



**Request for Proposals:**

**Integrated Content Marketing & Creative Services**

**Issued: October 3, 2024**

**Proposal Submission Deadline: October 24, 2024 at Noon MT**

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**SECTION I: GENERAL INFORMATION AND BACKGROUND****RFP Summary**

The Denver Preschool Program (DPP) is soliciting professional Integrated Content Marketing and Creative Services from qualified firms or agencies with expertise working with mission-driven organizations, and experience with content strategy, design, and execution. DPP uses content marketing and creative deliverables to educate audiences, increase organizational awareness, grow the organizational reputation, and increase engagement and participation in DPP content and programming.

As a learning organization, DPP strives to be nimble and innovative in improving its programs. DPP is informed by its own data, the latest early learning research, policy changes, input from partner organizations and feedback from participating preschools, families and students themselves. DPP is interested in learning about the impact of its work in the community. As such, the awarded contractor will continuously utilize Key Performance Indicators (KPIs) and similar metrics and data to improve and inform marketing strategies.

**Purpose**

This RFP provides prospective contractors with sufficient information to prepare and submit proposals for consideration to satisfy the need for expert assistance as outlined in this RFP.

All submissions will be treated equally and evaluated and scored accordingly.

**Background**

Since 2006, Denver Preschool Program (DPP) has been helping Denver families find and pay for quality preschool. A non-profit organization, DPP is the designated administrator of Denver's .15 percent sales tax. These funds are specifically dedicated to supporting high-quality preschool education for all Denver families, regardless of household income. Initially approved by Denver voters in 2006, the tax was reauthorized and expanded in 2014. In 2023, Denver voters approved making the sales tax permanent, ensuring continued support for preschool education in the City.

DPP provides Denver families with 4-year-old and qualifying 3-year-old children with tuition credits for preschool and provides quality improvement funds for participating preschool providers. Approximately 268 licensed preschool providers host nearly 750 DPP classrooms in the City and County of Denver and adjacent cities.

Denver Preschool Program participants receive tuition credits on a sliding scale based on family income, household size, length of the day attending preschool, and the Colorado Shines quality rating of the chosen provider. The program is open and voluntary for all Denver 4-year-olds in their last year of preschool prior to kindergarten, qualifying 3-year-olds prioritizing families experiencing financial hardship, and includes all the licensed preschool providers that contract with DPP and agree to participate in a quality improvement system.

To date, the DPP has provided approximately \$185 million in tuition credits and provided approximately \$5.1 million in scholarships to families and \$29.6 million in quality improvement funds to providers, has enrolled approximately 73,000 children, and currently serves nearly 5,000 children annually.

DPP is a non-profit organization governed by a Board of Directors appointed by the Mayor of Denver and comprised of citizens with experience managing businesses, non-profits and public programs.

## **SECTION II: ADMINISTRATIVE INFORMATION**

### **Contract Duration**

The term of the resulting contract is for a period commencing January 1, 2025 and ending on August 31, 2027. DPP, at its sole option, shall have the unilateral right to extend the contract for up to two (2) additional, successive one-year terms commencing on September 1, 2027.

The Denver Preschool Program shall also have the unilateral right to terminate the contract at any time if any awarded contractor is not meeting their contract obligations. Any awarded contractor would receive a notice of corrections and have the opportunity to implement the corrections before the Denver Preschool Program would consider terminating the contract.

### **Lead Officer**

The sole point of contact for purposes of this RFP before awarding of any contract is the Denver Preschool Program:

Irene Bonham  
Vice President of Communications  
305 Park Avenue West, Suite B  
Denver, CO 80205  
[irene@dpp.org](mailto:irene@dpp.org)

### **Response Options**

The Denver Preschool Program seeks to contract with the most qualified and capable contractor for this described work. As such, DPP will accept the following RFP responses to the Project described in Section V: Scope of Work/Requirements as a single entity or Partnership.

DPP reserves the right to contract with each entity working on any project, rather than allow subcontracting of individual projects. This means that if two entities apply together as a partnership, DPP will enter into separate contracts for each project with the entity that will complete the work. DPP also reserves the right to contract with one or all members of a proposed partnership for a specific project or projects.

The Denver Preschool Program is always interested in working with new and varied organizations. Interested parties are encouraged to explore ways that partnering with another individual or organization may bring new players into the local early childhood environment and, in so doing, contribute to a stronger marketing, communications, and outreach team.

Responses will be evaluated based on their capabilities. Therefore, it is possible that potential Offerors may be asked to partner with other contractors to ensure the best results for DPP.

**Contract Budget**

The estimated total maximum not to exceed budget for the initial duration of this contract commencing January 1, 2025 through August 31, 2027 is \$400,000. The annual estimated budget allocation for this project is as follows:

January 1, 2025 – December 31, 2025: \$150,000

January 1, 2026 – December 31, 2026: \$150,000

January 1, 2027 – August 31, 2027: \$100,000

The annual scope of work may expand or reduce based on the available revenue, programmatic changes and the needs of DPP.

Prospective contractors should ensure that proposals are aligned to these budget estimates. As noted in **Section VII: Evaluation and Award**, proposals can receive up to 20 points for the Value of Budget/Proposed Cost. Offerors are encouraged to submit a budget that will provide the highest quality services with the lowest possible cost.

**Inquiries**

Unless otherwise noted, prospective contractors may make email inquiries concerning this RFP to obtain clarification of requirements. All responses will be posted in the “Jobs” section of the DPP website at <https://dpp.org/jobs> no later than the date specified in **Section III: Proposal Schedule**. No inquiries will be accepted after the date and time indicated in **Section III: Proposal Schedule**. E-mail all inquiries to [irene@dpp.org](mailto:irene@dpp.org).

**Pre-Proposal Conference**

A Pre-Proposal Conference will be held on Wednesday, October 9, 2024, from 10 to 11 a.m. Mountain Time via Zoom. Participation in the Conference is not mandatory, but all interested Offerors are encouraged to take part to better facilitate the preparation of their proposals.

Please RSVP by Noon Mountain Time on Monday, October 7, 2024 for the Pre-Proposal Conference by emailing [irene@dpp.org](mailto:irene@dpp.org).

**Oral Presentations**

Offerors may be invited to make oral presentations. These presentations must be presented verbally as well as in writing. Written materials will become part of the Offeror’s proposal and are binding if the contract is awarded. The Lead Officer will notify Offerors of the time and place of oral presentations.

**Mandatory Contractual Terms**

By submitting an offer in response to this RFP, an Offeror, if selected for award of this contract, shall be deemed to have accepted the terms of this RFP as well as the terms laid out below.

- **Data Management:**  
The Offeror shall maintain that all data collected under this contract is the property of DPP and that no data can be used or transmitted for any purpose without DPP’s prior and written approval.
- **Employer’s Liability Insurance:**  
The Offeror shall maintain Employer’s Liability Insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

- General Liability Insurance:  
The Offeror shall maintain limits of \$1,000,000 for each occurrence claim, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations for each occurrence, and \$2,000,000 policy aggregate. The Denver Preschool Program and the City of Denver must be named as additionally insured on the firm’s liability insurance.
- Worker’s Compensation:  
The Offeror shall maintain coverage as required by statute for each of its business locations.
- Audit Requirements:  
Each year the Denver Preschool Program is required to participate in an independent financial audit of our program. As a contractor to the Program, the selected contractor will be required to have their Denver Preschool Program-related operations participate in this audit process. Denver Preschool Program may also conduct on-site audits of files.

**SECTION III: PROPOSAL SCHEDULE**

RFP Issued:	October 3, 2024
RSVP for Pre-Proposal Conference:	October 7, 2024 at Noon MT
Pre-Proposal Conference:	October 9, 2024 at 11 am MT
Deadline for Inquiries:	October 16, 2024 at Noon MT
Final Responses to Questions Posted:	October 18, 2024
Proposal Submission Deadline:	October 24, 2024 at Noon MT
Oral Presentations (if needed):	November 4-5, 2024
Contract(s) Awarded:	November 8, 2024
Contract Negotiation Period:	November 11-15, 2024
Services Launch:	January 1, 2025

Offeror must submit one proposal in pdf format via email. The pdf should be labeled with the agency/firm name, and the subject line should include “proposal for Integrated Content Marketing and Creative Services. Proposals must be received by the Denver Preschool Program via email to [irene@dpp.org](mailto:irene@dpp.org) no later than Noon Mountain Time on October 24, 2024 in order to be considered.

