



## Request for Proposal for Fitness Sponsorship of SnowFit and/or Other Fitness Events

**Date Issued: Monday, November 5, 2018**

**Response Deadline: Friday, November 30, 2018 – 5:00PM MST**

**Contact:**

Matt Tabrum  
Denver Arts & Venues  
1345 Champa Street  
Denver, CO 80204  
720-865-4318

[Matthew.Tabrum@denvergov.org](mailto:Matthew.Tabrum@denvergov.org)

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

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

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

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## INTRODUCTION

Denver Arts & Venues (DAV) is seeking a fitness sponsor for the City's SnowFit series at Red Rocks Amphitheatre. Proposers should be experienced in strength and conditioning fundamentals and instruction and will be required to provide event marketing and communication support. The eventual contract will be for a 3-year term and will be between the City and County of Denver (the "City") and the selected proposer.

Denver Arts & Venues is a division of the City & County of Denver's Department of General Services. DAV's mission is to amplify Denver's quality of life and economic vitality through our premier public venues, public art collection, and free entertainment events and programs. DAV is responsible for the maintenance, repair, management and operation of the City's theatre, concert, auditorium or arena venues, which include Red Rocks Amphitheatre & Visitor Center, the Denver Performing Arts Complex (DPAC), the Denver Coliseum, the McNichols Civic Center Building, and the Colorado Convention Center. DAV also supports a variety of free and paid programming and events including the Five Points Jazz Festival, select film series, city festivals, athletic events, arts programs and more. Additionally, DAV oversees the City's public art program and the City's creative sector business development initiatives.

### Further Information

For more information on Denver Arts & Venues facilities and programs, visit our website at [www.artsandvenuesdenver.com](http://www.artsandvenuesdenver.com).

If you require further clarification on the process or completion of your response, please contact Matt Tabrum up to November 27, 2018 using the details provided below.

Matt Tabrum  
Denver Arts & Venues  
cell: (720) 865-4318  
[Matthew.Tabrum@denvergov.org](mailto:Matthew.Tabrum@denvergov.org)

## **RFP CONDITIONS AND PROVISIONS**

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

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

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

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

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

## **GRATUITIES AND KICKBACKS**

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

It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime vendor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

In the event that any gratuities or kickbacks are offered or tendered to any City and County of Denver employee, the proposal shall be disqualified and shall not be reinstated.

## **NON-COLLUSIVE PROPOSER CERTIFICATION**

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

- A. The proposal has been arrived at by proposer independently and has been submitted without collusion with any other proposer.
- B. The contents of the proposal have not been communicated by proposer, nor, to its best knowledge and belief, by any of its employees or agents, to any person not an employee or agent of the proposer or its surety on any bond furnished herewith, and will not be communicated to any such person prior to the official opening of the proposal.
- C. No proposer shall submit more than one proposal for this RFP. It shall be the responsibility of each proposer to obtain the prior written permission of the Director of DAV before proposal opening in every situation in which the proposer, due to corporate association or other affiliation, may be found to be impermissibly associated with another vendor. Failure to observe this requirement could result in all such affiliated proposals being rejected.

## **DISCLOSURE OF CONTENTS OF PROPOSALS**

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

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

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

## SCOPE OF WORK

### **Selected proposer(s) will receive the following benefits:**

Lead up to six (6) SnowFit events.

1. For each event, one (1) fitness instructor and a minimum of four (4) supporting instructors to lead up to six (6) SnowFit events. Respondents may choose to present all six (6) sessions or a four (4) week series.
2. Provide a minimum of ten (10) volunteers for each SnowFit event sponsored by Sponsor to support event operations and logistics.

Promotion of SnowFit via proper media channels. This will require the City to have rights to proposer marks to promote SnowFit.

Promotion of SnowFit to proposer members and at proposer locations. This will require the City to have rights to proposer marks to promote SnowFit.

### **Denver Arts & Venues (the City) will provide the following minimum services:**

#### Event Management

1. Venue security
2. Venue parking staff and operations
3. Audio/Visual equipment and operation
4. Payment equipment and staff
5. Ticketing services
6. Collection of all monies

#### Marketing & Communication

1. Secure vanity URL, host, and maintain [www.redrockssnowfit.com](http://www.redrockssnowfit.com).
2. SnowFit logo and annual campaign development.
3. Social media promotion
4. Production of marketing collateral to include posters, ads, postcards, marquees and other materials to be determined by DAV.
5. Media relations
6. Rights to Red Rocks Amphitheatre / SnowFit marks to promote SnowFit.

