

SECOND AMENDATORY AGREEMENT

This **SECOND AMENDATORY AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **ENVIRONMENTAL HAZMAT SERVICES, INC.**, a Colorado corporation with its principal office street address at 4745 Independence Street, Wheat Ridge, Colorado 80033 (the “Contractor”) (collectively “the Parties”).

RECITALS:

A. The Parties entered into an Agreement dated October 11, 2018, and an Amendatory Agreement dated February 28, 2020 (collectively, the “Agreement”) to assist multiple City agencies with the clean-up of City Properties, including public rights of way, and other properties as directed by the City.

B. The Parties wish to amend the Agreement to extend the term, amend the invoicing and training provisions, amend standard provisions, and amend the scope of work.

NOW THEREFORE, in consideration of the premises and the Parties’ mutual covenants and obligations, the Parties agree as follows:

1. Section 3 of the Agreement entitled “**TERM**” is hereby deleted in its entirety and replaced with:

“**3. TERM**: The term of the Agreement will commence on **October 11, 2018** and will expire on **October 10, 2023** (the “Term”). Subject to the Executive Director’s prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the Executive Director.”

2. Section 5 of the Agreement entitled “**TRAINING**” is hereby deleted in its entirety and replaced with:

“**5. TRAINING**: With the exception of the training required in **Exhibit A**, Contractor, at its sole expense, is responsible for all required training. Upon request, Contractor shall provide a copy of all training certificates for its employees, including those of all sub-contractors. When training of workers for a specific duty is required by law, Contractor shall ensure that only properly trained individuals are assigned to and actually

perform the duty for which training is required; training for each worker is up to date and meets all refresher requirements; and a physical record of certification of training and refresher training exists for each worker.”

3. Section 9 of the Agreement entitled “**COMPENSATION AND PAYMENT**,” Subsection (c) entitled “**Invoicing**,” is hereby deleted in its entirety and replaced with:

“(c) **Invoicing**: Contractor shall provide the City with regular invoices in a format and with a level of detail acceptable to the City including any documentation required by the City, as further detailed in **Exhibit A**. Contractor shall also submit payroll-related documentation separately and at a time and frequency required to comply with the City’s prevailing wage ordinance. The City’s Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under the Agreement.”

4. Section 24 of the Agreement entitled “**NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT**:” is hereby deleted in its entirety and replaced with:

“**24. NO EMPLOYMENT OF WORKERS WITHOUT AUTHORIZATION TO PERFORM WORK UNDER THE AGREEMENT**:

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

b. The Contractor certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement, nor will it knowingly employ or contract with a worker without authorization to perform work under this Agreement in the future.

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

(3) It will not enter into a contract with a subconsultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

(4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations

under this Agreement, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization, it will notify such subconsultant or subcontractor and the City within three (3) days. The Contractor shall also terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the worker without authorization, unless during the three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with a worker without authorization.

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

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

5. Section 27 of the Agreement entitled “**NO DISCRIMINATION IN EMPLOYMENT:**” is hereby deleted in its entirety and replaced with:

“27. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under the Agreement, the Contractor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender

expression, marital status, source of income, military status, protective hairstyle, or disability. The Contractor shall insert the foregoing provision in all subcontracts.”

6. **Exhibits A and A-1** are hereby deleted in their entirety and replaced with **Exhibit A-2**, attached and incorporated hereto by reference. All references in the Agreement to Exhibits A and A-1 are changed to Exhibit A-2.

7. As herein amended, the Agreement is affirmed and ratified in each and every particular.

8. This Second Amendatory 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.

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Contract Control Number: ENVHL-202159546-02 / ALF-201844158-02
Contractor Name: ENVIRONMENTAL HAZMAT SERVICES, INC.

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

ENVHL-202159546-02 / ALF-201844158-02
ENVIRONMENTAL HAZMAT SERVICES, INC.

By: DocuSigned by:
Mr. Martin Green
045C85BF15D54E4...

Name: Mr. Martin Green
(please print)

Title: President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT A - 2
SCOPE OF WORK

Citywide Cleanup Services of Abandoned Waste in the City and County of Denver

The City requires Contractor support to assist multiple City agencies with the clean-up of City properties, including public rights-of-way, and other properties as directed by the City. The details and scope of work are as follows:

I. SCHEDULE OF SERVICES:

Authorization and Notice to Proceed

The Contractor shall perform clean-up services pursuant to a schedule agreed-upon with the Authorized Representative of the user City agency via a Notice to Proceed (NTP) in accordance with Section 2(d) of the Agreement. Notices to Proceed will be issued by an authorized representative verbally or in writing, including over the telephone, by text (SMS), or in person.