Requests for extension of this date or time will not be granted. Proposals received after the due date and time will not be considered. Proposals may not be submitted in person, by courier or delivery, or by fax. Incomplete proposals will not be considered.

**SECTION IV: SCOPE OF WORK / REQUIREMENTS**

DPP is seeking an experienced contractor or agency to provide Integrated Content Marketing and Creative Services. The selected partner will support our organization in enhancing our digital presence, aligning creative deliverables with our brand identity, and engaging key audiences through strategic content marketing, organic social media management, website content development, graphic design, SEO optimization, and multilingual support. This partnership will play a critical role in advancing our mission by creating cohesive, compelling content across platforms and driving measurable results. This partnership will serve as an extension of DPP's communications team, and will collaborate closely with internal staff and other DPP contractors.

**Key Contractor Responsibilities:**

1. Content Marketing Strategy and Execution
  - a. Audit existing content and collateral and make strategic recommendations for updates and changes.
  - b. Develop new content for collateral, such as flyers, brochures, etc., as needed.
  - c. Develop and execute a content marketing strategy to enhance brand visibility and drive engagement across owned digital platforms and social media.
  - d. Create and manage a content calendar for blogs, email newsletters, and other relevant channels.
  - e. Conduct audience analysis to recommend content types that resonate with target audiences.
  - f. Write and edit compelling content for digital and print mediums that align with organizational goals and messaging.
  - g. Ensure content is consistent with brand guidelines and supports organizational voice and tone.
2. Website Content Development and SEO Optimization
  - a. Audit existing website content for consistency with brand messaging and identify opportunities for improvement.
  - b. Develop new and/or update website content, including landing pages, blogs, newsletter articles, and resource sections.
  - c. Implement SEO best practices to improve organic search rankings, including keyword research, meta descriptions, alt text, and SEO audits.
  - d. Provide recommendations for ongoing website content optimization based on performance data and trends.
  - e. Source or create compelling imagery or graphics to accompany content.
3. Search Engine Optimization (SEO) Support
  - a. Conduct ongoing SEO audits of the website and identify opportunities for improvement.
  - b. Implement SEO strategies for new and existing content to maximize visibility and performance.
  - c. Create and optimize meta descriptions, title tags, and headers.
  - d. Provide insights and recommendations for continual optimization based on performance.
4. Organic Social Media Management
  - a. Develop and execute an organic social media strategy that aligns with content

- marketing goals and drives engagement across key platforms.
- b. Create, schedule, and publish social media posts that align with the content calendar.
  - c. Monitor social media performance, provide analytics reports, and make recommendations for optimization.
  - d. Engage with social media communities by responding to comments, messages, and inquiries in a timely and brand-appropriate manner.
  - e. Engage in social listening and monitor social media channels for any concerning content or emerging issues (e.g., negative comments, misinformation, and reputational risks) and promptly alert appropriate DPP staff to address these issues as necessary.
5. Brand Alignment and Creative Concepting
- a. Collaborate with internal teams to ensure all creative and content deliverables align with the organization's evolving brand identity.
  - b. Develop creative concepts that reflect brand values and resonate with target audiences.
  - c. Conduct periodic reviews of branding materials to ensure consistency across all platforms and touchpoints.
6. Graphic Design and Creative Services
- a. Provide graphic design support for digital content including social media graphics, email templates, infographics, and website visuals.
  - b. Provide graphic design for printed reports, such as annual reports or other critical organizational materials.
  - c. Develop printed materials such as brochures, flyers, and event collateral.
  - d. Ensure all creative assets are consistent with the organization's brand guidelines and maintain a cohesive visual identity.
  - e. Offer creative direction and design concepts for strategic initiatives.
7. Multilingual and Localized Content Support
- a. If applicable, create localized or multilingual content to serve diverse linguistic communities.
  - b. Provide recommendations for content localization or translation services for key languages.
8. Project Management and Collaboration
- a. Use project management tools (e.g., Google Suite, Asana, Trello, Basecamp, etc.) to ensure transparency, collaboration, and timely delivery of all services.
  - b. Maintain a comprehensive editorial calendar to track and schedule content across all platforms, ensuring alignment with marketing/communications strategies and key organizational priorities.
  - c. Ensure clear communication with internal teams, keeping all stakeholders informed and aligned across cross-functional projects.
  - d. Collaborate with other DPP contractors (e.g., PR, advertising, and media buying agencies) on communications efforts to ensure consistent messaging and alignment with broader marketing and outreach strategies.
  - e. Participate in regular status meetings and provide progress updates as needed.
9. Data Analysis and Reporting
- a. In collaboration with the VP of Communications, develop Key Performance



Indicators (KPIs) and benchmarks to measure the effectiveness of content marketing, social media efforts, SEO, and creative services.

- b. Provide regular analysis of content performance, website analytics, and social media engagement to assess the effectiveness of campaigns.
- c. Collaborate with internal teams to set measurable KPIs for content and creative services.
- d. Provide monthly or quarterly reports that include insights, recommendations, and next steps to optimize performance and drive long-term success.

### **Oversight**

The awarded contractor for Integrated Content Marketing and Creative Services will provide reports to and be overseen directly by Irene Bonham, Vice President of Communications.

## **SECTION V: RESPONSE REQUIREMENTS**

Offerors responding to this RFP should submit a proposal organized into the following sections. Proposals should be clear and concise, with a total length of 10 to 15 pages (excluding attachments such as work samples and references).

### **Formatting Requirements:**

- Proposals should be written in a sans serif font (e.g., Arial, Helvetica) with standard formatting (12-point font size, 1-inch margins).
- Submit proposals in PDF format.

### **Required Components and Suggested Page Counts:**

1. Executive Summary (1 page): Provide a brief summary of the Offeror's qualifications, approach, and understanding of the scope of work. Highlight how your proposed services align with DPP's goals and mission.
2. Company Overview (1 page): Offer a succinct description of your company or agency, including years of experience, areas of expertise, and relevant experience in providing content marketing and creative services for mission-driven organizations. If your company qualifies as a minority or women-owned business or disadvantaged business enterprise, please include that information here, as well as the location of your company.
3. Approach and Methodology (2-3 pages): Detail your approach to fulfilling the scope of work, covering key areas such as:
  - Content marketing and strategy
  - Social media management, including monitoring and reporting
  - SEO optimization
  - Website content development
  - Graphic design
  - Multilingual content development and inclusivity
  - Include how you will collaborate with DPP staff and other contractors, and outline tools or processes for managing an editorial calendar.
4. Experience and Case Studies (2-3 pages): Provide examples of relevant projects you've worked on, with a focus on content marketing, creative services, and SEO. Include 1-2

brief case studies, emphasizing measurable results (e.g., increased engagement, audience growth, improved search rankings).

5. Key Performance Indicators (KPIs) and Performance Measurement (1 page): Explain how you will work with DPP to develop and track KPIs and benchmarks to assess the success of content marketing, social media, and SEO efforts. Describe the metrics you will use to measure progress and provide actionable insights.
6. Team Structure and Expertise (1-2 pages): Introduce the key team members who will be assigned to the project. Include brief bios that highlight their relevant experience and expertise in content marketing, SEO, social media, and creative services.
7. Budget and Pricing Proposal (1 page): Provide a detailed budget, outlining costs associated with each area of the scope of work. Specify whether the pricing is hourly, project-based, or retainer-based, and clarify any additional costs (e.g., for special projects, production, or extra services).
8. Project Timeline and Workflow (1 page): Outline your preferred timeline and workflow for managing projects related to the scope of work, understanding that DPP will influence the final schedule. Describe how you will collaborate with DPP to establish a mutually agreeable timeline.
  - Proposed Workflow: Describe your project management process, emphasizing collaboration and feedback integration.
  - Flexibility and Key Milestones: Highlight your adaptability to client needs and outline significant milestones, such as kickoff meetings or review periods.
  - Include a sample timeline for a project of your choosing indicating expected deliverables and key milestones.
9. References (1 page): List 2-3 references from clients with whom you have completed similar work. Include contact information and a brief description of the projects you completed for these clients.
10. Sample Work/Portfolio (1-2 pages): Provide a portfolio or samples of previous work related to content marketing, social media, SEO, and creative services. Offerors may include links to live examples or include visual samples with brief descriptions.