Winning bidder will receive 'first right of refusal' on additional DAV produced fitness events.

## RFP INSTRUCTIONS

- I. Please submit the following information regarding your organization.
  - a. Name of Organization
  - b. Certificate of Insurance (COI)
  - c. Organization website URL
  - d. Location(s)
  - e. Years in business
  - f. Number of members (if applicable)
  - g. Please list any professional certifications and/or affiliations.
- II. Proposed annual marketing and communication plan that your organization will implement to support SnowFit and/or other Fitness Events.
- III. Estimated programming and structure.
- IV. Annual sponsorship fee (optional).
- V. Please submit the name and phone number of three professional references with whom your organization has done business with for at least one year.
- VI. Complete and submit attached Diversity and Inclusiveness Form.
- VII. Sign and return front page of RFP.

**SUBMISSION DEADLINE: Friday, November 30, 2018 5:00PM MST**

**SUBMIT ELECTRONIC FILES VIA EMAIL TO:**

Matt Tabrum  
Denver Arts & Venues  
720-865-4318  
[Matthew.Tabrum@denvergov.org](mailto:Matthew.Tabrum@denvergov.org)

## **DIVERSITY AND INCLUSIVENESS REQUIREMENT**

Using the attached form, entitled “Diversity and Inclusiveness in City Solicitations Information Request Form”, please state whether you have a diversity and inclusiveness program for employment and retention, procurement and supply chain activities, or customer service and provide the additional information requested on the form. The information provided on the Diversity and Inclusiveness in City Solicitations Information Request Form will provide an opportunity for City contractors/consultants to describe their own diversity and inclusiveness practices. Contractors/consultants are not expected to conduct intrusive examinations of its employees, managers, or business partners in order to describe diversity and inclusiveness measures. Rather, the City simply seeks a description of the contractor/consultant’s current practices, if any. Diversity and Inclusiveness information provided by City contractors/consultants in response to City solicitations for services or goods will be collected, analyzed, and made available in reports consistent with City Executive Order No. 101. However, no personally identifiable information provided by or obtained from contractors/consultants will be in such reports.

**[FORM ATTACHED SEPARATELY AND ALSO AVAILABLE AT  
<http://artsandvenuesdenver.com/about/business-opportunities/>]**



## SAMPLE CONTRACT

The Sample Contract for this RFP contains the City's proposed terms and conditions. These terms and conditions shall form the basis of a contract covering the subject matter of this RFP. By submitting a Proposal your firm confirms that the standard form is acceptable. If there is contention(s) with the contract, a brief explanation and alternative language, if any, should be included in your Proposal. Any exceptions to the terms and conditions will be taken into consideration when evaluating Proposals submitted. The City reserves the right to reject any or all of your proposed modifications. Modifications to sections of the contract entitled: "Defense and Indemnification," "Colorado Governmental Immunity Act," "No Employment of Illegal Aliens to Perform Work Under the Agreement," "No Discrimination in Employment," "Prevailing Wage," and "Governing Law; Venue" will render your Proposal non-responsive.

**THIS IS A SAMPLE TEMPLATE FOR PROFESSIONAL SERVICES  
CHECK FOR ALTERNATIVE AND FILL-IN PROVISIONS INDICATED BY \_\_ or [].**

### **SPONSORSHIP AGREEMENT**

**THIS SPONSORSHIP AGREEMENT** (this "**Agreement**") is made and entered by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized and existing under and by virtue of Article XX of the Constitution of the State of Colorado (the "**City**"), and \_\_\_\_\_, a \_\_\_\_\_ corporation located at \_\_\_\_\_ ("**Sponsor**").

**RECITALS:** The City through Denver Arts and Venues owns and operates certain public entertainment venues, specifically the Quigg Newton Denver Municipal Auditorium "Ellie Caulkins Opera House," the Buell Theatre, and Boettcher Concert Hall (sometimes referred to collectively as the "Denver Performing Arts Complex"), Red Rocks Amphitheatre, the Historic Denver Coliseum, and the Colorado Convention Center. The City also produces and promotes certain events.

Sponsor is a \_\_\_\_\_ of \_\_\_\_\_. Sponsor would like to obtain certain sponsorship opportunities in connection with the Red Rocks Amphitheatre (the "**City Venue**").

The City and Sponsor have, therefore, agreed to a sponsorship arrangement in accordance with the following terms and conditions.

