

## **SECOND AMENDATORY CONTRACT AND AGREEMENT (On-Call Vertical Construction (Large) Services)**

This **SECOND AMENDATORY CONTRACT AND AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (hereinafter referred to as the “City” ), party of the first part, and **MILENDER WHITE CONSTRUCTION CO.**, a Colorado corporation, (hereinafter referred to as the “Contractor”), party of the second part, located at 12655 West 54th Drive, Arvada, Colorado 80002, jointly (“the **Parties**”).

### **RECITALS:**

**A.** The Parties entered into a Contract and Agreement (On-Call Vertical Construction Services) dated July 13, 2023, and an Amendatory Contract and Agreement (On-Call Vertical Construction Services) dated April 17, 2024 (collectively, the “Agreement”) to perform, and complete all of the services and produce all the deliverables set forth in the Agreement, to the City’s satisfaction.

**B.** The Parties wish to amend the Agreement to increase the maximum contract amount, extend the term, and replace SC-15 Proposal Request Pricing.

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

**1.** Section 16 of the Agreement entitled “**MAXIMUM CONTRACT AMOUNT**” is hereby deleted in its entirety and replaced with:

#### **“16. MAXIMUM CONTRACT AMOUNT**

Each Project will be assigned and authorized separately by Work Order and the maximum liability of the City for any one Project shall not exceed the sum of **THIRTY-TWO MILLION NINE HUNDRED SEVENTY-NINE THOUSAND SEVEN HUNDRED EIGHTY-EIGHT DOLLARS AND TWENTY-FIVE CENTS (\$32,979,788.25)**, including all authorize Work Order changes. The maximum amount to be paid by the City to the Contractor for satisfactory completion of all Work Orders authorized by the City and performed by the Contractor under this Contract shall in no event exceed the sum of **THIRTY-TWO MILLION NINE HUNDRED SEVENTY-NINE THOUSAND SEVEN HUNDRED EIGHTY-EIGHT DOLLARS AND TWENTY-FIVE CENTS (\$32,979,788.25)**, unless this Contract is modified to increase said amount by a duly authorized, written contract amendment mutually agreeable to and executed by the parties hereto.”

2. Section 18 of the Agreement entitled “**TERM**” is hereby deleted in its entirety and replaced with:

**“18. TERM**

The term of this Agreement will commence on **July 14, 2023**, and will expire on **July 13, 2028**, (“**Term**”), unless extended by mutually agreeable contract amendment initiated at the sole discretion of the City. Nothing contained herein shall obligate the City to extend the Agreement beyond the term. The Term of this Agreement shall extend to include the term of any Work Order executed before the expiration of this Agreement and any associated Work Order changes.”

3. **SC-15**, entitled “**PROPOSAL REQUEST PRICING**”, is hereby deleted in its entirety, and replaced as follows:

**“SC-15 PROPOSAL REQUEST PRICING**

Title 9 of the General Contract Conditions shall generally apply to this Contract as supplemented by the following:

A. The City will issue proposal requests to award Work Orders. The proposal request will specify the information the Contractor must provide and how the proposal will be evaluated. Work orders may be awarded on the basis of price, availability, qualifications, or a combination of factors that represent the best value to the City, as determined by the Department of Transportation and Infrastructure. The Contractor shall submit the required information, in the format requested, within fourteen (14) consecutive calendar days of the date of issuance of a proposal request.

B. The City’s policy is to use a competitive process to award Work Orders. Work Orders will be awarded using one of the following methods:

1. Mini-Bid. Unless a Qualifications-Based Selection or Direct Selection is approved, Work Orders will be awarded to the lowest qualified bidder, using a lump sum hard bid approach. The Contractor will be required to provide lump sum pricing for all costs associated with the Work listed in the Proposal Request. All labor, material, equipment, and overhead and profit costs shall be included in the lump sum bid.

2. Best Value. If approved in writing for a specific Work Order by a DOTI Director, a Work Order may be awarded based on predetermined criteria in addition to, or instead of, price established by DOTI. Criteria may include, but are not limited to specialized qualifications, approach, schedule, and price.

3. Special Circumstances. In Special Circumstances, as defined by and documented as required by Executive Order 8, and when not prohibited by law or agreement, individual Work Orders may be awarded without a competitive process. Special Circumstances are those circumstances listed in Section 4.4.2 of Executive Order 8.

4. Markup for Overhead and Profit. The Contractor shall be entitled to **7%** of markup on the direct cost of the subcontractor’s work, including labor, materials, and equipment. The Contractor shall not

apply markup to Special Conditions, markup, or bonds, taxes or insurance. The Contractor, subcontractor or sub-subcontractor who actually performs the Work shall be entitled to a markup of **12%** on the actual costs identified in item B, only, above. For terminology and methodology applicable to Work Order pricing, refer to General Contract Conditions (2011 Edition) Titles 9 and 11, Special Conditions 15 through 19, and the Proposal Request Pricing Worksheet forms (attached) of this document. Bonds, insurance and sales tax are to be added after markup.

A supervising subcontractor, if any, shall not be entitled to a markup on the actual price charged to the subcontractor by the sub-subcontractor.

The general contractor's percentage markup on subcontractor work shall be considered to support the full cost of office supervisors and assistants, including all clerical and general office help; review and coordination; estimating; expediting; office equipment and supplies, telephone, fax, conformance to OSHA requirements, safety programs, and all other general contractor company expenses. These percentage markups shall be applied one time only for each Work Order or Work Order Change and shall not pyramid in any way.

5. Bonds, Insurance, Permits and Taxes shall be reimbursed at the actual cost associated with all required bond riders, insurance, permits, licenses, and sales, use or other taxes related to the Work.

6. Total Price to perform or complete the Work Order, the sum of all covered and uncovered work amount, must be in each Work Order.

7. If it is later determined that the pricing was not correct due to inaccurate or incomplete pricing data by the Contractor or any subcontractor or supplier, the price shall be reduced accordingly and the Work Order cost modified by a Work Order Change.”

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

5. This Second Amendatory Contract and Agreement (On-Call Vertical Construction Services) 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.]**

**[ELECTRONIC SIGNATURE PAGES FOLLOW.]**

**Contract Control Number:** DOTI-202582159-02 [202367924-02]  
**Contractor Name:** MILENDER WHITE CONSTRUCTION CO.

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:

\_\_\_\_\_

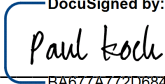
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By:

\_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

DOTI-202582159-02 [202367924-02]  
MILENDER WHITE CONSTRUCTION CO.

By:  \_\_\_\_\_  
BA677A772D68480...

Name: Paul Koch  
(please print)

Title: Construction Executive  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

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

Title: \_\_\_\_\_  
(please print)