In addition to the above components, each Offeror must submit the following attachments, which do not count against the page count limitations. These documents should be combined with the proposal to submit a single pdf file:

1. Vendor's Certification Page (Attachment A): The Offeror MUST sign the Request for Proposal Vendor's Certificate Page. The individual signing on behalf of the Offeror MUST be the Vendor (if the Vendor is an individual or sole proprietor) or an officer, manager, partner or other person legally authorized to bind the Offeror to their proposal.
2. Contract Terms Acceptance (Attachment B): A statement that the Offeror will, in substance, accept the terms of the DPP contract included with the proposal. Comments, or requests for changes with regard to the contract terms and conditions must be

included with the proposal. The willingness or ability of DPP to accept or negotiate such suggested changes will be considered on a case-by-case basis. If a proposal contains requests for contract modifications, the decision to reject, accept, or further negotiate requested changes will be at DPP's discretion. IF YOUR COMPANY NORMALLY SEEKS LEGAL REVIEW OF CONTRACT TERMS, THIS PROCESS SHOULD OCCUR PRIOR TO PROPOSAL SUBMISSION.

3. Price Guarantee: A statement that any submitted response and costs will remain valid for one hundred eighty (180) days after the proposal due date or until the contract is executed, whichever comes first.
4. Catastrophic Event Assurance: The Denver Preschool Program requires assurance of consistent service in the event of catastrophic events. Given these considerations, please describe how your firm's size is an asset to the DPP. Conversely, what are the risks to the DPP of working with an organization the size of your firm, and how will you manage those risks? Please describe your firm's contingency plan surrounding unplanned loss of key staff.

#### Submission Instructions:

- The total length of the proposal should be no more than 15 pages.
- Portfolios, case studies, and references should be integrated into the document and included within the page limit.
- Proposals must be submitted in PDF format. The file should be named to include the contractor's business name.
- Proposals must be submitted via email to [irene@dpp.org](mailto:irene@dpp.org) by Noon MT on October 24, 2024.
- The email's subject should include "Proposal for Integrated Content Marketing and Creative Services."
- Late submissions will not be accepted, and submissions that do not follow the submission requirements will not be considered.

### **SECTION VI: EVALUATION AND AWARD**

Offerors will be awarded based on proposals most advantageous to the Denver Preschool Program, considering the evaluation factors outlined in this section.

The following criteria will be used in screening, ranking, and the final selection of the chosen Evaluator:

Criteria	Maximum Points
MBE/WBE/DBE Certification	Pass/Fail rating
Experience and Qualifications	20
Proposed Approach and Methodology	20
Budget and Value	20
Team Expertise	15
Creativity and Innovation	10
Project Timeline and Workflow	10
Alignment with DPP Mission	5
<b>TOTAL</b>	<b>100</b>

Proposals will be subjected to a multi-stage evaluation and selection process.

### **Stage One – Proposal review**

The first stage will begin with a review of the response to the RFP.

Proposals not meeting mandatory or minimum requirements will not be considered. Incomplete proposals may not be considered. Proposals not deemed within the competitive range will not be considered. The Denver Preschool Program may disqualify any Offeror for any reason without explanation.

1. The Denver Preschool Program may choose to ask clarification questions in writing and include the additional information gathered in this process.
2. Evaluation and rating of the responses will be based on:
  - a) Information provided by the Offeror in their response
  - b) Information provided by the Offeror in response to Denver Preschool Program clarification questions
  - c) Total cost to the Denver Preschool Program
  - d) Organization and completeness of response to expedite evaluation

A short list of proposals will move into the next stage of the evaluation.

**Stage Two-** may consist of an on-site demonstration or presentations, by the Offeror, to allow the Denver Preschool Program learn more. The Denver Preschool Program may (at the evaluation committee's sole discretion) request an oral presentation of proposals in the competitive range (those most responsive to the requirements and reasonably susceptible of being selected for award). Presentations and site visits will be at the Offeror's expense.

The Denver Preschool Program will schedule these presentations for the purposes of:

- Allowing the Offeror an opportunity to present its proposal to the evaluation committee;
- Allowing the Offeror an opportunity to demonstrate its background and capabilities in providing the requested services;
- Allowing the Denver Preschool Program an opportunity to obtain further clarification of proposal aspects and attempt to resolve any uncertainties;
- Resolving suspected mistakes by calling such perceived errors to Offeror's attention without disclosing information concerning other Offerors' proposals; and
- Allowing the Denver Preschool Program an opportunity to ask specific questions of the Offeror regarding its proposal.

### **Stage Three – References**

References may be checked to address issues raised during the demonstrations, interviews, and trial period or to answer detail questions not yet resolved.

**Stage four - Best and Final Offer**

The Denver Preschool Program may, at its sole option, either accept an Offeror's initial proposal by award of a contract or enter into discussions with Offeror(s) whose proposal(s) are likely to be considered for award. The Denver Preschool Program will not disclose any pricing information from competing Offerors' proposals.

The Denver Preschool Program may invite Offeror(s) to submit a "Best and Final Offer" to the Denver Preschool Program for consideration. Best and Final Offers will be made at the Offerors' expense. After receipt and review of the Best and Final Offers, the Denver Preschool Program will determine the successful Offeror.

***Offerors should prepare the written proposal without the assumption that an opportunity for a Best and Final Offer will be made available, and their most favorable proposal should be submitted as their initial written submittal.***

**SECTION VII: SPECIAL CONSIDERATIONS**

1. The RFP does not commit the Denver Preschool Program to procure or award a contract for all or any portion of the scope of work described.
2. The Denver Preschool Program reserves the right to negotiate the contract terms related to payment, scope of work, staffing, timeline and performance of the work tasks, including the right to award based on the response to the most qualified Offeror.
3. The Denver Preschool Program remains the sole owner of all data collected under this contract.
4. The Denver Preschool Program reserves the right to reasonably request additional information or clarification of information provided in the RFP without changing the terms of the RFP.
5. Offerors shall respond to the RFP at their own expense.
6. The proposal must be signed by a person authorized to sign on behalf of the contractor and to bind the Offeror to the statements made in their response to this RFP.
7. Documents submitted pursuant to this RFP will be subject to the Colorado Open Records Act, C.R.S. 24-72-201, et. Seq. Information clearly marked as confidential and proprietary will be kept confidential by Denver Preschool Program, unless otherwise provided by law. The Colorado Open Records Act provides that "Trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data furnished by any person" to a state agency will not be produced in response to an open records request. The Submitter shall be the entity responsible for defending against Colorado Open Records Act disclosures for any records claimed by the Submitter to be confidential and proprietary.

