REQUEST FOR QUALIFICATIONS
Five Points Intersection Plaza - Street Mural
Award: $30,000.00 USD
Eligibility: Open to artists or artist teams residing in the State of Colorado
Deadline for Application: August 25th, 2021, by 10 a.m. MST
Document Issued: August 4th, 2021

RFQ OVERVIEW
Introduction:
The City and County of Denver’s (CCD) Department of Transportation and Infrastructure (DOTI) is seeking to commission a pavement/street art mural to be installed in 2021 as part of a pilot street improvement at the intersection of Welton Street, E 26th Avenue, 27th Street, and N Washington Street (hereafter referred to as the “Five Points Intersection Plaza”), and Clarkson Street between 28th Street and 26th Avenue. At the Five Points Intersection, the street improvements will include a gathering space for residents and visitors to the Five Points Business District with tables, chairs, and trees at the Five Points Intersection Plaza as a compliment to a temporary street mural. A second location for a temporary street mural will be installed on Clarkson Street, between 28th Street and 26th Avenue. Finally, paint and post pedestrian islands and bulb-outs at select locations on Welton Street may be explored for potential artwork treatments.

Five Points Neighborhood:
The Five Points neighborhood is located immediately adjacent to the downtown core of the City and County of Denver. Historically, the neighborhood was the first suburb of Denver, and developed as primarily an African American neighborhood in the first half of the twentieth century. The neighborhood, also known as the “Harlem of the West”, is recognized for its eclectic nightlife and jazz music scene in the early to middle twentieth century, hosting notable performing artists such as Billie Holiday, Duke Ellington, and Miles Davis. Today, a budding cultural and business corridor along Welton Street is being reinvigorated to celebrate the neighborhood’s cultural heritage and offer increased access to the diversity of amenities in this central location.

Project Snapshot:
• DOTI is leading an effort to create more space for people to gather at the intersection of Welton St, E 26th Ave, 27th St, and N Washington St. (the “Five Points Intersection/Pedestrian Plaza”)
• The new Five Points Pedestrian Plaza will provide tables, chairs, and other placemaking features for visitors to the Five Points Historic & Business District
• The new people-oriented spaces will enhance the safety of roadway users along the Welton Street Corridor and at the Five Points Intersection.
• The plaza itself will host a temporary artwork installation on the roadway surface once DOTI formalizes the closure of the roadway and adjusts traffic patterns.
• The pedestrian plaza street mural is estimated to be about 5,400 square feet of space.
• Clarkson Street is scheduled to receive a Temporary Outdoor Expansion Permit (TOE-Permit) and will provide an additional estimated 3,000 square feet for a temporary street mural.
• “Bulb-outs” along the corridor are estimated to provide a canvas of about 8,600 square feet.
• In total, the street murals encompass a space of about 17,000 square feet of space.
• The focus of the murals is at the Five Points Intersection Plaza and on Clarkson Street. If there is remaining budget, the bulb-outs will be considered.

Qualifications are requested from artist or artist teams residing in the state of Colorado. Preference will be given to artists/artist teams who live or work within the Five Points community or artists/artist teams that can demonstrate a connection to the Five Points community. Additionally, artists/artist teams that can demonstrate their experience with the application of artwork on a street, and/or who may already be a vendor with the City and County of Denver are highly preferred.

Site/Location Details:
The Five Points Pedestrian Plaza is currently planned for the intersection at Welton Street, E 26th Avenue, 27th Street, and N Washington Street. The Clarkson Street Outdoor Expansion is planned for the segment of Clarkson Street between 28th Street and 26th Avenue. Additionally, artwork may be implemented at “bulb-out” locations along the Welton Street Corridor if feasibility and project budget allow.

The Five Points Intersection will be modified to create a community gathering space. A conceptual rendering of the Five Points Intersection and Pedestrian Plaza is provided below:

*The image above is conceptual and final implementation may be different for the Five Points Pedestrian Plaza.*
Media, Materials, Maintenance, Site Discussion:

Media and Materials:
The project will be implemented on the roadway surface. Designs that highlight the historic and cultural significance of the Five Points neighborhood will be shown preference. Artwork installations should be considerate to the unique canvas characteristics that the roadway requires (for example: the roadway will need to be swept/power washed prior to being painted). The art installation should be able to withstand typical weather events such as rain and snow by finishing the project with a clear coat. The street murals must provide non-slip surfaces to ensure accessibility for everyone. All materials/colors must be approved by DOTI engineering staff prior to installation, which may require the limitation of colors, the removal of specific geometric shapes, and no logos, text, or advertising will be permitted.

