

SECOND AMENDATORY AGREEMENT

This **SECOND AMENDATORY AGREEMENT** is made and entered by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), and **POLARIZED WATER SOLUTIONS, LLC**, a Colorado limited liability company, whose address is 42029 Colonial Trail, Elizabeth, Colorado 80107 (the “Contractor”), referred to herein jointly as the “Parties” and individually as a “Party”.

WITNESSETH:

WHEREAS, the Parties entered into an On-Call Sand Trap/Interceptor Repair and Maintenance Services Agreement dated January 3, 2022, and an Amendatory Agreement dated August 16, 2022 (collectively, the “Agreement”) to provide services for the various Sand and Grease Traps located throughout the City; and

WHEREAS, the Parties now wish to modify the Agreement to extend the Term, increase the Maximum Contract Amount, and as otherwise set forth below.

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 amended to read as follows:

“**3. TERM:** The term of the Agreement started on January 1, 2022, and shall expire at 11:59:59 p.m. on December 31, 2024. The term of this Agreement may be extended by the City under the same terms and conditions by a written amendment to this Agreement for up to two (2) additional one (1) year terms. This Agreement may be terminated earlier as provided in this Agreement and may be extended as provided in a separate amendment to this Agreement (“**Term**”).”

2. In Section 4 of the Agreement, entitled “**COMPENSATION AND PAYMENT:**”, Sub-section A, entitled “**Maximum Contract Amount:**”, is amended to read as follows:

“**A. Maximum Contract Amount:** The City agrees to pay the Contractor, and the Contractor agrees to accept, as the total compensation for the Work rendered and costs incurred (including all "out-of-pocket" expenses) during the term of this Agreement a sum not to exceed **SEVEN HUNDRED THOUSAND DOLLARS AND NO CENTS (\$700,000.00)**, which amount shall not be exceeded unless this Agreement is modified to increase said amount by a duly authorized and written amendment to this Agreement executed by the Parties in the same manner as this Agreement. All Work is subject to inspection by the City prior to payment.”

3. Section 16 of the Agreement, entitled “**EXAMINATION OF RECORDS**”, is amended to read as follows:

“**16. EXAMINATION OF RECORDS**: The Contractor shall maintain records of the documentation supporting the use of ARPA Funds in an auditable format, for the later of five (5) years after final payment on this Agreement or the expiration of the applicable statute of limitations. Any authorized agent of the City, including the City Auditor or his or her representative, and for ARPA Funds any authorized agent of the Federal government, including the Special Inspector General for Pandemic Recovery (“Inspector General”) have the right to access, and the right to examine, copy and retain copies, at the official’s election in paper or electronic form, any pertinent books, documents, papers and records related to the Contractor’s use of ARPA Funds pursuant to this Agreement. The Contractor shall cooperate with Federal and City representatives and such representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of five (5) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of the use of ARPA Funds, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this section shall require the Contractor to make disclosures in violation of state or federal privacy laws. The Contractor shall at all times comply with D.R.M.C. 20-276.”

4. Section 30 of the Agreement, entitled “**LIVING WAGES**”, is hereby deleted in its entirety.

5. Section 31 of the Agreement, entitled “**NO EMPLOYMENT OF A WORKER WITHOUT AUTHORIZATION TO PERFORM WORK UNDER THE AGREEMENT**”, is hereby deleted in its entirety.

6. Section 43 of the Agreement, entitled “**ARPA FUNDS**”, is amended to read as follow:

“**43. ARPA FUNDS**:

“The Contractor agrees and acknowledges that some or all of the funds encumbered by the City to pay for the services described herein have been provided in accordance with Section 603(b) of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act, Public Law No. 117-2 (March 11, 2021) and as amended by the Consolidated

Appropriations Act 2023, Public Law No. 117-328 (December 29, 2022) (along with all rules and regulations promulgated thereunder, “ARPA”). The Parties acknowledge that all funding from ARPA (collectively, “ARPA Funds”) may only be used to cover those eligible costs incurred by the City during the period that begins on March 3, 2021 and ends on December 31, 2024:

“a. To respond to the public health emergency with respect to the Coronavirus Disease 2019 (“COVID-19”) or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or to aid impacted industries such as tourism, travel and hospitality;

“b. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the City that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;

“c. For the provision of government services to the extent of the reduction in revenue of the City due to the COVID-19 public health emergency relative to the revenues collected in the most recent full fiscal year of the City prior to the emergency; or

“d. To make necessary investments in water, sewer, or broadband infrastructure.