**SECTION VIII: RFP TERMS AND CONDITIONS**

1. **Offeror Agreement.** By submitting a proposal, the Offeror agrees to all provisions of the RFP. Any request for deviations from or exceptions to the technical requirements, data requirements, or terms and conditions of the Request for Proposal must be explained in detail on Offeror's letterhead and included in the proposal response.
2. **Response Requirements.** Proposal responses must include all of the information requested. The DPP may reject proposals that do not provide all information necessary for a complete understanding of the proposal or fail to answer all questions adequately.
3. **Errors and Waivers.** The DPP reserves the right to waive any technical or formal errors or omissions, and to accept or reject in part or in whole any or all proposals submitted.
4. **Price and Term Guaranties.** The successful Offeror(s) guarantees that prices will not increase during the initial term of the contract that results from the award. After the initial contract term, Offeror may request price increases in accordance with the terms of the contract. As a general rule, the terms of the contract will require that (i) the Offeror notify the DPP within a specified period of time before the expiration of the contract of its intent to increase prices and of the amount or rate of the price increase; (ii) the Offeror substantiate any increases, and (iii) the increase cannot exceed a specified cap.
5. **Modification or Withdrawal of Proposals.** Offerors may withdraw or modify their proposals prior to the Proposal Deadline.
6. **Addendum to RFP.** In the event that it becomes necessary to supplement or modify this RFP, DPP will issue an addendum. Offerors are responsible for reviewing the addenda and updating their proposals in response to such addenda.
7. **Notice of Errors in RFP.** If a Offeror becomes aware of an error or omission in this RFP, then such Offeror will promptly notify the Lead Officer via email on or before seventy-two hours prior to the Proposal Deadline.
8. **Acceptance of RFP Terms.** By submitting a proposal in response to this RFP, each Offeror acknowledges and accepts that such proposal constitutes a binding offer in accordance with the terms and conditions of this RFP. Each proposal MUST be signed by the Offeror or by the Offeror's authorized representative.
9. **Confidential/Proprietary Information.** The DPP is a public entity whose records are subject to public inspection in accordance with the Colorado Open Records Act, C.R.S. §§ 24-72-200.1 et seq. ("CORA"). Once the DPP awards a contract, then all proposals, whether successful or not, will become public records subject to public inspection in accordance with CORA. For these reasons, the DPP requests that Offerors DO NOT submit in their proposals information that they consider trade secrets, or otherwise confidential or sensitive commercial, financial, personal, or security-related ("Confidential Information") except as absolutely necessary to respond to the RFP. In the event of a CORA request or other legal process compelling disclosure, the DPP will comply with its legal obligations. The DPP will determine, in its sole discretion, what its legal obligations are.

10. Pricing. Estimated proposal prices are not acceptable. Proposal prices will be considered a Offeror's best and final offer, unless otherwise stated in the RFP. Offerors will guarantee proposal contents and fees for a period of 180 days from the proposal date. The unit price for each item will be for the unit of measurement specified. All trade discounts and terms of payment must be reflected within the unit price.
11. Selection of Proposal. As described within the RFP, the DPP will review proposals in accordance with the Evaluation Criteria and make a recommendation for award to the responsible Offeror(s) whose proposal is determined to be most advantageous to the DPP, in the DPP's sole discretion.
12. Award of Contract(s). Except as otherwise provided in this RFP, the successful Offeror(s) will sign the DPP contract. In the event the parties are unable to enter into a contract, the DPP, in its sole discretion, may cancel the award or make the award to the next most responsible Offeror.
13. Multiple Awards. The DPP reserves the right to award this RFP in part, to multiple Offerors, if so determined by the DPP to be in the best interests of the DPP.
14. DPP Contract. The DPP contract is included with this RFP as **Attachment B – DPP Sample Contract**. The Offeror or Offerors receiving and accepting an award or awards under this RFP are expected to execute a contract on the DPP's template contract form with terms and conditions substantially as set forth the Attachment. The DPP may update its template contract forms from time to time, even after the issuance of this RFP. If a Offeror desires to propose modifications to the DPP contract, DPP, in its sole discretion, may accept, reject, or further negotiate Offeror modifications to the DPP contract. **Offerors are encouraged to conduct their legal review of the DPP's contract prior to submitting a response to this RFP.** Except as identified in its proposal, Offeror's signature on the Offeror Certification constitutes an agreement that the Offeror will accept the DPP contract terms and conditions substantially as set forth in the Attachment.
15. Incorporation into DPP Contract. Any statements, attachments, or exhibits submitted as part of the successful proposal may be incorporated into and made a part of the DPP contract.
16. Acceptance of Proposal Content. The contents of the Offeror's proposal to the RFP (including persons specified to implement any project) will become contractual obligations if the Offeror is selected for an award of contract. Failure of the successful Offeror to accept these obligations in a contract, purchase order, or similar authorized acquisition document may result in cancellation of the award and such Offeror may be ineligible for consideration in future solicitations.
17. RFP Cancellation. The DPP reserves the right to cancel this RFP at any time, without penalty.
18. DPP Ownership of Proposals. Proposals will become the property of the DPP after the Proposal Deadline.
19. Incurring Costs. The DPP is not liable for any cost incurred by Offerors prior to issuance of a legally executed contract, purchase order, or other authorized acquisition document. Offeror has no property interest, of any nature, in the

subject matter of this RFP, any award, or a contract until a contract signed by the authorized representatives of the Offeror and the DPP.

20. Non-Discrimination. The Offeror shall comply with all applicable State and Federal laws, rules and regulations, and DPP policies, prohibiting discrimination, intimidation, or harassment on the basis of ethnicity or race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, genetic information, age, veteran status, or disability.
21. Criminal Record Verification. The Offeror will be required to complete a criminal record check on itself (if Offeror is an individual) and any employee, subcontractor, or other agent of Offeror providing services under the DPP contract on DPP property. The Offeror (if the Offeror is an individual) and employees, subcontractors or other agents of Offeror who have been convicted of, pled nolo contendere to, or received a deferred sentence or deferred prosecution for a felony, or a misdemeanor crime involving unlawful sexual behavior or unlawful behavior involving children, will not be allowed to work on DPP property for this contract. The Offeror may be required to complete the DPP's Criminal Records Check Certification. Offeror shall adhere to any Federal, State, and Local privacy and confidentiality requirements.
22. Information and Data Security. The Vendor shall comply with the Colorado Consumer Data Privacy Act, as codified in CRS § 6-1-713, 713.5, and elsewhere as applicable.



**ATTACHMENT A: Offeror's Certification Page**

Request for Proposal Integrated Content Marketing and Creative Services

I, on behalf of the proposer identified below, hereby certify that I have read a copy of the sample contract attached to the RFP and understand the terms and provisions contained in that contract. I further hereby certify that it is the proposer's intent to comply with each and every term and provision contained in the sample contract and propose no modifications to the sample contract except as follows:

- 1) \_\_\_\_\_
- 2) \_\_\_\_\_
- 3) \_\_\_\_\_

I understand that the modification stated above, if any, are offered for discussion purposes only and that the Denver Preschool Program reserves the right to accept, reject or further negotiate any and all proposed modification to the sample contract.

Company Name: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

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

**ATTACHMENT B: Sample DPP Contract****AGREEMENT**

**THIS AGREEMENT** (the “**Agreement**”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ between **DENVER PRESCHOOL PROGRAM, INC.**, a Colorado non-profit corporation, whose address is 305 Park Avenue West, Suite B, Denver, CO 80205, hereinafter referred to as the “**DPP**”, and \_\_\_\_\_, a [type of entity], with an address of \_\_\_\_\_ (the “**Contractor**”).

**WITNESSETH**

**WHEREAS**, DPP desires to contract with the Contractor to provide \_\_\_\_\_ services described in the Scope of Work, a copy of which is attached hereto as **Exhibit A** and incorporated into this Agreement, and DPP desires to contract with the Contractor for the performance of such services as an independent contractor; and

**NOW, THEREFORE**, in consideration of the mutual agreements herein contained, and subject to the terms and conditions herein stated, the parties agree as follows:

1. **SERVICES TO BE PROVIDED:** The Contractor shall, as directed by the DPP Chief Executive Officer (the “CEO”) or the CEO’s Designee, provide comprehensive services as more particularly described in the Scope of Work, a copy of which is attached hereto as **Exhibit A**.
2. **SUBCONTRACTORS:** Contractor agrees to receive prior written approval from DPP if using any Sub-contractors to complete any portion of the services contemplated by the Scope of Work. Any such approved subcontracting shall be subject to the provisions of Paragraph 17.
3. **DPP REPRESENTATIVE; ESSENTIAL PERSONNEL:**
  - A. **Coordination and Liaison.** The Contractor agrees that during the term of this Agreement it shall fully coordinate all services hereunder with DPP. The CEO or the CEO’s designee is DPP’s representative under this Agreement through

whom contractual services performed under this Agreement shall be coordinated.

B. Contractor's Representative. The Contractor designates \_\_\_\_\_ as the Project Manager and primary contact for the Contractor who will assume the primary responsibility to oversee on behalf of the Contractor the services to be performed under this Agreement. Any change in the Project Manager shall be subject to DPP's prior written approval. Upon written request from DPP, the Contractor shall use reasonable efforts to substitute a different Project Manager.