Maintenance & Durability:
This mural is intended to be semi-permanent. Applicants should be aware that this mural will be installed at a publicly accessible location, where people will be invited to spend time. Tables and chairs will also be at the location in the plaza space. The artwork will be exposed to the weather and other physical stresses and may be subjected to vandalism. To help counteract the stresses of the installation location, the paint ideally would be applied in at least two layers and have a clearcoat installed to enhance the mural’s durability. No additional funding has been identified for maintenance and upkeep of the mural. Long-term plans may also remove or cover the mural entirely. Artists who apply should understand this project may either slowly fade away with time, or potentially be covered by long-term improvements at the site. The potential to refresh the mural may exist in the future, but at this time is to-be-determined.

Mural Site Discussion:
A. Five Points Intersection Plaza
Temporary street art will be installed at the Five Points Intersection Plaza on the roadway surface after DOTI reconfigures the roadway in Fall 2021. This artwork will create a new central focus point for the Welton Street Corridor and enhance the planned public gathering space.

Note: The conceptual design to the left is subject to change and may not reflect what will be implemented during 2021. Additionally, not all areas in the light orange will be the final, painted locations. The Five Points Intersection Plaza is highlighted above with the intended temporary street mural location outlined and is estimated to be about 5,400 square feet.
B. Clarkson Street Temporary Outdoor Expansion

A Temporary Outdoor Expansion Permit (TOE) has been approved for Clarkson Street, between 28th Street and 26th Avenue, providing an additional location for a temporary street mural.

Note: The conceptual design to the left is subject to change and may not reflect what will be implemented during 2021. The canvas will be the roadway space between the curb and gutter along Clarkson Street.

C. Intersection Curb Extensions/Cornet “Bulb-outs”

Pavement/street art murals located in new pedestrian spaces at the corners of select intersections along the corridor can assist in highlighting and drawing attention to key entrance/exit points and locations. These bulb-outs will only be painted if the budget allows. At least five intersections may have bulb-outs painted if the budget allows.

Note: Bulb outs are delineated spaces on the corners of a roadway, that increase safety of roadway users by slowing vehicle turning speeds and shortening the crossing locations for pedestrians. Adding artwork to these locations helps to provide a unique identity to locations and offers placemaking opportunities.

Examples in Denver, CO on Santa Fe Drive (left), and Boston, MA (right)
Application Process
Who may apply?
This project is open to anyone who is a resident of the State of Colorado. We are committed to working with and supporting a broad diversity of artists based on race, ethnicity, gender identity, sexual orientation, national origin, age, religion, or intellectual or physical disability. The selection panel is especially interested in artists who live or work in the Five Points neighborhood and can demonstrate a deep understanding of the community, as well as the area’s history, urban landscape, surrounding neighborhoods, and in context with current social and cultural events.

Can a team apply?
Applications can be submitted for a single artist or a multi-person collaborative group. If applying as a team, please submit one application. Please limit team statement of interest to 500 words.

Application Guidelines:
All applicants must reside full-time in the State of Colorado. Preference will be given to artists/artist teams who live or work within the Five Points community or artists/artist teams that can demonstrate a connection to the Five Points community. Additionally, artists/artist teams that can demonstrate their experience with the application of artwork on a street, and/or who may already be a vendor with the City and County of Denver are highly preferred. Applying artists must show experience executing murals in the public realm, preferably on a roadway surface. Artists will be judged on artistic merit, understanding of the Five Points neighborhood and history, and experience creating murals of equivalent size. Applicants are requested to provide:

1. Five digital images of past work,
2. Résumé,
3. Statement of interest no more than 500 words (1 page or less) (if applying as an artist team, please maintain the 1-page, 500-word limit).

