

### **THIRD AMENDATORY AGREEMENT**

**THIS THIRD AMENDATORY AGREEMENT** (this “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 **SMG**, a Pennsylvania general partnership, whose address is 300 Conshohocken State Road, Suite 450, West Conshohocken, PA 19428 (“SMG” and, together with the City, the “Parties”).

#### **BACKGROUND:**

**WHEREAS**, the City and SMG entered into that certain Agreement, dated November 18, 2008, which was subsequently amended on March 7, 2011 and May 15, 2018 (collectively, the “Agreement”), for SMG to provide management services at the Colorado Convention Center (“CCC”); 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 affecting the CCC are on-going to promote public safety in connection with use of the CCC;

**WHEREAS**, SMG shall seek to minimize expenses incurred related to the Agreement during the health and safety restrictions period (as herein defined); and

**WHEREAS**, the City and SMG 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 SMG 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 SMG hereby agree to modify the Agreement to account for the temporary closure of certain city venues beginning on March 13, 2020, and continuing through and beyond the date of this Third 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 CCC commercially impractical (“Health and Safety Restrictions Period”).

3. The following language shall be added as a new section 3.12:

“3.12 Health and Safety Restrictions Period Activities. During the Health and Safety Restrictions Period, it may be possible to safely conduct certain activities at the CCC. Additionally, the Parties entered into a separate agreement for services on April 16, 2020 (“2020 Alternative Care Facility Agreement”) by which SMG agreed to provide management services at the CCC independent of this Agreement. Any work performed by SMG in connection with activities occurring during the Health and Safety Restrictions Period that is not performed pursuant to the Alternative Care Facility Agreement shall be performed in accordance with the terms of this Agreement, but shall not be performed unless mutually-agreed upon by the City and SMG in a writing signed by the Director prior to such work. For purposes of clarity, this Agreement shall constitute a writing. In the absence of a writing signed by the Director, SMG may provide Emergency Repairs as described in Section 5.4.”

4. Section 4 of the Agreement is hereby amended by addition of the following language:

“The Parties agree that this Agreement shall expire on December 31, 2023 unless Denver City Council approves a written amendment to further extend this Agreement. Given the impact of the COVID-19 crisis on operation of the CCC, and the likelihood that CCC-related construction will be on-going in 2023, the parties agree that in 2023 they shall discuss whether a potential amendment extending the term of this Agreement should be explored. This willingness to discuss potential extension of this Agreement in no way obligates either party to agree to an extension of its term.”

5. Section 5.1 of the Agreement is hereby amended by deletion of “Subsequent calendar years\*\*” which shall be replaced with “Period January 1, 2012 through December 31, 2017”; deletion of “2020” which shall be replaced with “2023”; and deletion of “\$445,000 plus increment\*\*\*” through “not exceed 4%.”

6. Notwithstanding anything contained in the Agreement, the terms of Section 5.2 shall not apply in 2020 and 2021. SMG shall not be paid an incentive fee for 2020. However, notwithstanding the foregoing, SMG shall be eligible for incentive compensation during 2021 in the amounts and contingent upon satisfaction of the incentive objectives described in Exhibit J. A copy of Exhibit J is attached hereto and incorporated herein by this reference.

7. The following language shall be added as a new section 5.4:

“5.4 Health and Safety Restrictions Period Expenses. Notwithstanding anything contained in this Agreement to the contrary, due to the Health and Safety Restrictions Period as defined in the Third Amendatory Agreement, City and SMG agree as follows: SMG shall manage expenses for the duration of the Health and Safety Restrictions Period to ensure Operating Expenses and other expenses in connection with the Agreement are minimized as described in **Exhibit K** which is attached hereto and incorporated herein by this reference. If necessary Operating Expenses and/or other expenses in connection with this Agreement during the Health and Safety Restrictions Period are identified that are not described in Exhibit K, such costs may be approved in advance writing by the Director, or her designee. Further, should repairs of an emergency nature be necessary and it not be possible to first consult with the Director prior to undertaking such emergency repairs, directly resulting expenses may be incurred by SMG to preserve and protect persons and the CCC (“Emergency Repairs”). Should SMG incur costs during the Health and Safety Restrictions Period that are not for Emergency Repairs, not described in **Exhibit K**, or otherwise approved in advance writing by the Director, 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 considered valid Operating Expenses or other reimbursable expenses during or subsequent to the Health and Safety Restrictions Period.”