**AGREEMENT:** By and in consideration of the mutual promises set forth hereafter, the parties agree as follows:

- 2.1 Grant of Sponsorship Rights and Benefits. Sponsor shall be entitled to the rights and benefits set forth in Exhibit A during the Term (as defined below) of this Agreement. Any unused tickets, hospitality, and assets will not rollover from one season to the next and must be utilized in each term year.
- 2.2 Sponsorship Rights Fees. In consideration of the rights and benefits provided to Sponsor as set forth in this Agreement, Sponsor shall pay to the City the fees set forth in Exhibit B.
- 2.3 Uses and Protection of Trademarks/Service Marks and Other Intellectual Property. The City and Sponsor each acknowledge that the other party owns certain names, trademarks, service marks, copyrights and other intellectual property associated with their respective businesses which marks will be specifically identified on Exhibit C (hereinafter collectively referred to as "**Marks**"), and each owns certain merchandising rights in and to the Marks, and all goodwill associated with or symbolized by the Marks.

It is agreed and understood that in marketing and promoting events at the City Venue (the "**Events**") and various activities associated therewith, the City and Sponsor may make various references to each other and may display the Marks of the City and Sponsor as well as photographs or graphic images of these activities. Each party grants to the other a non-exclusive, non-transferable license to use its Marks during the Term of this Agreement, subject to the terms and conditions hereafter set forth, solely in connection with advertising and promoting the Events and activities incidental thereto. The City and Sponsor shall agree in writing as to the form and content of any promotional or advertising materials which bear the other party's Marks, and the media in which such materials are to be used prior to their use, which approval the parties shall not unreasonably withhold. Such use may be subject to such reasonable conditions as either party may impose, including, but not limited to, conditions affording each party adequate protection of its Marks. Upon termination or expiration of this Agreement, both parties shall cease all use of the Marks of the other party as soon as practicable, but, in any event, within 30 days, unless the particular media which has been approved requires a longer lead time, but in no event longer than 90 days.

Neither party will challenge or assist in a challenge to the validity of the other party's Marks, any registrations thereof or the ownership thereof. Each party will be solely responsible for taking such actions, as it deems appropriate to obtain trademark, service mark, or other protection of its respective Marks.

Neither party is granted any right or license under this Agreement to sell or otherwise distribute for sale, any of the promotional advertising material or items related thereto, unless specifically set forth herein. If a party desires to sell or distribute for sale any of such materials or other merchandising or novelty items bearing the Marks of the other party, then it shall request permission to do so from the other party and, if granted, the parties shall

negotiate in good faith a separate licensing agreement covering such materials or items before they may be sold or distributed for sale.

- 2.4 Third Party Infringement. The City is not responsible for any third party infringement of Sponsor's copyrights, and is not responsible for protecting the intellectual property rights of Sponsor.
- 2.5 Filming of Sponsor Marks. Sponsor understands and acknowledges that the City often issues film permits to persons and entities wishing to film at a City Venue, whether still, motion picture, or otherwise. Notwithstanding any other provision of this Agreement, Sponsor recognizes and permits the City to issue such permits to persons and entities, to include Sponsor's Marks and surrounding site, and Sponsor holds the City harmless therefore. Sponsor 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 Sponsor's Marks.
- 2.6 Approval of Promotional Concepts. Each party reserves the right to approve all promotional concepts, which the other party wishes to use in connection with its identification with the first party. Under no circumstances will promotions which reflect unfavorably upon the City, or which are prohibited or restricted by law, rule, regulation, or executive order, be approved by the City.
- 2.7 Waiver and Release Forms. \_\_\_\_\_ shall be responsible for collecting a signed SNOWFIT Release, Waiver of Liability, Assumption of Risk, and Indemnity Agreement from each ticket holder for the Event. The agreed-upon form of the Waiver and Release is attached to this Agreement as **Exhibit F**. The back of each ticket shall include the abbreviated Waiver and Release attached to this Agreement as **Exhibit G**.
- 2.8
- 2.9 Exclusivity. This Agreement between the City and Sponsor, including the rights and benefits provided herein, shall NOT be exclusive.

Sponsor shall be subject to Arts & Venues Denver Venue Sponsorship Policy, as the same may be amended from time to time. A copy of the current policy is attached hereto as **Exhibit D**.

- 2.10 Independent Status. It is agreed and understood between the parties that nothing contained herein shall constitute or imply an agreement or understanding of joint venture, agency, partnership or employment between the parties, and neither party shall have the authority to incur any financial or contractual obligations on behalf of the other party. Sponsor shall have no

power of direction and control over the City or the City's employees, agents, subcontractors, or volunteers, or the manner or method utilized by the City in the performance of its functions. The City shall determine and have sole discretion over the manner and methods utilized to achieve the results desired by Sponsor and shall be solely responsible for the direction, control and supervision of Sponsor's acts and those of Sponsor's agents, employees, volunteers, and subcontractors relating to the performance of this Agreement.