Post Application Process:
An Artist Selection Committee has been created specifically for this art project. The Selection Committee is comprised of volunteers from the City Council District 9 Office, the Five Points community, members of the Five Points Business District (BID), employees from Denver’s Department of Transportation and Infrastructure (DOTI) Department of Economic Development and Opportunity (DEDO), and employees from Denver’s Arts and Venues. Once an application is submitted; a selection panel will review applications and invite up to 3 applicants to a virtual interview process. If the Selection Committee feels strongly about one applicant, then there will be no interview process and an artist will be selected. The Selection Committee is especially interested in artists who live or work in the Five Points neighborhood and can demonstrate a deep understanding of the neighborhood, as well as the area’s history, urban landscape, surrounding neighborhoods, and in context with current social and cultural events.
Ultimately, one artist or artist team will be invited to create a unique street mural(s) for the Five Points Intersection Plaza and intersection bulb-outs as the project budget permits. Once the artist/artist team is selected, the artist is expected to design the mural, procure their materials necessary for installation, and install the mural in September 2021/Early October 2021. A tentative schedule is provided in the next section with an estimation of the project timeline.

**Street Mural Budget**
The project budget is $30,000. Project funds will be awarded as an honorarium for one artist/one artist team.

The honorarium for the mural sites shall be inclusive of all costs associated with designing and executing the temporary street murals, including but not limited to: artist design fee, insurance, transportation to and from the site, site modification required (for example: cleaning/power washing the site, sweeping), installation, per diem expenses, materials (including but not limited to: paint, brushes, stencils, clear coat, non-slip aggregate), and contingency to cover unexpected expenses and any other costs related to the project materials.

**Artist Selection Process and Schedule**
The Selection Committee will review only completed applications that adhere to the criteria set forth in this RFQ. The Selection Committee will be a mix of Five Points community members, members of the Five Points Business Improvement District, and various City Agency Employees from DOTI, DEDO, and Denver Arts and Venues. Up to three semi-finalists will be invited to virtually interview in front of the Art Selection Committee in August/September 2021. Finalists will be notified of their selection in August 2021.

**Project Schedule**
*(Project Schedule is subject to adjustments as necessary, except for Application Deadline)*

- **August 4th, 2021**: Call to artists issued
- **August 25th, 2021**: Deadline for applications, by 10 a.m. MST
- **August 2021**: Applicants reviewed by Selection Committee
- **August/September 2021**: Semifinalists invited to interview (if necessary)
- **August 2021/September 2021**: Semifinalists interview with Art Selection Committee (if necessary)
- **Late August/September 2021**: Finalist selected; Artist notified of award, Artwork Design begins
- **September 2021**: Designs finalized: CCD approval of designs & materials
- **September/October 2021**: Pilot project/artwork installed
**Application Process & Materials to be Submitted**

*Please read this section carefully. Incomplete applications will NOT be considered. The applicant’s name must appear on all materials submitted.*

All applications for this project must be submitted via email to: [DOTI.Procurement@denvergov.org](mailto:DOTI.Procurement@denvergov.org), by no later than 10:00 am MST on August 25th, 2021.

The applicant must submit the following for their application to be reviewed:

1. **Digital Images**: 5 digital images of relevant, previously completed artworks. Please give preference to mural work that is in the public realm i.e., on the roadway, sidewalk, street furniture or building facade.

2. **Résumé or Bio**: A current résumé that outlines your professional accomplishments as an artist. Please limit your submission to no more than 2 pages. If applying as a team, please submit a résumé for each artist, with the lead artist first. Please ensure the résumé is no longer than 1 page per artist.

3. **Statement of Interest**: A statement of interest of 500 words or less briefly outlining your interest in this specific opportunity, your connection to the area, and experience working on projects of this scope.

4. **Responses to Questions**: Please include answers to the following questions in your application.

   - What is your connection to the Five Points neighborhood?
   - Have you completed any past work on a roadway surface and are familiar with the unique application process necessary?
   - In which state do you reside full-time?
   - Do you live in the City and County of Denver or surrounding neighborhoods?
   - Have you completed at least one mural located within the public realm? Who commissioned the mural? (Private, municipal, or state agency?)
   - Are you a vendor with the City and County of Denver?
   - This project requires a strict adherence to deadlines, planning for implementation in September 2021. How will you deliver this project by the end of September 2021?