#### 4. **TERM OF AGREEMENT:**

A. The term of this Agreement is effective \_\_\_\_\_ until \_\_\_\_\_ ("Term") unless sooner terminated as provided under this Agreement. DPP has \_\_\_ options to extend the term of the Agreement for \_\_\_ year each ("Extended Term"). DPP may elect to exercise its option to extend the Agreement by providing Contractor with written notice to extend prior to the end of the Term or Extended Term. Prior to the commencement of each Extended Term, the parties shall use commercially reasonable efforts to agree in writing to the maximum contract amount and budget for that Extended Term. This contract can be continued after the expiration of the after the expiration of the Term, and any Extended Term if applicable, only upon written agreement by both parties.

#### 5. **PAYMENT:**

A. DPP shall pay to Contractor an annual amount not to exceed \$\_\_\_\_\_ (the "**Contract Amount**") during the Term of this Agreement. This amount may vary up to the maximum amount according to a modified Scope of Work which may be modified from time to time by DPP based on the amount of tax receipts received by DPP, and the amount budgeted for the approved scope of work by DPP Board of Directors. Except for any Special Costs, if applicable and noted in the last paragraph of the Scope of Work attached as Exhibit A, the Contract Amount is intended to include all costs of both Contractor and any Sub-contractors, including but not limited to, \_\_\_\_\_, and any other duties listed in the Scope of Work. The Contract Amount shall be payable as follows: Contractor shall deliver to DPP a request for reimbursement ("the "**Reimbursement Request**") in accordance with the Scope of

Work (as may be modified from time to time by DPP), together with a financial report with supporting documents as may be reasonably requested by DPP in light of the nature of services performed or expenses incurred during the applicable period (the “**Supporting Materials**”). Reimbursement Requests must be received by DPP on or before the fifteenth (15<sup>th</sup>) day of the month subsequent to the month for which reimbursement is being sought. DPP shall pay the Reimbursement Request to the Contractor within thirty (30) days following DPP’s receipt, subject to approval of the Supporting Materials. Funds payable by DPP hereunder shall be paid to the Contractor on a reimbursement basis only, for work performed and/or expenses incurred during the prior period covered by the Reimbursement Request.

B. It is understood and agreed that any payment or performance obligation of DPP, under this Agreement or any amendment, shall extend only to the funds appropriated by the City and County of Denver and disbursed to DPP. The Contractor agrees that an upward adjustment of the Contract Amount is strictly prohibited unless authorized by the parties’ written amendment hereto. The Contractor shall notify DPP when it has reached 25%, 50%, and 75% of the Contract Amount. In no event shall DPP be obligated for the cost of any work performed, services provided or hardware or software provided in excess of the Contract Amount.

#### 6. **PROGRESS REPORTS:**

A. The Contractor shall maintain and submit to DPP from time to time as requested by the Director statistical and progress reports, and end-of-year reports in such format as designated by the CEO or the CEO’s designee including but not limited to, a description of all services provided under this Agreement and other information reasonably requested by the CEO or the CEO’s designee. Contractor shall cooperate with DPP in providing any report to DPP that is required to be given to the City of Denver in accordance with the terms of the Agreement between DPP and the City of Denver.

B. Reports required or requested by the CEO or the CEO’s designee under this Agreement shall be submitted in accordance with deadlines reasonably established by the CEO or the CEO’s designee and reasonably agreed upon by Contractor’s Project

Manager. Reports may be submitted electronically by E-mail in the form required by DPP.

7. **PERFORMANCE MONITORING/INSPECTION:** The Contractor shall permit the CEO or the CEO's designee to review and inspect the work performed under the Agreement. This means that if requested, and upon reasonable notice to Contractor, the Contractor shall make available to the CEO or the CEO's designee, for review records, reports, policies, minutes, materials, documents, invoices, accounts, whether in hardcopy or electronic format, used in performance of any of the services required hereunder or relating to any matter covered by this Agreement in order to coordinate the performance of services by the Contractor in accordance with the terms of this Agreement.

8. **COMPLIANCE WITH APPLICABLE LAWS:** The Contractor shall comply with all applicable Federal Laws, State Laws, and City ordinances, codes, rules and regulations, issued by the federal government, State of Colorado, or the City and County of Denver and provided to the Contractor concerning the services provided under this Agreement, as the same may be amended from time to time and whether or not specifically referenced herein ("**Applicable Laws**"). Contractor shall ensure that any and all subcontractors also comply with Applicable Laws.

9. **STATUS OF CONTRACTOR:** It is understood and agreed by and between the parties that the status of the Contractor shall be that of an independent contractor and is engaged on contractual basis to perform professional or technical services for limited periods of time. Contractor, at its cost, is solely responsible for obtaining workers' compensation insurance and unemployment insurance. Contractor shall be responsible to pay all required Federal, state and local income, employment, self-employment, business and other taxes, tariffs, duties, levies, or similar charges including but not limited to social security (FICA) and Medicare for which Contractor may be responsible in connection with the operation of its business and with respect to proceeds received from its participation in this Agreement<sup>10</sup>.

10. **TERMINATION OF AGREEMENT AND CLOSE OUT:**

A. In the event DPP determines the services provided under this

Agreement are not satisfactory, DPP shall issue a notice to cure (“**Cure Notice**”) identifying matters of unsatisfactory performance. The Cure Notice shall provide the Contractor Thirty (30) Days’ opportunity to cure all identified matters of unsatisfactory performance or if any matter cannot be corrected within said thirty day period, then the Contractor shall provide written notice of Contractor’s proposed plan for DPP’s approval, that will not be unreasonably withheld, to cure said matters within a reasonable period of time. In the event the unsatisfactory performance noted in the Cure Notice has not been remedied within the applicable period, DPP may terminate this Agreement at any time thereafter upon ten (10) days additional written notice.

B. The Contractor may terminate this Agreement in the event a payment due the Contractor is delinquent for thirty (30) days or more, or DPP does not comply with the provisions of the Proprietary or Confidential Information or Intellectual Property Rights clauses of this Agreement, and the Contractor has thereafter given DPP written notice and DPP has failed to make the payment within ten (10) days or otherwise cure performance following such written notice.

C. DPP may also, by written Notice of Default to the Contractor, effective thirty (30) days from Contractor’s receipt, terminate the whole or any part of this Agreement in the event the Contractor or any of its officers or any employee having primary responsibility for overseeing the services to be performed by Contractor under this Agreement is convicted of, pleads nolo contendere to, enters into a formal agreement in which they admit guilt, enters a plea of guilty, or otherwise admits culpability to criminal offenses of moral turpitude, crime relating or involving minors, bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion, or any offense of a similar nature, in connection with the Contractor’s business. The Contractor shall have a reciprocal right of termination in the event DPP’s contract with the City and County of Denver is terminated for like reasons.

D. If the Contractor’s services are terminated, it shall be paid only for that portion of the services satisfactorily completed in accordance with this Agreement at the time of such termination. In no event will DPP be liable for any costs incurred by the Contractor after the effective date of termination. Such non-recoverable costs

include, but are not limited to, post-termination employee salaries, overhead, insurance costs, contact administration and post-termination administrative expenses, or any other damages, costs or expenses associated with the Agreement or termination hereof which are not expressly authorized under this subparagraph 10.D. Within thirty (30) days following the effective date of termination of this Agreement, the Contractor will submit a final Reimbursement Request to DPP for the amount which represents the compensation actually due and owing the Contractor for its performance prior to the effective date of termination of the Agreement and for which the Contractor has not previously been compensated. Upon approval and payment by DPP of the final Reimbursement Request, DPP shall be under no further obligation to the Contractor for payment under this Agreement.

E. In the event of termination of this Agreement by DPP for any reason, and subject to the confidentiality provisions of paragraph 30, the Contractor will cooperate and coordinate with DPP for the transition of relevant records maintained by the Contractor in connection with the Denver Preschool Program. Provided the Contractor is reimbursed for any costs incurred, the Contractor will also use best efforts to actively and in good faith cooperate and coordinate with any successor contractor or provider retained by DPP in transitioning the operation. The Contractor shall have thirty (30) days following termination of the Agreement to provide DPP all documentation requested or required for complete and adequate closeout of the Agreement including an end of year report. In addition, the Contractor shall comply with contract closeout procedures directed by the CEO or the CEO's designee to be performed under this Agreement for final reimbursement, including but not limited to submission of outstanding invoices, reports, and other information due to DPP.