- 2.11 Indemnification. Sponsor shall (i) defend, release, indemnify and save and hold harmless the City and (ii) with respect to the serving, selling, and/or sampling by Sponsor of Sponsor products, release, indemnify and save and hold harmless ARAMARK Sports and Entertainment Services, LLC, a Delaware limited liability company ("**Aramark**"), as concessionaire of the Red Rocks Amphitheatre (including the Visitor Center and Trading Post) and the Denver Coliseum: (x) against any and all damages to property or injuries to or death of any person or persons, including property and employees or agents of the City or Aramark ("**Damages**"), and (y) from any and all claims, demands, suits, actions, liabilities, causes of action or legal or equitable proceedings of any kind or nature, including workers' compensation claims, of or by anyone whomsoever ("**Claims**"). Sponsor's foregoing obligations shall apply to Damages and Claims in any way resulting from or arising out of and to the extent caused by acts, errors, or omissions of Sponsor or its officers, employees, representatives, suppliers, invitees, licensees, subconsultants, subcontractors, or agents in the performance under this Agreement; provided, however, that Sponsor need not indemnify and save and hold harmless the City, its officers, agents, and employees from damages proximately resulting from the sole negligence of the City's officers, agents, and employees. This indemnity clause shall also cover the City's defense costs, in the event that the City, in its sole discretion, elects to provide its own defense. Defense costs coverage must be included in the liability coverage provided for the City and County of Denver, its officers, officials and employees as additional insureds. These indemnification obligations shall survive the termination of this Agreement by expiration of the Term hereof or otherwise.

2.12 Insurance.

- a) General Conditions: Sponsor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Sponsor shall keep the required insurance coverage in force at all times during the Term of this Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of this Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII

or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies are canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices paragraph of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless such cancellation or non-renewal is due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Sponsor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices paragraph of this Agreement by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by Sponsor. Sponsor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of Sponsor. Sponsor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

- b) Proof of Insurance: A certificate of insurance shall be supplied to the City prior to the execution of this Agreement. Sponsor may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. Sponsor certifies that the certificate of insurance complies with all insurance requirements of this Agreement. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Sponsor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.
- c) Additional Insureds: For Commercial General Liability, Sponsor's and any subcontractors' or subconsultants' insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
- d) Waiver of Subrogation: For all coverages required under this Agreement, Sponsor's insurer shall waive subrogation rights against the City.

- e) Subcontractors and Subconsultants: All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of Sponsor. Sponsor shall include all such subcontractors and subconsultants as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Sponsor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.
- f) Workers' Compensation/Employer's Liability Insurance: Sponsor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Sponsor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of Sponsor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the Term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Sponsor executes this Agreement.
- g) Commercial General Liability: Sponsor shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$50,000 fire damage legal (\$300,000 if a City facility is leased), \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.
- h) Business Automobile Liability: Sponsor shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.
- i) Additional Provisions: For Commercial General Liability, the policies must provide the following:
  - (a) That this Agreement is an Insured Contract under the policy;
  - (b) Defense costs are outside the limits of liability;

- (c) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
- (d) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

2.13 Term. The term of this Agreement shall commence as of \_\_\_\_\_, 201\_ (the “**Effective Date**”), and shall end at 12 o'clock midnight on \_\_\_\_\_, 201\_ (the “**Term**”).

2.14 Termination. Either party may terminate this Agreement as follows:

- a) If the other party commits a material breach of this Agreement and fails to cure said breach after receiving 30 days' notice in writing of the alleged breach from the aggrieved party.
- b) If the other party is unable to pay its liabilities when due, or makes an assignment for the benefit of creditors, or files a petition under any federal or state bankruptcy statute, or files a voluntary petition in bankruptcy, or is adjudicated bankrupt or insolvent, or if any receiver is appointed for its business or property, or if a trustee in bankruptcy or insolvency is appointed under the laws of the United States government or of the several states.

2.15 Effect of Termination. In the event this Agreement expires in accordance with its own Term, or is terminated prior to expiration as set forth above, each party shall cease using the other party's Marks. As soon as practicable after termination, each party shall use all reasonable efforts to cease distribution of materials or broadcast of television promotional spots and other similar activities that reflect the relationship of the parties or the parties' Marks.