**Questions:**

Questions regarding this Request for Qualifications must be submitted by e-mail only to [DOTI.Procurement@denvergov.org](mailto:DOTI.Procurement@denvergov.org), no later than 10:00 a.m. MST, August 16th, 2021.
THIS IS A SAMPLE TEMPLATE FOR PROFESSIONAL SERVICES

AGREEMENT

THIS AGREEMENT is made between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado (the “City”) and _______________, a _______________, [with its principal place of business located at/ doing business at] __________________________ (the “Artist”), collectively “the parties”.

RECITALS

1. The Artist has been selected by the City to design, execute, fabricate, deliver and install a work of art consisting of a temporary street mural (the “Work”), such Work to be integrated into the Welton Street pedestrian plaza (the “Site”), after consultation with Denver Arts and Venues (DAV), Site designers, and Department of Transportation and Infrastructure personnel.
2. Both parties wish to reasonably promote and maintain the integrity and clarity of the Artist’s ideas and statements as represented by the Work.
3. The Artist was selected via an open RFQ.
4. The City believes the Artist to be well able to undertake and perform such services for the City and County of Denver, and desires to contract with the Artist for the performing of such services.
5. The Artist is ready, willing and able to render such services as an independent contractor.

AGREEMENTS

The parties agree as follows:

1. COORDINATION AND LIAISON: The Artist shall fully coordinate all services under the Agreement with the Manager of the Department of Transportation and Infrastructure personnel, (“Manager”) or, the Manager’s Designee in coordination with Director of the Division of Denver Arts and Venues (the “Director”) or the Director’s Designee.

2. SERVICES TO BE PERFORMED:
   a. Work created: As the Manager directs, the Artist shall diligently undertake, perform, and complete all of the services and produce all the deliverables, as more fully set forth on Exhibit A, the Scope of Work, to the City’s satisfaction. Artist’s application of the Work at
the site shall be consistent with the initial proposal and conceptual design. The Work shall be appropriate to a public setting and for viewing by public officials, City employees, citizens, and the general public of all ages visiting the Site.

b. **Legal Requirements:** The City may, prior to, during, and after installation of the Work, require Artist to make such revisions to the Work as are necessary for the Work to comply with the initial proposal and conceptual design, and applicable statutes, ordinances, or regulations of the City (including, without limitation the Denver Sign Code), the State of Colorado, or the U. S. Government. The City may also request revisions to the Work for other practical and/or non-aesthetic reasons.

c. **Display Period:** The Work is intended to be temporary for up to five years and shall be un-installed in an environmentally safe and City approved manner by Artist upon notice of the City to Artist to remove the Work from display.

d. **Warranties:** Artist represents and warrants to the City that: the aesthetic design and installation of the Work is solely the result of the artistic effort of Artist; the Work is unique and original and does not infringe upon any copyright; that neither the Work installed hereunder, nor a duplicate thereof, has been accepted for sale or display elsewhere; the aesthetic design and installation of the Work will be performed in a workmanlike manner; and the Work will be applied to the site in such a manner as to reasonably protect it against damage or destruction by external forces. The foregoing warranties shall survive for a period of two (2) years after the City’s acceptance of the completed 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.

e. **Maintenance and Repair:** Artist shall be responsible for any maintenance or repair of the Work.

f. **Site alteration:** Artist agrees that the City is under no obligation to notify or consult with Artist in the event of any proposed alteration of the site that would affect the intended character of the Work nor is the City under any obligation to maintain the integrity of the Work.
g. **Removal, Relocation, Sale, Donation or Destruction.** Nothing in this Agreement shall preclude any right of the City, in its sole discretion and without notice to Artist, (i) to remove the Work from public display, or (ii) to destroy the Work. Rather, Artist understands and agrees that the Work is intended to be temporary and the Artist will remove the Work upon conclusion of the display period. Artist waives any rights which the Artist might have in connection with the removal or destruction of the Work under the VARA, as amended, including but not limited to §106A(a) and §113.