Work Schedules

Contractor services will be required for both: a) routine weekday projects and programs, and b) non-routine and urgent responses to a designated work site.

Routine Services

“Routine Services” are clean-up services initiated by the Contractor between the hours of 4:30 AM and 6 PM on weekdays excluding national holidays that have been planned or scheduled with an authorized representative of the City at least one day in advance of performing the work. Services are initiated when both Contractor staff and Contractor work vehicle(s) first arrive at the designated work site.

Routine Services span a single shift of work, not exceeding 12-hours. Routine Services may extend into the evening hours depending upon when services were initiated. (While performing routine services contractor staff may accrue overtime depending upon their agreement with their employer.)

Non-Routine and Urgent Services

“Non-Routine Services” are clean-up services that are not Routine Services, including services initiated by the Contractor with fewer than 24 hours’ notice in advance of performing the work, including weekends and national holidays.

“Urgent Services” are clean-up services initiated within two hours of a request for services. Urgent Services require the Contractor to mobilize one or more staff and a work vehicle for service to a designated work site within a one to two-hour window of receiving an NTP (typically conveyed by telephone, text, email or in person) from an Authorized Representative. In the absence of a specific communication on time frame in the NTP, the Contractor shall ensure that at least one worker having tools and a work vehicle arrives on site within 90 minutes of the contractor’s receipt of an NTP.

The City may incur increased costs for Non-Routine and Urgent Services according the contract rate sheet set forth in Exhibit C.

II. TRAINING

The City will provide Contractor with a copy of the *Lyall* settlement agreement and will inform Contractor of its obligations under the settlement agreement.

All employees of the Contractor who perform services under this contract in a public setting, or in such circumstances where they may encounter the public, shall attend and receive sensitivity and awareness training as specified by the City. Training must be completed by each employee of the Contractor no later than 15 days after having been assigned work duties or tasks under this Agreement. Contractor's employees may be required to attend refresher training or other trainings of a more advanced nature regarding interactions with the public as specified by the City. Training content and training venue will be provided by the City unless training can be provided in an on-line, on-demand, computer-based format. The Contractor's investment of labor hours for employees to participate in training may be billed to the City at contract rates. The City will only allow those employees of the Contractor who successfully complete training to continue to provide service to the City beyond the 15-day limit.

III. SCOPE OF SERVICES:

Waste Clean-up

For each NTP, the Contractor will provide two or more laborers with a vehicle to support City staff to remove and dispose of waste items at various properties. At least one of these laborers must be listed on the "Key Personnel" list, set forth in Exhibit B, and must be trained and qualified to guide and oversee clean-up services and to assist other staff in the event any household hazardous wastes are encountered. This Key Person will also be responsible for conferring with and following the directions of the Authorized Representative of the City agency requesting services at all times during the clean-up.

During each clean-up, the Contractor will pick-up and remove items found on various properties and rights of way as directed by the City agency requesting the work (for example, the Department of Transportation and Infrastructure, the Department of Parks and Recreation, etc.). Waste that Contractor staff may encounter during cleanups includes litter, food, spoiled food, human and animal waste, sharps (possibly used syringes and other injection devices), articles contaminated with bodily fluids, and consumer chemical products (such as aerosol cans, batteries, fuel canisters, etc.). An officer of the Denver Police Department or Denver Parks Rangers will be present during the work and will intercede in the removal of any firearms, medications, or illegal drugs.

Waste clean-up services provided under this Agreement shall not include management of belongings of tenants in the process of eviction from private rental residences such as homes, apartments, and condominiums.

Household chemical products and sharps must be collected, contained and handled in coordination with the Environmental Quality Division of the Department of Public Health and Environment. Depending on the type of waste, proper management may include durable packaging or overpacking and transport to and storage at a designated City regulated waste management site. Sanitary wastes may be collected, contained (i.e., bagged), and deposited directly in a City waste collection vehicle, City waste bin or receptacle, or transported to a designated City transfer facility or the Denver Arapahoe Disposal Site, as directed by the City agency requesting the service.