11. **NO WAIVER:** In no event shall any payment by DPP or any performance by Contractor hereunder constitute or be construed to be a waiver by either Party of any breach of any term, covenant, or condition of this Agreement or any default which may then exist on the part of the Contractor; the making of any such payment or performance by Contractor when any such breach or default shall exist shall not impair or prejudice any right or remedy available with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more terms, covenants, or

conditions of the Agreement shall be held to be a waiver of any later or other breach.

12. **RETENTION AND EXAMINATION OF RECORDS:** For a period of \_\_\_\_\_ following final payment under this Agreement, Contractor shall retain all books, documents, papers and records of the Contractor involving transactions related to this Agreement (“Contract Records”). Subject to the confidentiality provisions of paragraph 30, during such post Agreement period, the Contractor agrees that any duly authorized representative or designee of DPP shall have access to and the rights to examine any Contract Records. Such review shall occur no more frequently than once per year, upon prior reasonable written notice to the Contractor, at a place and time convenient to both parties, unless DPP has reasonable cause to require any additional review. Electronic records may be kept in lieu of paper records. Paper records not retained must be shredded using a micro cut shredder.

13. **TAXES AND LICENSES:** The Contractor agrees to promptly pay all taxes, excises, license fees and permit fees of whatever nature applicable to its operations, and to obtain and keep current all required licenses, municipal, county, state or federal, required for the conduct of its business hereunder, and further agrees not to permit any of said taxes, excises, or license fees to become delinquent. The Contractor further agrees to furnish DPP, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment by the Contractor of all required licenses and taxes. The Contractor further agrees to pay promptly when due all bills, debts and obligations incurred by it in conjunction with its operations, and not to permit the same to become delinquent and to promptly discharge any lien, mortgage, judgment or execution which will in any way impair the rights of DPP under this Agreement; provided, however, the Contractor shall have the right to contest any lien or judgment.

14. **TAXES, CHARGES AND PENALTIES:** DPP shall not be liable for the payment of taxes, late charges, or penalties of any nature.

15. **VENUE, GOVERNING LAW:** Each and every term, condition, or covenant of herein is subject to and shall be construed in accordance with the provisions of Colorado law. Venue for any arbitration shall be in Denver, Colorado, and venue for any



judicial action (seeking protection of rights in intellectual property, trade secrets, or confidential or proprietary information) arising hereunder shall be in the District Court of Denver County, Colorado.

16. **USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** The Contractor, its officers, agents and employees shall comply with Federal laws concerning the use, possession or sale of alcohol or drugs. Violation of applicable laws which effect or impair the Contractor's performance under this Agreement can result in DPP barring the Contractor from DPP facilities or participating in DPP operations.

17. **ASSIGNMENT AND SUBCONTRACTING:** DPP is not obligated or liable under this Agreement to any party other than the Contractor named herein. The Contractor understands and agrees that it shall not subcontract or assign this Contract or any other Work under this Contract to any other person or entity without the prior written consent and approval of DPP, in DPP's sole discretion. Any attempt by the Contractor to assign or subcontract its rights hereunder without such prior written consent of DPP shall, at the option of DPP, shall constitute a default by Contractor and automatically terminate this Agreement and all rights of the Contractor under this Agreement. DPP's approval of such contracting or subcontracting shall not be construed to create any contractual relationship between DPP and any such subcontractor, and the Contractor named herein shall in any and all events be and remain responsible to DPP according to the terms of this Agreement for performance of the services to be rendered in accordance with the Scope of Work. Contractor shall remain fully responsible to DPP for the performance by any approved third party performing services or supplying materials contemplated under this Agreement.

18. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance under this Agreement, the Contractor 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 variance, marital status, or physical or mental disability; and the Contractor further agrees to insert the foregoing provision in all subcontracts hereunder.

19. **INSURANCE:** The Contractor agrees to substantially comply with the insurance requirements that are detailed in **Exhibit B**. Any deviations from these requirements shall be made only with the prior written approval of DPP.

20. **INDEMNIFICATION:** Each Party shall defend, release, indemnify and save and hold harmless the other Party, and its officers, directors and agents, against any and all claims and liability arising out of damages to property or bodily injuries to or death of any person or persons, resulting from or arising out of its own activities, omissions or performance in connection herewith, including negligent acts or omissions its officers, employees, representatives, agents and subcontractors; provided, however, that a Party need not indemnify and save harmless the other Party from claims or liability resulting from negligence of the indemnified Party's own officers, employees, representatives, agents or subcontractors.

21. **NO WAIVER OF NON-PROFIT STATUTE:** Notwithstanding any other provision of this Agreement to the contrary, no term of condition of this Agreement shall be construed or interpreted as a waiver of any provision of the Colorado Revised Nonprofit Corporation Act, C.R.S., 7-121-101 et seq., as now or hereafter amended. It is acknowledged that C.R.S. 7-123-105, provides for limitations on actions against nonprofit corporations. No provision of this Agreement, whether or not incorporated herein by reference, shall be construed or interpreted so as to diminish the limitations afforded either Party under this Statute.

22. **CONFLICT OF INTEREST:** The parties agree that no official, officer or employee of DPP shall have any personal or beneficial interest whatsoever in the services or property described herein and the Contractor further agrees not to hire or contract for services with any official, officer, or employee of DPP.

The Contractor agrees that it will not engage in any transaction, activity or conduct which would result in a conflict of interest under this Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own

interests, the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of DPP. DPP, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists after it has given the Contractor written notice which describes the conflict. The Contractor shall have thirty (30) days after the notice is received to eliminate or cure the conflict of interest in a manner which is acceptable to DPP.

23. **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 DPP and the Contractor, and nothing contained in this Agreement shall give or allow any claim or right of action by any other or third person or entity under this Agreement. It is the express intention of DPP and the Contractor that any person or entity other than DPP or the Contractor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

24. **DISPUTES:** It is the express intention of the parties to this Agreement that all disputes of any nature whatsoever arising under this Agreement shall be resolved by binding arbitration with the Judicial Arbitrator Group (“JAG”) in Denver, Colorado. Unless the parties agree otherwise, any arbitration shall be conducted by and in accordance with the rules and regulations of the American Arbitration Association. However, if the City and County of Denver is named as a party in the dispute, the dispute shall be resolved by administrative hearings pursuant to the procedure established by Denver Revised Municipal Code 56-106(b)-(f). The parties expressly agree that this dispute resolution process is the only dispute resolution mechanism that will be recognized by the parties, notwithstanding any other claimed theory of entitlement on the part of either party or any subcontractor or supplier. Prior to invoking arbitration, a Party shall notify the other Party in writing and state the basis for the dispute along with the requested relief. The Parties agree to meet and confer regarding the dispute. Failing resolution, the parties agree to submit the matter to mediation before a mediator chosen by mutual agreement, and further agree to attempt to resolve the dispute acting in good faith. If the dispute is not resolved to the

satisfaction of either party, the dissatisfied Party(ies) may seek binding arbitration. Notwithstanding the foregoing, disputes procedure is not required for injunctive relief actions seeking protection of rights in intellectual property, trade secrets, or confidential or proprietary information.

25. **PARAGRAPH HEADINGS:** The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

26. **SURVIVAL OF CERTAIN AGREEMENT PROVISIONS:** The parties understand and agree that all terms, conditions and covenants of this Agreement, together with the exhibits and attachments hereto, if any, any or all of which, by reasonable implication, contemplate continued performance or compliance beyond the expiration or termination of this Agreement (by expiration of the term or otherwise), shall survive such expiration or termination and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, the obligations for defense and indemnity, for performance by Contractor following termination as set forth in Section 10.D, for preserving confidentiality of confidential information, and rights and obligations with respect to intellectual property shall 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.

27. **SEVERABILITY:** The parties agree that if any part, term or provision of this Agreement, except for the provisions of this Agreement requiring prior appropriation and stating the Maximum Contract Amount to be paid by DPP, is held to be illegal or unenforceable, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid or unenforceable.