8. This Amendment is intended to preserve the parties’ rights and obligations for resumption of 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 10.8(F) shall be added to the Agreement as follows:

“F. Notwithstanding anything contained in Section 10.8, 8.1, 8.4 or otherwise in the Agreement to the contrary, SMG agrees not to seek to terminate the Agreement in connection with the Health and Safety Restrictions Period.”

9. Section 10.8(E) shall be amended by addition of the following after the first sentence: “Notwithstanding the foregoing, the terms of this subsection 10.8(E) shall not apply in connection with the Health and Safety Restrictions Period.”

10. Additional language shall be added to Section 14.9 Notices as follows:

“City shall notify SMG at least 14 days prior to the conclusion of the Health and Safety Restrictions Period (“Reopening Notice”). The Reopening Notice shall be sent by electronic mail message to [bmcclintock@asmglobal.com](mailto:bmcclintock@asmglobal.com) or overnight mail to SMG and shall be deemed effective when sent by City. Upon issuance by City of the Reopening Notice, SMG shall undertake all actions reasonably necessary to resume providing all services required by SMG the day after the date identified by

City as the expiration date of the Health and Safety Restrictions Period (“Activation Date”). Should SMG fail to provide requested services on and after the Activation Date, SMG shall be in breach of this Agreement.”

11. A new Section 16 shall be added to the Agreement as follows:

**“SECTION 16 CESSATION OF THE HEALTH AND SAFETY RESTRICTIONS PERIOD AND RESUMPTION OF ACTIVITIES:** Upon issuance by City of the Reopening Notice, SMG shall undertake all actions necessary to resume providing all services required by the Agreement on the day after the date identified by City as the expiration date of the Health and Safety Restrictions Period (“Activation Date”). Should SMG fail to provide requested services on and after the Activation Date, SMG shall be in breach of this Agreement.”

12. A new Section 17 shall be added to the Agreement as follows:

**“SECTION 17 PAYMENT OF CITY MINIMUM WAGE:** SMG 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, SMG expressly acknowledges that SMG is aware of the requirements of the City’s Minimum Wage Ordinance and that any failure by SMG, 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.”

13. SMG consents to the use of electronic signatures by the City. This Third 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 Third 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 Third 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.

14. The Parties agree that this Third Amendatory Agreement shall be deemed effective as of January 1, 2021.

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

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**Contract Control Number:** THTRS-202057221-03/ALFRESCO #CE93003-03  
**Contractor Name:** SMG

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:**

THTRS-202057221-03/ALFRESCO #CE93003-03  
SMG

DocuSigned by:  
*Bob Newman*  
By: \_\_\_\_\_  
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Name: Robert Newman  
(please print)

Title: President  
(please print)

ATTEST: [if required]

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

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

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

**EXHIBIT J**

**2021 TOTAL INCENTIVE COMPENSATION POSSIBLE**

			\$ 445,000
		% TOTAL	
<b>CUSTOMER SERVICE CRITERIA</b>	<b>2021 GOAL</b>	<b>40%</b>	<b>\$ 178,000</b>
1. EVENT MANAGEMENT	5.50		
2. ANCILLARY SERVICES EVALUATION	5.50		
3. FACILITY READINESS OF CCC	5.50		
4. CUSTOMER SERVICE EVALUATION	5.50		

**BASED ON THE RETURN/RECEIPT OF A MINIMUM 25% OF SMG CUSTOMER SURVEYS SENT AS TESTED BY EXTERNAL AUDITORS ACCORDING TO AGREED UPON PROCEDURES**