In addition to waste collection and packaging of items, the City may require the Contractor to assist the City with delivery and erection of temporary portable fencing for the purpose of delineating the work site perimeter and facilitating the City's maintenance of a safe work area. The City may also require the Contractor to assist with removal and return of fencing. Fencing may be provided by a third party under an agreement with the City. However, the City may require that the Contractor procure fencing at allowed contract rates and mark-up.

The Contractor's employees on site shall wear level D or modified level D PPE, at a minimum. For information pertaining to level D PPE, please visit: <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.120AppB>

The Contractor's employees may choose to wear additional PPE such as disposable Tyvek coveralls, disposable gloves, safety glasses, and an N95 or P100 filtering facepiece respirator. Wearing of a Personal Floatation Device, or life vest may be appropriate when working along riverbanks.

The Contractor is ultimately responsible for assuring that its employees wear the appropriate level of PPE for the work. Should the City find that the Contractor's staff are failing to wear appropriate PPE on site, the City may immediately cancel the work and seek to remedy the risk with the contractor. The City may, pursuant to Section 11 of the Agreement, terminate the Agreement for cause should the Contractor's action or inaction constitute serious or repeat disregard for worker safety or the safety of others.

Structured Oversight for Quality Control

The Contractor is required to participate in structured oversight practices implemented by the City agency commanding services under this Agreement. The purpose of this oversight is to 1) establish a shared understanding of task or project goals, and 2) document acceptable work completion and create a record of work quality for review. Structured oversight practices may consist of, but are not limited to, the following:

- 1) Pre-task, or pre-project tailgate meetings to establish quality goals;
- 2) Post-task or post-project work site inspections;
- 3) Use of checklists or sign-off sheets on work completed;
- 4) Photo or video documentation of post project work site conditions.

Communication with the Public During Clean-up

Employees of the Contractor are not authorized to speak with any member of the public on behalf of the City or negotiate with any member of the public to take a certain action on behalf of the City during site clean-up, in preparation of site clean-up, and following site clean-up. For the purposes of this scope of services, members of the public are any person not specifically employed by the Contractor, and any person on site or in the immediate area of a clean-up who is not a representative of the City with a recognized or self-identified position as an employee of the City and County of Denver. Members of the public include journalists and reporters, bystanders to a clean-up, persons both inside and outside of any barrier or fence defining the clean-up area, and persons directly or indirectly influenced by the City's clean-up action. If accosted by a member of the public, the Contractor's employees are authorized only to direct that person to speak with a City representative on-site. In directing the person to a City representative, the Contractor's employees must be polite, courteous, act in conformance with City training, and provide only that information necessary to accurately direct the person to an on-site City representative.

The Contractor must take steps to prevent or avoid interaction with members of the public on behalf of the City at a clean-up site. The Contractor must immediately report to the lead City representative at a clean-up site any engagement with a member of the public beyond simple courteous redirection of the person to a City representative.

Collection, Transportation, and Storage

At the direction and supervision of the user City agency, the Contractor may be required to collect items for safe keeping and short-term storage. The Contractor will manage collected items at the direction of the City, which will include a tagging and inventory process so that people may return at a later date to reclaim their possessions.

At the City's direction and supervision, the Contractor will place possessions in protective bags and rigid containers and transport the containers for safekeeping to a storage site or sites owned or leased by the City. Contractor will package collected items in transparent or translucent plastic bags before the items are placed in

a rigid container. The storage site(s) and suitable rigid storage containers will be supplied by the City. The location of storage sites may change during the Term, and Contractor may be directed to relocate containers to new sites as part of this scope of work. The Contractor shall provide bags for stored materials. The bags must be of heavy-duty construction similar or equal to commercial quality 55-gallon drum liners, and must be translucent or effectively transparent or clear plastic.

The City will work with the Contractor as needed to develop and use a tags and receipts process that best serves the City and the people served by this short-term storage procedure.

The Contractor must provide the use of one or more trucks with the capacity to carry a minimum of 500 pounds of trash in bags or an equivalent volume of containers at any time for a project and must provide an operator for that truck. At least one such truck must have a lift gate and the capacity to carry eight or more full containers (e.g., typical City-supplied 90-gallon barrels). The City may also require the contractor to transport large items that cannot be contained in a bin.