**h. Surviving Covenants:** The covenants and obligations set forth in section 1(h) of this Agreement shall survive the termination of the Agreement and 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.

**i. Preparedness:** The Artist is ready, willing, and able to provide the artistic services required by this Agreement.

**j. Industry Standard:** The Artist shall faithfully perform the services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement.

3. **TERM:** The Agreement will commence on the date of the City’s signature (the “Effective Date”) of this Agreement and will expire on _________________ (the “Term”). [Subject to the Manager’s prior written authorization, the Artist shall complete any work in progress as of the expiration date unless earlier terminated by the Manager.]

   **a. [OR Initial Term.** The Agreement will commence on September 1, 2021 and will expire on August 31, 2022 (the “Initial Term.”)

4. **COMPENSATION AND PAYMENT:**

   **a. Fee:** The City shall pay and the Artist shall accept as the sole compensation for services rendered and costs incurred under the Agreement $_________. Amounts billed may not exceed the rates [budget] set forth in Exhibit [B] [OR The Artist agrees to accept, and the City agrees to pay, as full and complete compensation for completion of all the items of work contained in this Agreement a fixed fee of ______________ Dollars ($___________.00), which shall
constitute full compensation for all services and materials whatsoever to be performed and furnished by the Artist under this Agreement. It is agreed that the City has no obligations regarding commission, or any agreements with galleries or agents with whom the Artist may have contracted.

The fee shall be paid in the following installments, subject to receipt by the City of acceptable periodic invoices and supporting documentation from the Artist, each installment to represent full and final payment for all services and materials provided by the Artist prior to the submittal of such periodic invoice for the specific phase of performance:

a. Execution of Contract  
   (5%) $0,000.00

b. Preliminary Design Review  
   (10%) $0,000.00
c. Final Design Review (30%) $ 0,000.00
d. Mid-Point Fabrication (30%) $ 0,000.00
e. Installation (20%) $ 0,000.00
f. Post-Installation (5%) $ 0,000.00
and Final Acceptance

Total Contract Amount Not to Exceed (100%) $ 0,000.00

b. **Reimbursable Expenses:** All of the Artist’s expenses are contained in the rates [budget] [in Exhibit B.]

c. **Invoicing:** Artist shall provide the City with a monthly [milestone] invoice in a format and with a level of detail acceptable to the City including all supporting documentation required by the City. The City’s Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under this Agreement.

d. **Maximum Contract Amount:**

i. Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed __________________ ($_______) (the “Maximum Contract Amount”). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Artist beyond that specifically described in Exhibit A. Any services performed beyond those in Exhibit A are performed at Artist’s risk and without authorization under the Agreement.

ii. The City’s payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

5. **STATUS OF ARTIST:** The Artist is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Artist nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever. [Without limiting the foregoing, the parties
specifically acknowledge that: the Artist is not entitled to unemployment insurance benefits (unless unemployment compensation coverage is provided by the Artist or some other entity besides the City); the Artist is not entitled to workers’ compensation benefits from the City; and the Artist is obligated to pay federal and state income taxes on any monies earned pursuant to this Agreement].

6. **TERMINATION:**

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

   b. Notwithstanding the preceding paragraph, the City may terminate the Agreement if the Artist or any of its officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Artist’s business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

   c. Upon termination of the Agreement, with or without cause, the Artist shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement.

   d. If the Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in the Artist’s possession, custody, or control by whatever method the City deems expedient. The Artist shall deliver all documents in any form that were prepared under the Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and materials are the property of the City. The Artist shall mark all copies of work product that are incomplete at the time of termination “DRAFT-INCOMPLETE”.

7. **EXAMINATION OF RECORDS AND AUDIT:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to
examine, copy and retain copies, at City’s election in paper or electronic form, any pertinent books, documents, papers and records related to 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 Artist to make disclosures in violation of state or federal privacy laws. Artist shall at all times comply with D.R.M.C. 20-276.