“The Parties further acknowledge that ARPA Funds may also be used to cover those eligible costs incurred by the City during the period that begins on December 29, 2022 and ends on December 31, 2024:

“e. To provide emergency relief from natural disasters or the negative economic impacts of natural disasters, including temporary emergency housing, food assistance, financial assistance for lost wages, or other immediate needs;

“f. Subject to restriction, to fund certain surface transportation-related projects under limited U.S. Department of Transportation programs; or

“g. Subject to certain restriction, to fund projects eligible under Title I of the Housing and Community Development Act of 1974, which includes any projects that are currently eligible activities, programs, and projects under Community Development Block Grant and Indian Community Development Block Grant authorization.

“The Contractor shall only utilize ARPA Funds for the purposes described in the Scope of Services attached as **Exhibit A**. The Contractor agrees and acknowledges that, as a condition to receiving the ARPA Funds, it shall strictly follow the Coronavirus Local Fiscal Recovery Fund Award Terms

and Conditions attached hereto and incorporated herein as **Exhibit G**. All invoices submitted by the Contractor to the City pursuant to this Agreement shall use “COVID-19” or “Coronavirus” as a descriptor for those costs that are paid by ARPA Funds to facilitate the tracking of Agreement-related spending related to COVID-19. The Contractor shall segregate and specifically identify the time and expenditures billed to the City on each invoice to allow for future review and analysis of COVID-19 related expenses. To avoid an unlawful duplication of federal benefits, the Parties agree and acknowledge that the services and/or goods provided by the Contractor for which ARPA Funds are used shall not, to the extent that ARPA Funds are used, also be paid for or reimbursed by monies provided under any other federal program.

“The City agrees and acknowledges that it shall obligate the use of ARPA funds for the services performed and/or good provided by the Contractor under this Agreement no later than December 31, 2024. The Contractor agrees and acknowledges that all services performed and/or goods provided by the Contractor using ARPA Funds must be performed and/or provided, respectively, by the Contractor no later than December 31, 2026. Further, the Contractor agrees and acknowledges that payment for all services performed and/or goods provided by the Contractor using ARPA Funds must be provided by the City to the Contractor no later than December 31, 2026. As such, the Contractor shall invoice the City not later than November 1, 2026 for all work performed pursuant to this Agreement for which ARPA Funds will be used to enable sufficient time for the City to review, process, and pay such invoice no later than the performance deadline prescribed in ARPA (the “Invoice Deadline Date”). Any invoice submitted by the Contractor after the Invoice Deadline Date for services performed and/or goods provided on or prior to December 31, 2026 may not be eligible to be paid by ARPA Funds, and, to the extent that ARPA Funds are not available to pay such invoice, partially or in total, such invoice shall only be paid subject to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of this Agreement.

“To the extent that the Contractor’s services hereunder contemplate the spending of ARPA Funds, the Contractor shall provide to the City information responsive to mandatory performance measures, including programmatic data sufficient to conduct oversight as well as understand aggregate program outcomes. Further, in providing the ARPA-required information to the City, to the extent possible, Contractor shall provide this programmatic data related to such services disaggregated by race, ethnicity, gender, income, and other relevant demographic factors as may be determined by the City. The Contractor shall insert the foregoing requirement into all subcontracts related to this Agreement, thereby obligating all subcontractors to the same reporting requirement as the Contractor.”

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.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK;
SIGNATURE PAGES FOLLOW.]**

Contract Control Number: GENRL-202371001-02 [GENRL-202161473-02]
Contractor Name: POLARIZED WATER SOLUTIONS, LLC

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:

GENRL-202371001-02 [GENRL-202161473-02]
POLARIZED WATER SOLUTIONS, LLC

DocuSigned by:
By: Justin Evett
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Name: Justin Evett
(please print)

Title: COO - Pump Division
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)