**FINANCIAL CRITERIA** **2021 GOAL**    **40%**    **\$**    **178,000**    **\$ 178,000 CHECK**

1. DIRECT RENTAL REVENUE (\$2,528,150) + DIRECT SERVICE REVENUE (\$1,503,359) + TOTAL ANCILLARY EVENT REVENUE & OTHER EVENT INCOME (\$6,030,202) + TOTAL OTHER INCOME (\$1,493,280) = \$11,554,991 AS REPORTED IN AUDITED 2021 FINANCIAL STATEMENTS*	<b>\$ 11,554,991</b>	30%	<b>\$ 53,400</b>
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We will adopt a sliding scale for the aforementioned criteria such that the partial incentive compensation award can be earned if Total Revenue is less than \$11,554,991. The sliding scale is as follows:

- If 2021 Total income is greater than \$11,554,991, Incentive = \$53,400
- If 2021 Total income is greater than \$11,179,991 but less than \$11,554,991, Incentive = \$40,050
- If 2021 Total income is greater than \$10,804,991 but less than \$11,179,991, Incentive = \$26,700
- If 2021 Total income is greater than \$10,429,991 but less than \$10,804,991, Incentive = \$13,350

If 2021 Total income is less than \$10,429,991, Incentive = \$0

2. LOSS CONTRIBUTION TO SRF 15607 = \$7,675,420 OR LESS			
We will adopt a sliding scale for the aforementioned criteria such that the partial incentive compensation award can be earned if Loss Contribution is greater than \$7,675,420. The sliding scale is as follows:			
If 2021 Loss to SRF 15607 is less than \$7,675,420, Incentive = \$53,400			
If 2021 Loss to SRF 15607 is less than \$7,925,420 but greater than \$7,675,420, Incentive = \$40,050			
If 2021 Loss to SRF 15607 is less than \$8,175,420 but greater than \$7,925,420, Incentive = \$26,700			
If 2021 Loss to SRF 15607 is less than \$8,425,420 but greater than \$8,175,420, Incentive = \$13,350			

(7,675,420)    30%    53,400

3. If 2021 Loss to SRF 15607 is more than \$8,425,420, Incentive = \$0	<b>500,000</b>	20%	<b>35,600</b>
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CCC GROSS FDA TAX REVENUE IS AT LEAST \$500,000

We will adopt a sliding scale for the aforementioned criteria such that the partial incentive compensation award can be earned based on FDA Tax collected. The sliding scale is as follows:

- If 2021 Gross FDA Tax is greater than \$500,000, Incentive = \$35,600
- If 2021 Gross FDA Tax is greater than \$400,000 but less than \$500,000, Incentive = \$26,700
- If 2021 Gross FDA Tax is greater than \$300,000 but less than \$400,000, Incentive = \$17,800
- If 2021 Gross FDA Tax is greater than \$200,000 but less than \$300,000, Incentive = \$8,900

4. If 2021 Gross FDA Tax is less than \$200,000, Incentive = \$0			
AT 12/31/2021, SMG HAS COLLECTED OVER 95% OF NON RELATED PARTY AR AGED OVER 90 DAYS AND AT 12/31/2021, SMG HAS PAID OVER 95% OF TRADE ACCOUNTS PAYABLE AGED OVER 90 DAYS	<b>95%; 95%</b>	20%	<b>35,600</b>

**NOTE: ALL FINANCIAL REFERENCES ABOVE SHALL BE BASED ON 2021 AUDITED FINANCIAL STATEMENTS**

**QUALITATIVE CRITERIA**

	<b>2021 GOAL</b>	<b>20%</b>	<b>\$ 89,000</b>
<b>Opportunistic Leadership of CCC</b>	\$ 22,250	25%	
1. To Director's satisfaction, continue collaboration with relevant parties on key initiatives: sustainability program; AXS ticketing; Denver Theatre District programs; Arts Complex/CCC joint projects (e.g., Light Rail Stations and Information Center), sponsorship and naming rights opportunities.	\$ 22,250	25%	
2. To Director's satisfaction, ensure participation of SMG management team in relevant VISIT Denver programs, Alliance meetings, ACF operations, and CAB meetings.	\$ 26,700	30%	
3. To Director's satisfaction, actively participate with City and other stakeholders in Center operations and coordination of expansion efforts. Including,	<u>\$ 17,800</u>	<u>20%</u>	
4. To Director's satisfaction, continue leadership and collaboration in the roll-out of the Center's technology upgrade.	\$ 89,000	100%	

