

SECOND AMENDATORY AGREEMENT

THIS SECOND AMENDATORY AGREEMENT (referred to as “Amendatory Agreement”, or “Second Amendatory Agreement”) is made and entered by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized pursuant to the Constitution of the State of Colorado (the “City”), and **ARAMARK MANAGEMENT SERVICES LIMITED PARTNERSHIP**, a Delaware limited partnership, with an address of 1101 Market Street, 29th Floor, Philadelphia, PA 19107 (the “Contractor”).

BACKGROUND:

WHEREAS, the City and Contractor entered into that certain Agreement, dated January 18, 2018, which was subsequently amended on January 31, 2019 (collectively, the “Agreement”), by which Contractor agreed to provide various facility services to the City; and

WHEREAS, the City declared a state of local disaster emergency on March 12, 2020 pursuant to C.R.S. 24-33.5-701, *et seq.*, brought on by the spread of COVID-19, the Governor of the State of Colorado declared a Disaster Emergency (D 2020 003) dated March 11, 2020 on the same basis, and the President of the United States issued a Declaration of Emergency on March 13, 2020 due to the COVID-19 crisis;

WHEREAS, the parties expressly acknowledge that state and local health and safety restrictions (as herein defined) affecting the facilities described in the Agreement are on-going to promote public safety in connection with use of city venues;

WHEREAS, Contractor shall seek to minimize expenses incurred related to the Agreement during the duration of the health and safety restrictions period; and

WHEREAS, the City and Contractor benefit by amending the Agreement as it will provide clarity concerning the parties’ respective responsibilities; enable all parties to control costs pursuant to the Agreement; and ensure continuity of services by Contractor pursuant to the Agreement upon the conclusion of the health and safety restrictions period.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained in the Agreement and herein contained the parties agree as follows:

1. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Agreement.
2. In response to the COVID-19 crisis in the City and County of Denver, Colorado, the City and Contractor hereby agree to modify the Agreement to account for the temporary closure, reduction in activities, and safety restrictions at city venues beginning on March 13, 2020, and continuing through and beyond the date of this Second Amendatory Agreement, as well as

any extension(s) or reinstatement(s) thereof, and any other Federal, State, or local limitations on mass gatherings that render use of the city venues implicated by the Agreement commercially impractical (“Health and Safety Restrictions Period”).

3. Except as otherwise described in this Amending Agreement, the financial structure of the Agreement will remain cost-plus during the term of the Agreement, and all costs and expenses will be paid in accordance with the Agreement, as amended.

4. Section 4 of the Agreement is hereby deleted and replaced with the following:

“**4. TERM OF AGREEMENT:** The term of this Agreement shall be from January 1, 2018, and shall expire on December 31, 2025, unless earlier terminated in accordance with the terms of this Agreement.”

5. Section 6(c) of the Agreement shall be modified by deletion of “Twenty Million Dollars (\$20,000,000.00)” which shall be replaced with “Thirty Million Dollars (\$30,000,000.00)”.

6. All references to “45” and “46” in Section 39 are hereby deleted and replaced with “52”.

7. The following language shall be added as a new Section 48:

“**48. HEALTH AND SAFETY RESTRICTIONS PERIOD EXPENSES:** Due to the Health and Safety Restrictions Period as defined in the Second Amending Agreement, City and Contractor agree as follows: Contractor shall manage expenses for the duration of the Health and Safety Restrictions Period so that costs are incurred in accordance with **Exhibit E** which is attached hereto and incorporated herein by this reference. If necessary expenses during the Health and Safety Restrictions Period are identified that are not described in **Exhibit E**, such costs may be approved in advance writing by the Director or her designee. Should Contractor incur costs during the Health and Safety Restrictions Period that are not described in **Exhibit E**, or approved in advance writing by the Director or her designee, notwithstanding anything in this Agreement to the contrary, such amounts shall not be the responsibility of the City pursuant to the Agreement and shall not be reimbursable during or subsequent to the Health and Safety Restrictions Period. Nothing in this Section 48 shall be construed to diminish Contractor’s obligations to City in accordance with this Agreement during the Health and Safety Restrictions Period.”

8. The following language shall be added as a new Section 49:

“49. Health and Safety Restrictions Period Activities. During the Health and Safety Restrictions Period, it may be possible to safely conduct certain activities at certain city facilities. Any work performed by Contractor in connection with activities occurring during the Health and Safety Restrictions Period shall be performed in accordance with the terms of the Agreement, but shall not be performed unless mutually-agreed upon by the City and Contractor in a writing signed by the Director prior to any such work. In the absence of a writing signed by the Director, Contractor may provide specific services in connection with this Agreement by strict conformance with an e-mailed directive from the Director or her designee to perform such services. Notwithstanding the foregoing, all obligations of Contractor pursuant to the Agreement, other than as specifically modified in the Second Amendatory Agreement, shall continue in full force and effect.”

