

THIRD AMENDATORY AGREEMENT

This **THIRD AMENDATORY AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a home rule and municipal corporation of the State of Colorado (the “City”), and **ORION ENVIRONMENTAL, LLC**, a Delaware limited liability company, (f/k/a **ORION ENVIRONMENTAL, INC.**) registered to conduct business in Colorado, with its principal place of business located at 10301 East 107th Place, Brighton, Colorado 80601 (the “Contractor”), jointly (“the Parties”).

RECITALS:

WHEREAS, the Mayor declared a state of local disaster emergency on March 12, 2020, as amended 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, as amended on the same basis, and the President of the United States issued a Declaration of Emergency on March 13, 2020, as amended due to the COVID-19 crisis;

WHEREAS, the City awarded the Agreement to the Contractor as a result of a competitive selection process conducted by the City in accordance with its rules and procedures;

WHEREAS, to respond to the COVID-19 crisis in the City and County of Denver, Colorado, and pursuant to the declarations of emergency described above, the City wishes to retain Contractor for on-call abatement and remediation consulting Services;

WHEREAS, the City wishes such work to be performed on an expedited, emergency basis;

WHEREAS, the Parties entered into an Agreement dated June 10, 2020, an Amendatory Agreement dated August 19, 2022, and a Second Amendatory Agreement dated March 7, 2025, (collectively, the “Agreement”) to perform, and complete all of the Services and produce all the deliverables set forth in **Exhibit A** (“Services”), to the City’s satisfaction.

WHEREAS, the Parties wish to amend the Agreement to extend the term, increase the maximum contract amount, add subpart (3) to paragraph 6.d-Maximum Contract Amount, update paragraph 7-Key Personnel, update paragraph 10-Termination, update paragraph 11-Examination of Records, update paragraph 16-FEMA Grant and Cooperative Agreement Specific Provisions, update paragraph 24-Notices, update paragraph 31-Payment of City Minimum Wage, and update Exhibit B-Cost Schedule exhibit.

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

1. Section 4 of the Agreement entitled "**TERM:**" is hereby deleted in its entirety and replaced with:

"4. **TERM:** The term of the Agreement will commence on **June 10, 2020** and will expire on **December 9, 2026** (the "Term"). Subject to the Manager's prior written authorization, Contractor shall complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the Manager. Contractor hereby agrees that if the City elects to extend the Agreement as stated above, that it shall extend the Agreement under the same terms and conditions set forth in the Agreement."

2. Section 6 of the Agreement entitled "**COMPENSATION AND PAYMENT:**" subsection d. entitled "**Maximum Contract Amount:**", sub-subsection (1) is hereby deleted in its entirety and replaced with:

"(1) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **SEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$7,500,000.00)** (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor beyond that specifically described in **Exhibit A**. Any services performed beyond those in **Exhibit A** are performed at Contractor's risk and without authorization under the Agreement."

3. Section 6 of the Agreement entitled "**COMPENSATION AND PAYMENT:**" subsection d. entitled "**Maximum Contract Amount:**", sub-subsection (3) is added to the Agreement as follows:

"(3) The Contractor further understands that this Agreement may be funded, in whole or in part, with federal funds, in which the Contractor expressly understands and agrees that its rights, demands, and claims to compensation arising under this Agreement are contingent upon the City's actual receipt of such federal funds and the continued funding by the federal government. If such funds or any part thereof are not received, appropriated, or allocated by the City, the City and the Contractor may mutually amend the Agreement, or the City may unilaterally terminate this Agreement. If the federal government disallows the costs associated with this Agreement, claws

back or otherwise reduces the funds awarded or actually paid to the City, the City reserves the right to make any necessary reductions to this Agreement.”