CHECK    \$ 445,000

## Exhibit K

<b>April 6, 2020 to December 31, 2020</b>
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Account Title	Operating Funding
<b>Wages &amp; Benefits</b>	\$ 5,438,893
<b>Contracted Security</b>	72,350
<b>Contracted Armor Car Service</b>	20,700
<b>Contracted Labor Services</b>	11,358
<b>General &amp; Administrative Expenses</b>	540,056
<b>Trash Removal</b>	16,155
<b>Operational Overhead Expenses</b>	48,866
<b>General Building RM</b>	905,342
<b>Roll Up Door Maintenance</b>	6,428
<b>Window Cleaning &amp; RM</b>	-
<b>Sound Equipment Maintenance</b>	942
<b>Ceiling/Wall Maintenance</b>	68,632
<b>Electrical Systems RM</b>	3,000
<b>Emergency Generator RM</b>	7,614
<b>Elevator/Escalator RM</b>	428,700
<b>Fire Alarm Maintenance</b>	111,934
<b>HVAC Systems Maintenance</b>	344,474
<b>Machinery &amp; Equipment RM</b>	24,804
<b>Maintenance Agreements</b>	70,229
<b>Other Repairs &amp; Maintenance</b>	-
<b>General Building Supplies</b>	125,141
<b>Bulbs &amp; Lamps</b>	47,030
<b>Electrical</b>	2,215
<b>HVAC</b>	380,439
<b>Filters</b>	10,123
<b>Parts Mach &amp; Equip</b>	469
<b>Janitorial</b>	73,690
<b>Parking Garage Maintenance &amp; Supplies</b>	1,276
<b>Auto Insurance</b>	1,266
<b>Fidelity Insurance</b>	948
<b>General Liability Insurance</b>	154,000
<b>Property Insurance</b>	13,482
<b>Utilities</b>	30,533
<b>Management Fee Client</b>	333,750

<b>January 1, 2021 to December 31, 2021</b>
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Account Title	Operating Funding
<b>Wages &amp; Benefits</b>	\$ 13,636,324
<b>Contracted Security</b>	3,500
<b>Contracted Armor Car Service</b>	-
<b>Contracted Labor Services</b>	843,881
<b>General &amp; Administrative Expenses</b>	1,089,160
<b>Trash Removal</b>	61,000
<b>Operational Overhead Expenses</b>	122,066
<b>General Building RM</b>	219,500
<b>Roll Up Door Maintenance</b>	44,000
<b>Window Cleaning &amp; RM</b>	257,000
<b>Sound Equipment Maintenance</b>	14,000
<b>Ceiling/Wall Maintenance</b>	85,000
<b>Electrical Systems RM</b>	11,000
<b>Emergency Generator RM</b>	14,500
<b>Elevator/Escalator RM</b>	656,550
<b>Fire Alarm Maintenance</b>	118,455
<b>HVAC Systems Maintenance</b>	47,500
<b>Machinery &amp; Equipment RM</b>	129,000
<b>Maintenance Agreements</b>	134,620
<b>Other Repairs &amp; Maintenance</b>	12,000
<b>General Building Supplies</b>	228,250
<b>Bulbs &amp; Lamps</b>	49,500
<b>Electrical</b>	50,000
<b>HVAC</b>	32,500
<b>Filters</b>	38,000
<b>Parts Mach &amp; Equip</b>	2,000
<b>Janitorial</b>	269,000
<b>Parking Garage Maintenance &amp; Supplies</b>	14,025
<b>Auto Insurance</b>	1,643
<b>Fidelity Insurance</b>	1,735
<b>General Liability Insurance</b>	170,100
<b>Property Insurance</b>	19,829
<b>Utilities</b>	70,000
<b>Management Fee Client</b>	445,000