2.16 Miscellaneous General Provisions.

- a) Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties, as well as their respective successors in interest, whether by merger, reorganization or acquisition.
- b) Assignment. Neither party shall assign or transfer its rights, nor delegate its obligations under this Agreement to any third party without the prior written approval of the other party, which may be withheld for any or no reason, with the exception that such assignment may be made without obtaining consent to (i) any affiliate of a party, or (ii) any entity (or its affiliate) acquiring all or substantially all of the assets or stock, by merger or otherwise, of a party or any affiliate of a party. For purposes of this provision,

“affiliate” shall mean any entity controlling, controlled by or under common control with the referenced party.

- c) Entire Agreement. This Agreement contains the entire understanding between the parties and supersedes all prior agreements between the said parties, whether written or oral, no representation, inducement, promises or agreements or otherwise, which are not embodied herein, shall be of any force or effect. This Agreement may not be amended or otherwise modified except by written agreement executed and authorized by all parties.
- d) Severability. Any provisions of this Agreement prohibited by law, or found to be invalid by any court or agency having jurisdiction thereof, shall be ineffective to the extent of such prohibition or invalidity, without in any way invalidating or affecting the remaining provisions of this Agreement.
- e) Counterparts. This Agreement may be executed in any number of counterparts, who together shall constitute one and the same instrument, but shall be effective only upon execution by each of the parties named below.
- f) Notice. Any notice, request, approval or consent under this Agreement to be given by either party to the other shall be given in writing, and shall be considered served when delivered in person, or three (3) days after the date mailed by certified or registered mail, return receipt requested, addressed to the recipient at its address set forth below, or to such other address as the recipient may subsequently have furnished in writing to the sender.

CITY:

City and County of Denver  
Director, Arts and Venues Division  
1345 Champa Street, First Floor  
Denver, CO 80204

SPONSOR:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- g) Force Majeure. Neither party shall be deemed in default hereunder and neither shall be liable to the other if either is subsequently unable to perform its obligations hereunder by



reason of any fire, earthquake, flood, epidemic, accident, explosion, strike, riot, civil disturbance, act of public enemy, embargo, act of God, any municipal, county, state, or national ordinance or law, any executive or judicial order, or similar event beyond the parties' control; provided, however, that no party shall be entitled to relief under this Paragraph unless such party shall have given the other party reasonable notice of such event, and shall have exhausted all reasonable means of complying or implementing alternative means of compliance with its contractual obligations hereunder.

- h) Governing Law, Venue. This Agreement shall be governed by and interpreted under the laws of the State of Colorado and the City and County of Denver. Any action regarding this Agreement shall be filed in the District Court in and for the Second Judicial District of the State of Colorado, without regard to any statute or rule of law which would suggest or require another venue.
- i) Authority. The City and Sponsor represent and warrant that each, respectively, has full power and authority to enter into this Agreement.
- j) Exhibits. All references to exhibits herein are to exhibits that are specifically incorporated by reference to this Agreement.
- k) Headings. All headings and captions are for convenience only, and shall in no way affect their construction and interpretation.
- l) Survival. The provisions of this Agreement, and the obligations of the parties which, by their own terms, contemplate actions to be performed after termination, including, but not limited to, payment of fees and other consideration, and the terms of this Agreement regarding indemnification, effect of termination, governing law, venue, and Marks, shall survive the termination of this Agreement.
- m) No Express Or Implied Agency. This Agreement shall not be valid or binding in any way upon the City until fully executed by the City's authorized representatives appearing below.
- n) No Discrimination In Employment. In connection with the performance under this Agreement, Sponsor agrees not to refuse to hire, discharge, promote, or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability; and

Sponsor further agrees to insert the foregoing provision in all subcontracts hereunder.

- o) No Third Party Beneficiaries. It is expressly understood and agreed 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 Sponsor, and nothing contained in this Agreement gives or allows any claim or right of action to any third person or entity. It is the express intention of the City and Sponsor that any person other than the City or Sponsor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
- p) Review Of Records. Sponsor agrees that any duly authorized representative of the City shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, and records of Sponsor involving matters directly related to this Agreement. The City's Auditor shall have the right at any time, and from time to time, to audit all of the records of Sponsor, directly related to this Agreement, and Sponsor, upon request, shall make all such matters available for such examination. The City's right to have such audit made with respect to any year, and Sponsor's obligation to retain the above records, shall expire three (3) years after Sponsor's final payment has been delivered to the City.
- q) Electronic Signatures and Electronic Records. Sponsor consents to the use of electronic signatures by the City. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The parties agree not to object to the admissibility of this Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**[Remainder of page intentionally left blank.]**