4. Section 7 of the Agreement entitled “**KEY PERSONNEL:**” is hereby deleted in its entirety and replaced with:

“7. **KEY PERSONNEL/QUALIFIED PERSONNEL:** Contractor shall utilize the key personnel identified in **Exhibit C**. If any changes to key personnel have occurred or if Contractor decides to replace any of the key personnel, Contractor shall utilize personnel qualified for the project and identified position. If, at any time, the City determines that the performance of key or qualified personnel is not acceptable, the City shall notify Contractor and may give Contractor notice of the period of time that the City considers reasonable to correct this performance. If the City notifies Contractor that certain of its such personnel should be reassigned, Contractor shall use its best efforts to obtain adequate substitute personnel within ten (10) days from the date of the City’s notice. Contractor shall provide qualified personnel with requisite experience to perform and complete all Services under the Agreement.”

5. Section 10 of the Agreement entitled “**TERMINATION:**” is hereby deleted in its entirety and replaced with:

“10. TERMINATION/ NOTICE TO STOP:

a. The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon twenty (20) days prior written notice to the Contractor. However, nothing gives the Contractor the right to perform Services under the Agreement beyond the time when its Services become unsatisfactory to the Executive Director or when it receives notice of termination.

b. Notwithstanding the preceding paragraph, the City may terminate the Agreement if the Contractor or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Contractor’s business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

c. Upon termination of the Agreement, with or without cause, the Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating

to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement.

d. If the Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in the Contractor's possession, custody, or control by whatever method the City deems expedient. The Contractor shall deliver all documents in any form that were prepared under the Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and materials are the property of the City. The Contractor shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE".

e. The City has the right to issue a Notice to Stop Work ("Notice to Stop Work") if the City has reason to believe, in its sole discretion, that the federal funds for this Agreement are not available, delayed, or withheld for any reason. Upon receiving a Notice to Stop Work, the Contractor shall cease all work under the Agreement immediately, or within the time set forth in the Notice. Contractor shall submit an invoice for all outstanding work as soon as possible, but no later than fifteen (15) days after the date of the Notice to Stop Work or as directed in the Notice. The Contractor shall not resume work under the Agreement until it receives a Notice to Proceed ("Notice to Proceed") from the City. A Notice to Stop Work does not terminate the Agreement."

6. Section 11 of the Agreement entitled "**EXAMINATION OF RECORD:**" is hereby deleted in its entirety and replaced with:

"11. EXAMINATION OF RECORDS AND AUDITS:

a. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Contractor's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Contractor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, 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 paragraph shall require Contractor to make disclosures in violation of state or federal privacy laws. Contractor shall at all times comply with D.R.M.C. 20-276.

b. 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.”

7. Section 16 of the Agreement entitled “**FEMA GRANT AND COOPERATIVE AGREEMENT SPECIFIC PROVISIONS:**” is hereby deleted in its entirety and replaced with:

“**16. FEDERAL AND SPECIAL FUND REQUIREMENTS:** When federal or special funds, including grant funds, are used for NTPs or Work Orders, either directly or indirectly, the Contractor is subject to all terms and conditions set forth in the source fund as identified by and incorporated into the NTP or Work Order. To the extent that FEMA grant funds have been encumbered by the City to pay for any part of the Contractor’s Services described herein, Contractor is subject to all terms and conditions set forth in **Exhibit G** (the FEMA Grant and Cooperative Agreement provisions), or as otherwise since updated by FEMA.”

8. Section 24 of the Agreement entitled “**NOTICES:**” is hereby deleted in its entirety and replaced with:

“**24. NOTICES:** All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Contractor at the address first above written, and if to the City at:

Executive Director of the Department of Public Health and Environment or Designee
201 West Colfax Avenue, 8th Floor
Denver, Colorado 80202

With a copy of any such notice to:

Denver City Attorney’s Office
1437 Bannock St., Room 353
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

9. Section 31 of the Agreement entitled “**PAYMENT OF CITY MINIMUM WAGE:**” is hereby deleted in its entirety and replaced with:

“**31. [RESERVED.]**”

10. **Exhibit B** is hereby deleted in its entirety and replaced with **Exhibit B-1, Cost Schedule**, attached and incorporated by reference herein. All references in the original Agreement to **Exhibit B** are changed to **Exhibit B-1**.