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

9. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Artist. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

10. **INSURANCE:**

   a. **General Conditions:** Artist 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. Artist shall keep the required insurance coverage in force at all times during the term of the Agreement, including any extension thereof, during any warranty period and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as “A-VIII” or better. Each policy shall require notification to the City in the event
any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Artist shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City’s contract number. Artist shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Artist. The Artist 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:** Artist may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. Artist certifies that the certificate of insurance attached as Exhibit __, preferably an ACORD form, complies with all insurance requirements of this Agreement. The City requests that the City’s contract number be referenced on the certificate of insurance. The City’s acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Artist’s breach of this Agreement or of any of the City’s rights or remedies under this Agreement. The City’s Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

c. **Additional Insureds:** For commercial general liability, excess/umbrella liability (if required), and auto liability, Artist’s and subcontractor’s insurer shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

d. **Waiver of Subrogation:** For all coverages required under this Agreement, [with the exception of Professional Liability], Artist’s insurer shall waive subrogation rights against the City.
e. **Subcontractors and Sub-consultants:** Artist shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) procure and maintain coverage as approved by the Artist and appropriate to their respective primary business risks considering the nature and scope of services provided.

f. **Workers’ Compensation/Employer’s Liability Insurance:** Artist shall maintain the coverage as required by statute for each work location and shall maintain Employer’s Liability insurance with limits of $100,000 per occurrence for each bodily injury claim, $100,000 per occurrence for each bodily injury caused by disease claim, and $500,000 aggregate for all bodily injuries caused by disease claims.

g. **Commercial General Liability:** Artist shall maintain a Commercial General Liability insurance policy with minimum limits of $1,000,000 for each bodily injury and property damage occurrence, $2,000,000 products and completed operations aggregate (if applicable), and $2,000,000 policy aggregate.

h. **Automobile Liability:** Artist shall maintain Business Automobile Liability with limits of $1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

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

j. **Professional Liability (Errors & Omissions):** Artist shall maintain minimum limits of $1,000,000 per claim and $1,000,000 policy aggregate limit. The policy shall be kept in force, or a Tail policy placed, for three (3) years for all contracts except construction contracts for which the policy or Tail shall be kept in place for eight (8) years.]

11. **DEFENSE AND INDEMNIFICATION**

   a. Artist hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the
City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Artist or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

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

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

d. Artist will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City’s exclusive remedy.

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

f. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.
12. **TAXES, CHARGES AND PENALTIES**: The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City’s prompt payment ordinance D.R.M.C. § 20-107, et seq. The Artist shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

13. **ASSIGNMENT; SUBCONTRACTING**: The Artist shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Manager’s prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and shall be cause for termination of this Agreement by the City. The Manager has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Artist shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign.

14. **INUREMENT**: The rights and obligations of the parties to the Agreement inure to the benefit of and shall be binding upon the parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

15. **NO THIRD PARTY BENEFICIARY**: Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Artist receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

16. **NO AUTHORITY TO BIND CITY TO CONTRACTS**: The Artist lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City’s Charter and the Denver Revised Municipal Code.

17. **SEVERABILITY**: Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable,
the validity of the remaining portions or provisions will not be affected, if the intent of the parties can be fulfilled.

18. **CONFLICT OF INTEREST:**

   **a.** No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement; and the Artist shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City’s Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

   **b.** The Artist shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Artist represents that it has disclosed any and all current or potential conflicts of interest, including transactions, activities or conduct that would affect the judgment, actions or work of the Artist by placing the Artist’s own interests, or the interests of any party with whom the Artist has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given the Artist written notice describing the conflict.

19. **NOTICES:** All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Artist at the address first above written, and if to the City at:

   Manager of the Department of Transportation and Infrastructure or Designee
   201 West Colfax Avenue, Dept. 608
   Denver, Colorado 80202

   With a copy of any such notice to:

   Denver Arts and Venues
   1345 Champa Street
   Denver, Colorado 80202

   Denver City Attorney’s Office
   1437 Bannock St., Room 353
   Denver, Colorado 80202
Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

20. **NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:**

   a. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”).

   b. The Artist certifies that:

      i. At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

      ii. It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

   c. The Artist also agrees and represents that:

      i. It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

      ii. It shall not enter into a contract with a sub-consultant or subcontractor that fails to certify to the Artist that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

      iii. It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in either the E-Verify Program.

      iv. It is prohibited from using either the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Artist to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
v. If it obtains actual knowledge that a sub-consultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such sub-consultant or subcontractor and the City within three (3) days. The Artist will also then terminate such sub-consultant or subcontractor if within three (3) days after such notice the sub-consultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the sub-consultant or subcontractor provides information to establish that the sub-consultant or subcontractor has not knowingly employed or contracted with an illegal alien.

vi. It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

d. The Artist is liable for any violations as provided in the Certification Ordinance. If Artist violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Artist shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Artist from submitting bids or proposals for future contracts with the City.