28. **AGREEMENT AS COMPLETE INTEGRATION; AMENDMENTS:** This Agreement is intended as the complete integration of all understandings between the parties as to the subject matter of this Agreement. No prior or contemporaneous

addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless agreed upon in writing both parties. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendment or other agreement properly executed by both parties. No oral representation by any officer or employee of DPP at variance with the terms and conditions of this Agreement, or any written amendment to this Agreement, shall have any force or effect or bind DPP. Amendments to this Agreement will become effective when approved by both parties and executed in the same manner as this Agreement. This Agreement and any amendments shall be binding upon the parties, their successors and assigns.

29. **LEGAL AUTHORITY:**

A. The Contractor warrants and represents that it possesses the legal authority to enter into this Agreement and any required action or authorization has been taken or obtained.

B. The person or persons signing and executing this Agreement on behalf of the Contractor warrant and represent that the signatory has been fully authorized by the Contractor to execute this Agreement on behalf of the Contractor and to validly and legally bind the Contractor to all the terms, performances and provisions herein.

30. **PROPRIETARY OR CONFIDENTIAL INFORMATION:**

A. **Definition of Proprietary or Confidential Information:** The Parties understand and agree that, in performance of this Agreement, each may require access to proprietary or confidential information of the other, the disclosure of which to third parties may be damaging to the Disclosing Party. **“Confidential Information”** includes that information collected from persons with an expectation that it will be held confidential and not disclosed to third parties. **“Proprietary Information”** means information that is not publicly available information and that either Party considers sufficiently business sensitive to warrant protection as a trade secret or otherwise as permitted by law. Each Party shall identify Confidential or Proprietary information in

advance of disclosure to the other. Neither Party may disclose the Proprietary or Confidential Information of the other to any third person, except as required for performance of this Contract. Each Party shall exercise the same standard of care to protect such information of the Other Party as a reasonably prudent contractor would to protect its own proprietary or confidential information.

B. **Open Records:** The parties understand that DPP is subject to the Colorado Open Records Act, §24-72-201, et. seq., C.R.S. (2005) and that in the event of a request to DPP for disclosure of such information, to the extent such information is under the Contractor's control, the Contractor agrees to cooperate in good faith in making information available that is subject to disclosure under the Act. In the event the Contractor believes the requested material or information is not subject to disclosure, the Contractor shall provide DPP the basis for such objection, in which event DPP shall object to such request based on the information provided by the Contractor. With respect to Confidential or Proprietary Information previously provided to DPP, DPP will notify the Contractor of requests for such information and shall object to disclosure using the applicable exemption in C.R.S. § 24-72-204. The Contractor shall not be responsible for liability or costs of litigation relating to DPP's obligations under the Open Records Act.

### 31. **INTELLECTUAL PROPERTY RIGHTS:**

A. Ownership. Except as otherwise specified herein, DPP is and shall be the sole and exclusive owner of all right, title and interest throughout the world in and to all Work Product, including all Intellectual Property Rights therein.

**Intellectual Property Rights"** means any and all rights arising in the United States or any other jurisdiction throughout the world in and to (a) patents, patent disclosures, and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, and other similar designations of source or origin, together with the goodwill symbolized by any of the foregoing, (c) copyrights and works of authorship (whether copyrightable or not), including computer programs, and rights in data and databases, (d) trade secrets,

know-how, and other confidential or proprietary information, and (e) all other intellectual property, in each case whether registered or unregistered, and including all registrations and applications for such rights and renewals or extensions thereof, and all similar or equivalent rights or forms of protection in any part of the world.

**“Work Product”** means the deliverables pursuant to this Agreement and all other writings, technology, inventions, discoveries, processes, techniques, methods, ideas, concepts, research, proposals, and materials, and all other work product of any nature whatsoever, that are created, prepared, produced, authored, edited, modified, conceived, or reduced to practice by or on behalf of Contractor solely or jointly with the DPP or others in the course of performing the services under this Agreement, and all printed, physical, and electronic copies and other tangible embodiments of any of the foregoing.

B. Work Made For Hire; Assignment. Contractor acknowledges and agrees that any and all Work Product that may qualify as “work made for hire” as defined in the Copyright Act of 1976 (17 U.S.C. § 101) is hereby deemed “work made for hire” for DPP and all copyrights therein shall automatically and immediately vest in DPP. To the extent that any Work Product does not constitute “work made for hire.” Contractor hereby irrevocably assigns to DPP and its successors and assigns, for no additional consideration, Contractor's entire right, title, and interest in and to the Work Product and all Intellectual Property Rights therein, including the right to sue, counterclaim, and recover for all past, present, and future infringement, misappropriation, or dilution thereof, and all rights corresponding thereto throughout the world.

C. Applications for Patent and Registration of Intellectual Property Rights. Contractor acknowledges and agrees that, as between DPP and Contractor, DPP has the exclusive right (but not any obligation), in its sole discretion, to file and prosecute any patent application for or application for registration of any Intellectual Property Rights in the Work Product and maintain any resulting issuance or registration. Contractor shall not file any such application, during the Term or at any time thereafter, unless specifically authorized by DPP in writing to do so on DPP's behalf. In the event any such application is filed in Contractor's name, Contractor hereby irrevocably

assigns to DPP and its successors and assigns, for no additional consideration, Contractor's entire right, title, and interest in and to such application, all Intellectual Property Rights disclosed or claimed therein, and any patent or registration issuing or resulting therefrom.

D. Disclosure of Inventions; Maintenance of Records. Contractor shall promptly make full written disclosure to DPP of all inventions that constitute Work Product and shall at all times keep and maintain adequate, current, accurate, and authentic records of all Work Product. Such records may be in the form of notes, sketches, drawings, flow charts, electronic files, laboratory notebooks, reports, or any other format that may be specified by DPP. The records shall at all times be the exclusive property and Confidential Information of DPP, and Contractor agrees not to remove such records from DPP's premises, except as may be expressly permitted by DPP in its written policies or by its prior written consent.

E. Company Materials. As between DPP and Contractor, DPP is, and shall remain, the sole and exclusive owner of all right, title, and interest in and to any documents, specifications, data, know-how, methodologies, software, and other materials provided to Contractor by DPP ("**Company Materials**"), including all Intellectual Property Rights therein. Contractor shall have no right or license to reproduce or use any Company Materials except solely during the Term to the extent necessary to perform its obligations under this Agreement. All other rights in and to the Company Materials are expressly reserved by DPP.

F. Confidentiality. The Work Product and Company Materials are and shall at all times remain the Confidential Information of DPP and subject to all Contractor obligations and restrictions set forth in Section 30. Without limiting such obligations or restrictions, Contractor shall not disclose to any third party the nature or details of any Work Product or Company Materials without the DPP's prior written consent

G. Moral Rights. To the extent any copyrights are assigned under this Section 31, Contractor hereby irrevocably waives in favor of DPP, to the extent permitted by applicable law, any and all claims Contractor may now or hereafter have in any



jurisdiction to all rights of paternity or attribution, integrity, disclosure, and withdrawal and any other rights that may be known as “moral rights” in relation to all works of authorship to which the assigned copyrights apply.

H. Further Assurances; Power of Attorney. During and after the Term, Contractor shall reasonably cooperate with DPP to (i) apply for, obtain, perfect, and transfer to DPP the Work Product and any and all Intellectual Property Rights therein in any jurisdiction throughout the world, and (ii) maintain, protect, and enforce the same, including giving testimony and executing and delivering to DPP any and all applications, oaths, declarations, affidavits, waivers, assignments, and other documents and instruments as may be requested by the Company. Contractor hereby grants DPP a limited and irrevocable power of attorney, coupled with an interest, to execute and deliver any such documents on Contractor’s behalf in its name and to do all other lawfully permitted acts to transfer legal ownership of the Work Product to DPP and further the transfer, prosecution, issuance, registration, and maintenance of all Intellectual Property Rights therein, to the extent permitted by applicable law, if Contractor does not promptly cooperate with DPP’s request (without limiting the rights DPP shall have in such circumstances by operation of law).