9. This Second Amendatory Agreement is intended to preserve the parties’ rights and obligations for resumption of normal activities after the Health and Safety Restrictions Period and to promote continuity of services at the conclusion of the Health and Safety Restrictions Period. To effect such intent, a new section 50 shall be added to the Agreement as follows:

“50. EFFECT OF HEALTH AND SAFETY RESTRICTIONS PERIOD AND RESUMPTION OF SERVICES: The parties specifically agree that notwithstanding anything in the Agreement to the contrary, the number of events and need for services which are provided pursuant to the Agreement will likely be less than estimated during 2020 and 2021. Additionally, Contractor agrees not to seek to terminate the Agreement or diminish or avoid any of its obligations to City pursuant to the Agreement in connection with the Health and Safety Restrictions Period. The City shall notify Contractor at least 30 days prior to the conclusion of the Health and Safety Restrictions Period (“Reopening Notice”). The Reopening Notice shall be sent by electronic mail to Scott Yeager, Yeager-scott@aramark.com, or overnight mail to Contractor and shall be deemed effective when sent by City. Upon submission of the Reopening Notice, Contractor shall undertake all actions reasonably necessary to resume providing all services required by the City on the day after the date identified by City as the expiration date of the Health and Safety Restrictions Period (“Activation Date”). Should Contractor fail to provide requested services on and after the Activation Date, Contractor shall be in breach of this Agreement.”

10. A new Section 51 shall be added to the Agreement as follows:

“SECTION 51 PAYMENT OF CITY MINIMUM WAGE: Contractor shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City’s Minimum Wage Ordinance, Sections 20-82

through 20-84 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, Contractor expressly acknowledges that Contractor is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by Contractor, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein."

11. A new section 52 shall be added to the Agreement as follows:

“CONTRACTOR COST-MARKUP CONSIDERATIONS RELATED TO COVID-19 PANDEMIC: Contractor and City agree that modification of Contractor cost markup amounts, given economic conditions related to the Health and Safety Restrictions Period, are necessary. With continued uncertainty related to when certain City venues will again be fully activated, and for mutual financial planning purposes, City and Contractor agree that no modifications will be made to Contractor markup specified in Exhibit B related to hourly wages including benefits paid for work pursuant to the Agreement, and that Contractor will instead make a one-time sponsorship payment to City in the amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000) (the “First Sponsorship Payment”). The First Sponsorship Payment shall be disbursed to City within 45 days of the full execution of the Second Amendatory Agreement. The First Sponsorship Payment shall be amortized on a straight-line basis over the remaining months of the term of this Agreement (as of the execution of this Second Amendment), commencing upon the date of disbursement. The First Sponsorship Payment shall be used by City for costs incurred by City pursuant to this Agreement. The City shall be solely responsible for determining what costs are funded with the First Sponsorship Payment. Should City terminate the Agreement not in connection with a breach of the Agreement by Contractor prior to the complete amortization of the First Sponsorship Payment, City shall reimburse Contractor for the total unamortized balance of the First Sponsorship Payment as of the date of termination. As further consideration for this Second Amendatory Agreement, Contractor shall make a second sponsorship payment to City, in the amount of One Hundred Thousand and No/100 Dollars (\$100,000)(the “Second Sponsorship Payment”) on October 1, 2021. The Second Sponsorship Payment shall be used by City for costs incurred by City pursuant to this Agreement. The City shall be solely responsible for determining what costs are funded with the Second Sponsorship Payment. In no event shall all or any portion of the Second Sponsorship Payment be reimbursable to Contractor at any time.”

12. Section B.5 to Exhibit A of the Agreement shall be modified by deletion of the third sentence, which shall be replaced with the following:

“Notwithstanding anything contained in the Agreement to the contrary, equipment shall be purchased/leased and paid for as described in this Section B.5 of Exhibit A. Any approval for purchase/lease of equipment by Contractor shall not be valid until or unless authorized in a signed written directive from the Director or her designee specifying all equipment to be purchased/leased. No approval for an equipment purchase/lease shall be binding on the City until or unless Contractor, prior to City’s written approval, provides complete and detailed cost information for any equipment to be purchased/leased as well as the proposed markup. This financial disclosure must include detailed information demonstrating a net labor savings, if applicable, or other cost savings to be realized directly by City from Contractor’s purchase/lease of the equipment. Any costs to City in connection with such equipment must be accurately and completely stated in the City’s written and signed approval for such costs to be paid for by City pursuant to this Agreement. Contractor shall invoice City for the actual cost of such equipment and such invoice shall include the agreed-upon Contractor cost markup.

Any equipment purchased/leased by Contractor pursuant to this Section B.5 of Exhibit A must be consumed or used solely by Contractor in performance of the Services.”