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

12. This Third 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.

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[SIGNATURE PAGES FOLLOW.]

Contract Control Number:
Contractor Name:

ESEQD-202580412-03 / ENVHL-202054420-03
ORION ENVIRONMENTAL, 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:

Attorney for the City and County of Denver

By: _____

REGISTERED AND COUNTERSIGNED:

By: _____

By: _____

Contract Control Number:
Contractor Name:

ESEQD-202580412-03 / ENVHL-202054420-03
ORION ENVIRONMENTAL, LLC

By:

DocuSigned by:

Shawn Lopez

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Name:

Shawn Lopez

(please print)

Title:

President

(please print)

ATTEST: [if required]

By:

Name:

(please print)

Title:

(please print)

EXHIBIT B-1

COST SCHEDULE

<u>Unless Otherwise Specified, Classifications 1 to 6 Do Not Have a Wage Rate According to Prevailing Wage Schedules.</u>							
Item	Classification	Work Description	Salaried Position (yes/no)	Hourly Position (yes/no)	Not Applicable to a Specific Prevailing Wage Classification	<u>Straight Time</u> Hourly	<u>Overtime</u> Hourly
1	Project Manager	Main Contact for Contract, Cost Proposals & Billing. Project Coordination	Yes	No		\$ 140.00	140.00
2	Superintendent	Projects Contact and Oversight	Yes	No		140.00	140.00
3	Asbestos Supervisor (non-asbestos laborer)	State Certified Onsite Supervisor for Asbestos Worker & Laborer	No	YES		140.00	192.00
4	Common Worker Field Supervisor	Onsite Supervisor for Common Worker & Laborer	NO	YES		140.00	192.00
5	Expert Witness	Litigation & Preparation	NO	YES		\$ 450.00	\$ 675.00
6	Administrative Support	As Needed Non-Field Laborer	NO	YES		75.00	115.00

<u>Classifications 7 to 19 Are Subject to Prevailing Wage Rate Based on Heavy Construction Projects Schedules Dated Monday, February 3, 2020*</u>							
Item	Classification	Work Description	Salaried Position (yes/no)	Hourly Position (yes/no)	Hourly Minimum Rate per Prevailing Wage (Rate + Fringes)	<u>Straight Time</u> Flat Rate*	<u>Overtime</u> Flat Rate*
7	Asbestos Laborer	State Certified Asbestos Worker Performing Abatement of asbestos or remediation of hazardous materials inside or outside of a building	NO	YES		\$ 120.00	161.00
8	Common Worker	Non-Asbestos & Non-Regulated Material/Demolition & Cleanup Laborer	NO	YES		99.00	149.00

9	Laborer	Yardman	NO	YES		76.00	115.00
10	Truck Driver	Pick-Up	NO	YES		120.00	161.00
11	Truck Driver	Tandem/Semi Truck and Water	NO	YES		145.00	197.00
12	Power Equipment Operator	Backhoe	NO	YES		120.00	161.00
13	Power Equipment Operator	Trackhoe	NO	YES		120.00	161.00
14	Power Equipment Operator	Front End Loader	NO	YES		120.00	161.00
15	Power Equipment Operator	Skid Loader	NO	YES		120.00	161.00
16	Power Equipment Operator	Wheel Excavator Supplemental Group 6	NO	YES		120.00	161.00
17	Power Equipment Operator	Bulldozer	NO	YES		140.00	192.00
18	Electrician	Licensed and Capable of Meeting CDPHE PPE Requirements for Asbestos Containment Entry	NO	YES		140.00	192.00
19	Plumber	Licensed and Capable of Meeting CDPHE PPE Requirements for Asbestos Containment Entry	NO	YES		140.00	192.00

*Hourly Rate Minus Prevailing Wage = Flat Rate