemnify, and hold harmless the City, its officers, agents, and employees from any claim, damages, expense, loss, or costs arising out of Artist's objection to disclosure, including prompt reimbursement to the City of all reasonable attorney's fees, costs, and damages the City may incur directly or may be ordered to pay by such court, including but not limited to time expended by the City Attorney Staff, whose costs shall be computed at the rate of two hundred dollars and no cents (\$200.00) per hour of City Attorney time.

**E. Examination of Records and Audits.**

(i) Any authorized agent of the City, including the City Auditor or their 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 Artist's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Artist 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 the Parties to make disclosures in violation of state or federal privacy laws. The Parties shall at all times comply with D.R.M.C. §20-276.

(ii) Additionally, Artist agrees that until the expiration of three (3) years after the final payment under the Agreement, any duly authorized representative of the City,

including the CEO or their representative, shall have the right to examine any pertinent books, documents, papers and records of Artist related to Artist's performance of this Agreement, including communications or correspondence related to Artist's performance, without regard to whether the work was paid for in whole or in part with federal funds or was otherwise related to a federal grant program.

(iii) In the event the City receives federal funds to be used toward the services performed under this Agreement, the FAA, the Comptroller General of the United States and any other duly authorized representatives shall have access to any books, documents, papers and records of Artist which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts and transcriptions. Artist further agrees that such records will contain information concerning the hours and specific services performed along with the applicable federal project number.

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

**G. City Smoking Policy.** Artist and its officers, agents and employees shall cooperate and comply with the provisions of Denver Executive Order No. 99 and the Colorado Indoor Clean Air Act, prohibiting smoking in all City buildings and facilities.

**H. Conflict of Interest.**

(i) Artist and its subsidiaries, affiliates, subcontractors, principals, or employees shall not engage in any transaction, work, activity or conduct which would result in a conflict of interest. A conflict of interest occurs when, for example, because of the relationship between two individuals, organizations or one organization (including its subsidiaries or related organizations) performing or proposing for multiple scopes of work for the City, there is or could be in the future a lack of impartiality, impaired objectivity, an unfair advantage over one or more firms competing for the work, or a financial or other interest in other scopes of work.

(ii) Artist represents that, in its Response or Proposal, as applicable, it disclosed any and all current or potential conflicts of interest of which it is aware, including transactions, work, activities, or conduct that might affect the judgment, actions, or work of Artist or which might give Artist an unfair advantage in this or a future procurement. If the Parties identified a conflict of interest and agreed to a plan to mitigate such conflict, Artist agrees it will comply with that mitigation plan.

(iii) The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement if such a conflict exists, after it has given Artist written notice which describes such conflict. If, during the course of the Agreement, the City determines that a potential conflict of interest exists or may exist, Artist shall have



thirty (30) days after the notice is received in which to eliminate or cure the conflict of interest in a manner which is acceptable to the City.

(iv) Artist has a continuing duty to disclose, in writing, any actual or potential conflicts of interest including work Artist is performing or anticipates performing for other entities on the same or interrelated projects or tasks. Artist must disclose, in writing, any corporate transactions involving other companies that Artist knows or should know also are performing or anticipate performing work at DEN on the same or interrelated projects or tasks. In the event that Artist fails to disclose in writing actual or potential conflicts, the CEO in their sole discretion, may terminate the Agreement for cause or for its convenience.

#### **14. SENSITIVE SECURITY INFORMATION:**

Artist acknowledges that, in the course of performing its work under this Agreement, Artist may be given access to Sensitive Security Information (“SSI”), as material is described in the Code of Federal Regulations, 49 C.F.R. Part 1520. Artist specifically agrees to comply with all requirements of the applicable federal regulations, including but not limited to, 49 C.F.R. Parts 15 and 1520. Artist understands any questions it may have regarding its obligations with respect to SSI must be referred to DEN’s Security Office.

#### **15. DEN SECURITY:**

**A.** Artist, its officers, authorized officials, employees, agents, subcontractors, and those under its control, shall comply with safety, operational, or security measures required of Artist or the City by the FAA or TSA. If Artist, its officers, authorized officials, employees, agents, subcontractors or those under its control, fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against the City, then, in addition to any other remedies available to the City, Artist shall fully reimburse the City any fines or penalties levied against the City, and any attorney fees or related costs paid by the City as a result of any such violation. Artist must pay this amount within fifteen (15) days from the date of the invoice or written notice. Any fines and fees assessed by the FAA or TSA against the City due to the actions of Artist and/or its agents will be deducted directly from the invoice for that billing period.

**B.** Artist is responsible for compliance with Airport Security regulations and 49 C.F.R. Parts 1542 (Airport Security) and 14 C.F.R. Parts 139 (Airport Certification and Operations). Any and all violations pertaining to Parts 1542 and 139 resulting in a fine will be passed on to and borne by Artist. The fee/fine will be deducted from the invoice at time of billing.

#### **16. FEDERAL RIGHTS:**

This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for airport purposes and the expenditure of federal funds for the extension, expansion or development of the Airport System. As applicable, Artist shall comply with the Standard Federal Assurances identified in *Appendix I*.

**17. CONTRACT DOCUMENTS; ORDER OF PRECEDENCE:**

**A. Attachments.** This Agreement consists of **Section 1 through 16** which precede the signature page, and the following attachments which are incorporated herein and made a part hereof by reference:

- Appendix 1: Standard Federal Assurances
- Exhibit A: Scope of Work
- Exhibit B: Milestone Deliverables and Payout Amounts
- Exhibit C: Insurance Requirements
- Exhibit D: Plaque Specifications
- Exhibit E: Final Design
- Exhibit F: Installation and Safety Plan with Progress Reports
- Exhibit G: Maintenance Manual
- Exhibit H: Acceptance Letter
- Exhibit I: Utilization/EDI Plan

**B. Order of Precedence.** In the event of an irreconcilable conflict between a provision of **Section 1 through 16** and any of the listed attachments or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

- Appendix 1
- Section 1 through Section 16** hereof
- Exhibit A
- Exhibit B
- Exhibit E
- Exhibit F
- Exhibit I: Utilization/EDI Plan
- Exhibit C
- Exhibit D
- Exhibit G
- Exhibit H

**18. CITY EXECUTION OF AGREEMENT:**

**A. City Execution.** This Agreement is expressly subject to, and shall become effective upon, the execution of all signatories of the City and, if required, the approval of Denver City Council. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same.

**B. Electronic Signatures and Electronic Records.** The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City and/or Artist 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.

**[SIGNATURE PAGES FOLLOW]**

SAMPLE