

## 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 **THE WHITING TURNER CONTRACTING COMPANY**, a Maryland corporation registered to do business in Colorado, whose address is 7800 E Union Ave, Ste 100, Denver, CO 80237 (the “Contractor”), jointly (“the Parties”).

### WITNESSETH

A. The Parties entered into a Preconstruction Services Agreement dated October 7, 2020 (the “Agreement”) and a First Amendment Agreement dated October 28, 2021, to perform all of said work in accordance with the Contract and Scope of Work(s).

B. The Parties wish to amend the Agreement to increase funding. All references to Exhibit A shall include and incorporate Exhibit A-1, attached hereto, and all references to Exhibit B shall be replaced with Exhibit B-3, attached hereto.

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

1. Section 1.3 of the Agreement entitled BUDGET is hereby deleted in its entirety and replaced with: “The Contractor acknowledges that there are limited funds available to design and construct the Project. The City’s preconstruction budget for this Project is: **TWO MILLION SIXTEEN THOUSAND SEVEN HUNDRED DOLLARS (\$2,016,700.00)** (the “Project Budget”) and is subject to increase or decrease at the sole discretion of the Executive Director of the National Western Center Office (“NWCO”), prior to establishing a GMP for the Construction Services Phase of the Project.”
2. Section 6.1 of the Agreement entitled BASIC SERVICES is hereby deleted in its entirety and replaced with: “The Contractor’s Basic Services shall consist of all preconstruction and related work and services set forth in Exhibits E and B, and B-3 (Basic Services and Proposal). The Contractor shall be compensated for all such services performed on a lump sum basis. The maximum amount payable for all Basic Services shall be the lump sum amount of **TWO MILLION SIXTEEN THOUSAND SEVEN HUNDRED DOLLARS (\$2,016,700.00)** Compensation shall be paid to the Contractor monthly, based upon pay applications and progress

reports accepted and approved by the Project Manager. Upon successful completion of Pre-Construction Services, the City may in its sole discretion elect to execute a CM/GC Construction Contract with Contractor.

3. Section 6.3 of the Agreement entitled MAXIMUM CONTRACT AMOUNT is hereby deleted in its entirety and replaced with: “Maximum Contract Amount. The “Maximum Contract Amount” to be paid by the City to the Contractor under this Agreement shall not exceed the sum of **TWO MILLION SIXTEEN THOUSAND SEVEN HUNDRED DOLLARS (\$2,016,700.00).**”
4. Section 6.4 of the Agreement entitled FUNDING is hereby deleted in its entirety and replaced with: “It is expressly understood and agreed by the Contractor that the Contractor is undertaking this performance for a “not to exceed”, maximum fee for the Project. It is further understood and agreed by the Contractor that the total obligation of the City for all or any part of its payment obligations hereunder, whether direct or contingent, shall in no event extend beyond payment of the lesser of the amounts duly and lawfully encumbered for the purposes of the Agreement or the Maximum Contract Amount set forth above. The City has, as of the date first set forth above, duly and lawfully encumbered the sum of **TWO MILLION SIXTEEN THOUSAND SEVEN HUNDRED DOLLARS (\$2,016,700.00)** for the purposes of this Agreement. With respect to all such performance and funding, the Contractor understands and agrees that the provision of any services which would cause the total amount payable to Contractor to exceed the amount of previously encumbered funds, is strictly prohibited. In the event the continuation of services by the Contractor would cause the amount payable to Contractor to exceed the amount payable under Sections 6.1 and 6.2, the Contractor agrees to give the Project Manager at least four (4) weeks’ written notice of the exhaustion of available funds. In the event additional funds are not made available within such four (4) week period, the Contractor agrees to stop providing services until such time as additional funds are made available and encumbered for the purposes of this Agreement. It shall be the responsibility of the Contractor to verify that the amounts already encumbered are sufficient to cover the entire cost of such work. Work or services performed in excess of the amount encumbered or outside the

scope of authorized work or services is undertaken or performed in violation of the terms of this Agreement and, as such, at the Contractor's own risk and sole cost and expense. Funding for the Project has been budgeted over several years, and the City reserves the right to suspend work and the Contractor will not be compensated monetarily for the time delay."

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

6. 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.

**[SIGNATURES TO FOLLOW]**

**Contract Control Number:** DOTI-202161189-02[202055964-02]  
**Contractor Name:** THE WHITING-TURNER CONTRACTING COMPANY

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:**

DOTI-202161189-02[202055964-02]  
THE WHITING-TURNER CONTRACTING COMPANY

By: DocuSigned by:  
Paul Schmitt  
A03E0010A0D34B0...

Name: Paul Schmitt  
(please print)

Title: Sr Vice President  
(please print)

ATTEST: [if required]

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

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

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