Operation of Storage Facility

A City agency may require the Contractor to supply the labor and expertise needed to staff a temporary storage site of collected items. The Contractor will be responsible for inventorying and locating items and returning them upon request, and must record details of the transaction. The Contractor will be required to supply a security guard with actual security services training (such as an off-duty police officer or an employee of a commercial security service) for the hours that the storage site is open for items to be claimed.

The storage site staffed by the Contractor shall be open for use by the public for efficient retrieval of claimed items daily during a two-hour window, on a schedule of the City's choosing. However, during the Term, the City may choose to change the schedule and increase the time the site is open to the public and the Contractor must provide the necessary staffing to facilitate such a change in schedule.

The Contractor will be required to work with City staff to sort through and discard items that are unclaimed after a designated period.

Communication with the Public at Storage Facilities

At all times while interacting with members of the public at the storage facility, and in each person-to-person interaction at the facility, the Contractor and any person employed by the Contractor will act with courtesy and in conformance with City training. Furthermore, the Contractor and any persons employed by the Contractor at the storage facility will minimize interaction and conversation with members of the public to only that necessary to complete the successful transaction of identifying items belonging to the claimant and transferring those items to the claimant. At all times while the Contractor is staffing the storage site, the Contractor must ensure all persons acting on behalf of the City conduct themselves in a polite, respectful, courteous and professional manner, including during side conversations that may be overheard by a member of the public.

Reporting

The Contractor will be required to provide agreed-upon weekly, monthly, or at time of invoicing reports to the City that may include inventory sheets, claim checks, documentation of claimed items, documentation of volume of waste collected, documentation of the quantity of special wastes collected at each site, and staff hours.

Environmental Awareness and Compliance

The City's Environmental Management System (EMS) requires the Contractor to be aware of:

- The City's Environmental Policy,
- The environmental aspects their actions may impact, and

- Their duty to implement practices to comply with environmental regulations and the City's environmental performance goals.

The City's Environmental Policy may be viewed here: <https://www.denvergov.org/files/assets/public/public-health-and-environment/documents/eg/2017-denver-environmental-policy.pdf>

IV. INVOICING

Contractor shall invoice the City for work performed within seven (7) days of completion of that work. Each invoice must be for a defined scope of service, or service event, that was performed within a prescribed period of time and location. The City recognizes five defined service events:

- 1) Site clean-up involving any activities associated with pick-up and removal from the land of items or wastes. (Site clean-up includes clean-up at small and large encampments, clean-up of City property, ROW, parkland or natural areas, ad hoc clean-up assignments targeting a prescribed area, management of fencing and barriers required by the City for any project or task, and transportation of waste or material possessions.)
- 2) A week-long period in which the Contractor staffed an open storage facility or otherwise provided services outside of a clean-up site at which items and material possessions were managed, transferred, relocated or disposed of from a storage facility.
- 3) An urgent call for service to gather and take into safe keeping a person's possessions or to collect and dispose of hazardous or unsanitary wastes discovered at a single location. (An urgent call for service may include mobilization to the site of an arrest of persons resulting in abandonment of possessions or wastes, a confiscation of items or wastes by the City following a law enforcement action, the removal of wastes from a clandestine drug making site, or the removal and clean-up of wastes dumped or abandoned in alleys, streets, parks or other ROW.)
- 4) Waste disposal or reclamation of aggregated wastes taking place separately from a unique service event named above, such as and including delivery of propane bottles to a propane recovery facility, disposal of drug making materials and chemical intermediates held for a time to accurately assess regulatory and safety status.
- 5) City-specific or City-mandated training different from standard professional, trades, commercially required and recommended trainings the Contractor's human resources and other corporate functions would require (i.e., OSHA, DOT, CDL). (Such City training includes sensitivity training for persons interacting with the public, and Trauma-Informed Approaches to engaging with people experiencing homelessness. The Contractor may charge the City for labor hours to attend each training event or participation period if training is delivered on-line.)

The Contractor may invoice the City only for work that has been completed. All invoices must be itemized in conformance with the allowed named and numbered categories of labor and materials rates described in the Rate Sheet. Each invoice must be for only a single defined service event. The City will reject any invoice combining two or more service events.

Each invoice must be delivered via e-mail within the 7-day invoicing window to the City using the e-mail address specified by the user agency. Each invoice must be accompanied by relevant supporting materials such as receipts for items purchased or subcontracted services. Invoices may be accompanied by reports as requested by the user agency to substantiate work completed, such as a report of numbers or volumes of materials or wastes handled within a designated time frame or service event.