13. Section B.7 to Exhibit A of the Agreement shall be deleted and replaced with the following:

“Notwithstanding anything contained in the Agreement to the contrary, consumable supplies shall be purchased and paid for as described in this Section B.7 of Exhibit A. Contractor shall maintain an ongoing log and attendant records of all supplies used for three (3) years following expiration of the duration of the term of this Agreement, which may be audited by the City at any time. The Contractor shall be financially responsible for any material misuse or material loss of supplies. Consumable supplies shall consist of all paper products, soaps, and any cleaning solutions or disinfectants. The Contractor shall maintain in a readily accessible area material safety data sheets available for review by all employees and the City. Contractor shall implement procedures so that the correct product is used for each and every surface in the facilities for which Services are provided pursuant to this Agreement. The Contractor shall comply with the City and DAV’s sustainability efforts by using “green” cleaning products, and maximizing waste diversion. The Contractor shall promptly reimburse the City upon demand for any material misuse of supplies under their control.

The Contractor and the City shall meet quarterly, and no later than April 1, July 1, October 1, and January 1, of each calendar year to discuss and mutually agree upon the

custodial supplies budget for the upcoming quarter (“Supplier Approval Quarterly Meetings”). At the Supplier Approval Quarterly Meetings, Contractor will provide the City pricing information, in a form reasonably acceptable to City, for all custodial supplies for City’s immediately following fiscal quarter, including, quotes from the following category of approved suppliers: (1) one contracted City supplier (a “City Supplier”), (2) one Contractor M/WBE certified partner (a “M/WBE Partner”), and (3) one third-party supplier (a “3rd Party Supplier”). At each Supplier Approval Quarterly Meeting, with the first such meeting occurring prior to January 1, 2021, the City and the Contractor will discuss supply purchases and City will designate approved suppliers, costs and quantities for the following quarter. For all supplies purchased directly from a City Supplier, the City will directly pay for all such supplies. For supplies purchased by Contractor from either a M/WBE Partner or a 3rd Party Supplier, Contractor shall invoice City for such supplies and such invoice shall include an agreed-upon Contractor cost markup agreed upon in writing at the applicable Supplier Approval Quarterly Meeting. The spend for each type and quantity of supplies purchased from M/WBE Partners and 3rd Party Suppliers will be tracked and recorded by Contractor, and thereafter documented in a quarterly costing statement which shall be delivered to City no later than 15 days after the prior calendar quarter.

Any supplies purchased by Contractor pursuant to this Section B.7 of Exhibit A must be consumed or used solely by Contractor in performance of the Services.”

14. The following language shall be added as a new Section B.30 to Exhibit A of the Agreement:

“B.30 BI-WEEKLY MEETINGS AND STAFFING

During the Health and Safety Restrictions Period, Contractor will have bi-weekly meetings with the Venue Director or his/her designee to discuss management and staffing levels at the Facilities and make any necessary adjustments based on the City’s needs.”

15. All of the terms described in ‘Pricing Item #3’ and ‘Pricing Item #4’ of each of the ‘Pricing A’, ‘Pricing B’ and ‘Pricing C’ sections of Exhibit B of the Agreement are hereby deleted. Markup of supplies and equipment purchased by Contractor shall be governed by the terms of this Second Amendatory Agreement.

16. Contractor consents to the use of electronic signatures by the City. This Second Amendatory Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of this Second Amendatory Agreement solely because it is in

electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Second Amendatory Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the basis that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

17. The Parties agree that this Second Amendatory Agreement shall be deemed effective as of November 1, 2020.

18. Except as herein amended, the Agreement is affirmed and ratified in each and every particular.

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Contract Control Number:
02

THTRS-202056774-02 ALFRESCO #THTRS-201736911-

Contractor Name:

Aramark Management Services Limited Partnership

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:
201736911-02
Contractor Name:

THTRS-202056774-02 ALFRESCO # THTRS-
Aramark Management Services Limited Partnership

By: _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Contract Control Number:
201736911-02
Contractor Name:

THTRS-202056774-02 ALFRESCO # THTRS-
Aramark Management Services Limited Partnership
By: Aramark SMMS, LLC, its General Partner

By:  _____ 11/19/2020

Name: Mark Adams
(please print)

Title: VP Finance
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Exhibit E

The following are expenses approved by Arts & Venues. Contractor will have bi-weekly meetings with each Venue Director or his/her designee to discuss management and staffing levels at the Facilities and make any necessary adjustments based on the City's needs. If additional expenses are identified that are not described herein, such costs may be approved in advance writing by the Director or her designee.

Red Rocks Venue:

1. Staffing Levels:
 - a. 1 custodian, 7 days a week, from 8am-4pm
 - b. One security guard, seven days per week, 24 hours per day
 - c. One working manager who will oversee operations and supervise staff 40 hours per week.
2. Expenses: Reasonable costs associated with manager cell phone.

Denver Arts Complex and McNichols Building:

1. Staffing:
 - a. One hourly custodian seven days per week, 7:30am-5:00pm
 - b. 2 working managers to oversee operations and supervise staff working at McNichols and Arts Complex.
2. Expenses:
 - a. Actual parking and bus pass expenses necessary for performance of the Services and reasonable costs associated with manager cell phone.