I. Pre-Existing Materials.

(i) As between DPP and Contractor, subject to the license granted under Section 31(l)(ii) (below), Contractor is, and shall remain, the sole and exclusive owner of all right, title, and interest in and to all documents, data, know-how, methodologies, software, and other materials developed or acquired by Contractor prior to the date of this Agreement or independently of the performance of any services rendered hereunder (“**Pre-Existing Materials**”), including all Intellectual Property Rights therein.

(ii) To the extent that any Pre-Existing Materials are incorporated in or combined with any deliverable or otherwise necessary for the use or exploitation of any Work Product, Contractor hereby irrevocably grants to DPP a royalty-free, fully paid-up, perpetual, transferable, sub-licensable (through multiple tiers), worldwide, non-exclusive license to use, perform, display, reproduce, distribute, modify, make derivative works of,

make, have made, sell, offer to sell, import, and otherwise exploit such Pre-Existing Materials as part of or in connection with such deliverables and other Work Product, and to practice any method related thereto. All other rights in and to the Pre-Existing Materials are expressly reserved by Contractor.

(iii) Contractor shall not incorporate or combine any Pre-Existing Materials or any tangible or intangible property of any third party into or with any deliverable without obtaining DPP's prior written consent.

J. No Infringement. Contractor hereby represents and warrants that: (a) none of the services, deliverables, and Pre-Existing Materials, or DPP's use thereof or other exercise of its rights or license under this Agreement, does or will infringe, misappropriate, dilute, or otherwise violate any Intellectual Property Right of any Person, and (b) as of the date of this Agreement, there are no pending or, to Contractor's knowledge, threatened claims, litigation, or other proceedings against Contractor by any third party based on an alleged violation of such Intellectual Property Rights.

K. Indemnification. Notwithstanding any other provision herein, each Party shall indemnify and hold harmless the other Party from all loss, damage or liability for, or by reason of, any actual or alleged infringement of any U.S. patent, copyright, or trademark, or any trade secret disclosure arising solely as a result of either Parties' activities or performance pursuant to this Agreement.

L. Remedies. Each Party shall be responsible for any and all losses or damages resulting from any infringement of the other Party's Intellectual Property Rights or unlawful disclosure of any Proprietary or Confidential Information by its employees, officers, agents or assigns. Either Party, during or after the term of this Agreement, may take any and all actions that it reasonably deems necessary to protect its rights in its Intellectual Property or its interests concerning the Proprietary or Confidential Information including the intervention in any legal proceeding concerning the Information's use or disclosure. This obligation shall survive the cancellation or other termination of this Agreement.

32. **NOTICES:** Any notices, demands, or other communications required or permitted to be given by any provision of this Agreement shall be given in writing, delivered personally or sent by commercial carrier with tracking capabilities, addressed to the parties at the following addresses:

To DPP: Denver Preschool Program, Inc.  
305 Park Avenue West, Suite B  
Denver, CO 80205  
Attention: CEO

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or at such other address as either party may hereafter or from time to time designate by written notice to the other party given in accordance herewith. Notice shall be considered received on the day on which such notice is actually received by the party to whom it is addressed as evidenced by tracking records through commercial carrier.

33. **NO CONSTRUCTION AGAINST DRAFTING PARTY:** Each of the Parties acknowledge that each of them and their respective counsel have had the opportunity to review this Agreement and that this Agreement shall not be construed against any Party merely because this Agreement or any of its provisions, have been prepared by a particular Party.

34. **INUREMENT:** The rights and obligations of the parties herein shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns permitted under this Agreement.

35. **COUNTERPARTS OF THIS AGREEMENT:** This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement. Contractor and DPP agree that electronic and facsimile copies of this signed Agreement shall also be deemed originals of this Agreement.



**IN WITNESS WHEREOF**, DPP and the Contractor have executed, through their lawfully empowered representatives, this Agreement as of the day and year above written.

**DENVER PRESCHOOL PROGRAM**

By: \_\_\_\_\_  
CEO, Denver Preschool Program

By: \_\_\_\_\_  
Chair of the Board of Directors, Denver Preschool Program

**[Contractor's name]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

- Exhibit A - Scope of Work/Budget**
- Exhibit B - Insurance Requirements**

**Exhibit A**  
**Scope of Work/Budget:**

DPP shall pay to Contractor a maximum sum not to exceed \$ \_\_\_\_\_ annually (the "Contract Amount") during the Term of this Agreement.

**Project Contract:**

This scope of work pertains to work to be performed by \_\_\_\_\_ ("Contractor") for the Denver Preschool Program ("DPP").

**Project:**

**Timeline:**

This project commences \_\_\_\_\_, and runs through \_\_\_\_\_.

**Fees:**

**Expenses:**

Day-to-day out-of-pocket expenses are included in the above not-to-exceed fees. Out-of-pocket expenses include administrative time, transportation, photocopying, postage, parking, local and long-distance telephone and fax, cellular calls, messenger and other similar day-to-day office expenditures.

**Special Costs:**

The following items are not included in the out-of-pocket expenses listed above, must be approved by DPP in writing in advance, and will incur additional costs:

## **Exhibit B Insurance Requirements**

A. **General Conditions:** The Contractor agrees to secure, prior to the disbursement of funding hereunder, the following insurance covering all operations, goods or services provided pursuant to this Agreement. The Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for any claims-made policy, three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed to do business in Colorado and rated by A.M. Best Company as "A" VIII or better, or other insurer acceptable to DPP. Each policy shall contain a valid provision or endorsement stating "Should any of the above-described policies be canceled or should any coverage be reduced before the expiration date thereof, the issuing company shall send written notice to the CEO, Denver Preschool Program, 305 Park Avenue West, Suite B by certified mail, return receipt requested. Such written notice shall be sent thirty (30) days prior to such cancellation or reduction unless due to non-payment of premiums for which notice shall be sent ten (10) days prior." If any policy is in excess of a deductible or self-insured retention, DPP must be notified by the Contractor. The Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

B. **Proof of Insurance:** The Contractor shall provide a copy of this Agreement to its insurance agent or broker. The Contractor further agrees to have its agent or broker provide a certificate of insurance, a policy, or other proof of insurance as required by DPP.

C. **Additional Insureds:** For general liability, the Contractor's insurer shall name DPP as an additional insured.

D. **Third Party Providers:** All sub-consultants, independent contractors, suppliers or other entities providing goods or services to or on behalf of the Contractor as contemplated by this Agreement shall be subject to all of the requirements herein and shall procure and maintain to the extent applicable the same coverages required of the Contractor. The Contractor shall include all such consultants, independent contractors, suppliers or other entities as insureds under its policies or shall ensure that such third parties maintain the required coverages. The Contractor agrees to provide proof of insurance for all such third parties upon request by DPP.

E. **Workers' Compensation/Employer's Liability Insurance:** The Contractor shall maintain the coverage as required by statute for each of its business locations and shall maintain Employer's Liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

F. **General Liability:** The Contractor shall maintain limits of \$1,000,000 for each occurrence claim, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations for each occurrence, and \$2,000,000 policy aggregate.

G. **Automobile Liability:** The Contractor shall maintain limits of \$1,000,000 for combined single limit applicable to all vehicles operating on DPP's property and elsewhere which includes auto pollution liability coverage for any vehicle hauling cargo containing pollutants or contaminants.

H. **Additional Provisions:**

(1) For all general liability, the policies must provide the following:

(a) If any aggregate limit is reduced by twenty-five percent (25%) or more by paid or reserved claims, DPP shall notify the City within ten (10) days and reinstate the aggregates required;

(b) Defense costs, and such costs will not diminish the policy limit.

(c) Contractual liability covering bodily injury, property damage, and loss of use claims related to the indemnification provisions of this Agreement.

(d) A severability of interests provision;

(e) Waiver of exclusion for lawsuits by one insured against another;

(f) A provision that coverage is primary; and

(g) A provision that coverage is non-contributory with other coverage or self-insurance provided by the City.

(2) For all general liability, if the policy is a claims-made policy, then the retroactive date must be on or before the date the first DPP Board of Directors was appointed.

For all general liability, the policies must not contain an exclusion for sexual abuse, molestation, discrimination or similar offenses.