21. DISPUTES: All disputes between the City and Artist arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Manager as defined in this Agreement.

22. GOVERNING LAW; VENUE: The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District.
23. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under the Agreement, the Artist may not refuse to hire, discharge, promote or demote, or 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. The Artist shall insert the foregoing provision in all subcontracts.

24. **COMPLIANCE WITH ALL LAWS:**
   
   **a.** Artist shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

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

   **i.** Equal Employment Opportunity Compliance: Artist agrees to comply with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60);

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

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

   **iv.** Contract Work Hours and Safety Standards: Artist agrees to comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5);
v. Rights to Inventions Made Under a Contract or Agreement: Artist agrees to comply with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency;

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

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

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

ix. Byrd Anti-Lobbying: If the Maximum Contract Amount exceeds $100,000, the Artist must complete and submit to the City a required certification form provided by the City certifying that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress in connection with obtaining any Federal contract grant of any other award covered by 31 U.S.C. 1352. Artist must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.
25. **PAYMENT OF CITY MINIMUM WAGE**: Artist shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City’s Minimum Wage Ordinance, Sections 20-82 through 20-84 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, Artist expressly acknowledges that Artist is aware of the requirements of the City’s Minimum Wage Ordinance and that any failure by 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.

26. **LEGAL AUTHORITY**: Artist represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Artist represents and warrants that he has been fully authorized by Artist to execute the Agreement on behalf of Artist and to validly and legally bind Artist to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Artist or the person signing the Agreement to enter into the Agreement.

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

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

29. **INTELLECTUAL PROPERTY RIGHTS**: Artist understands and agrees that given the temporary nature of the Work, the Visual Artists Rights Act of 1990, 17 U.S.C. §101 et. seq., as amended (“VARA”) and any rights accruing thereunder do not apply to the Work. However, to the extent VARA is applicable, Artist, as to his, her, or its rights in the Work, the provisions of this Agreement shall supersede the provisions of VARA, 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 and agrees that the Work is intended to be temporary and will be un-installed upon conclusion of the display period. To the extent VARA applies, Artist retains: (i) all other right, title and interest in the Work including all copyrights, but expressly excluding any rights in the Work under VARA, 17 U.S.C. §101 et. seq., as amended, including but not limited to §106A(a) and §113, 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, 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 on 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 for advertising brochures, media publicity, catalogues or similar publications.

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

31. **SURVIVAL OF CERTAIN PROVISIONS:** The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Artist’s obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

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

33. **CITY EXECUTION OF AGREEMENT:** The Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

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

35. **USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** The Artist shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in contract personnel being barred from City facilities and from participating in City operations.
36. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS**: Artist consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

37. **[OR COUNTERPARTS OF THE AGREEMENT]**: The Agreement may be executed in counterparts, each of which is an original and constitute the same instrument.]

*Remainder of page left intentionally blank.*

*Signatures follow.*
THE PARTIES have executed this Agreement as of ____________________.

ATTEST:

By: ___________________________________
   Clerk and Recorder, Ex-Officio Clerk of
   the City and County of Denver

CITY AND COUNTY OF DENVER:

By: ___________________________________
   Mayor

REGISTERED AND COUNTERSIGNED:

By: ___________________________________
   Manager of Finance

By: ___________________________________
   Auditor

“CITY”

APPROVED AS TO FORM:
Attorney for the City and County of Denver

By: ___________________________________
   Assistant City Attorney
ATTEST: [If required by Corporate procedures]

By: ________________________________
Name: ________________________________
(please print)
Title: ________________________________

“ARTIST”

By: ________________________________
Title: ________________________________