

REVIVAL AND 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 **DENVER- DBA, MCITP/MCTS COMPUTER & LIMOUSINE SERVICES, S-CORP**, a Colorado corporation located at 4966 Durham Court, Denver, Colorado 80239 ("Contractor") and, together with the City, the "Parties").

RECITALS:

A. The Parties entered into an Agreement dated June 14, 2016, and an Amendatory Agreement dated August 8, 2018 (collectively, the "Agreement") for Contractor to undertake and perform the patron shuttle services for events at Red Rocks Amphitheatre as set forth in the Agreement.

B. The Agreement expired by its terms on December 31, 2021.

C. The Parties wish to amend the Agreement to reinstate all of the terms and conditions of the Agreement, to extend the term, increase the maximum compensation, and to make such other amendments as are herein set forth.

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

1. Capitalized terms used but not defined herein shall have the meanings given them in the Agreement.

2. Section 3 of the Agreement, entitled "**TERM:**", is hereby amended to read as follows:

"**3. TERM:** This Agreement shall commence on April 1, 2016, and shall expire on March 31, 2023 (the "Term")."

3. Subsection a. of Section 4 of the Agreement, entitled "**COMPENSATION AND PAYMENT:**", is hereby amended to read as follows:

"**a. Fees:** The City shall pay and Contractor shall accept as the sole compensation for services rendered and costs incurred under this Agreement no more than Eight Hundred Thousand Dollars and No Cents (\$800,000.00)."

4. Subsection d.(1) of Section 4 of the Agreement, entitled "**COMPENSATION AND PAYMENT:**", is hereby amended to read as follows:

"**(1)** Notwithstanding any other provision of this Agreement, the City's maximum payment obligation will not exceed Eight Hundred Thousand Dollars and No Cents (\$800,000.00). The City is not obligated to execute

an agreement or any amendments to this Agreement for any further services, including any services performed by Contractor beyond that specifically described in the Scope of Work. Any services performed beyond those in the Scope of Work are performed at Contractor's risk and without authorization under this Agreement.”

5. Section 7 of the Agreement, entitled **EXAMINATION OF RECORDS:**”, is hereby amended to read as follows:

“7. **EXAMINATION OF RECORDS AND AUDITS:** 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 forgoing 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 time comply with D.R.M.C. 20-276.”

6. In Section 9 of the Agreement, entitled “**INSURANCE:**”, Subsection f., entitled “**Workers’ Compensation/Employer’s Liability Insurance:**”, is hereby amended to read as follows:

“f. **Workers’ Compensation and Employer’s Liability Insurance:** The parties recognize and agree that Contractor is engaged in an independent occupation and profession and is free from control and direction in the performance of the services contracted for herein consistent with that mandated by C.R.S. §8-40-202(2)(a). It is understood and agreed by the parties that the City does not (1) require Contractor to work exclusively for the City, provided that Contractor may have elected to work exclusively for the City for the period of time specified in the term of this Agreement; (2) establish a quality standard for Contractor, provided that the parties agree that while the City may provide plans regarding its expectancy of the work to be performed by Contractor, the City will not oversee the actual work of Contractor or instruct Contractor as to how the work will be performed; (3) pay a salary or hourly wage to Contractor instead of the fixed contract rate stated herein; (4) terminate the work of Contractor for cause during the term of this Agreement unless Contractor violates the terms of

the Agreement or fails to produce a work product or result that meets the specific terms provided in this Agreement; (5) provide any training for Contractor other than minimal orientation to the site or other parameters of Contractor activity; (6) provide tools or benefits to Contractor; (7) dictate the time of performance; except that this Agreement completion date together with the range of negotiated and mutually agreeable work hours has been established herein; (8) pay Contractor personally instead of making City warrants payable to the professional name of the Contractor, except that in this Agreement the Contractor is an individual and sole proprietor; and (9) combine the regular operation of the City in any way with the professional or business operations of Contractor instead of maintaining office operations separately and distinctly.

“These provisions are separately stated in **Exhibit C-2**, “Separate Declaration Regarding Independent Status”, constituting the writing mandated by C.R.S. 8-40-202(2)(b), which must be signed and notarized by Contractor and the Manager. The Mayor hereby delegates to the Manager the authority to execute on behalf of the City **Exhibit C-2**, “Separate Declaration Regarding Independent Status.”

7. Exhibit C-2, “Separate Declaration Regarding Independent Status,” is attached hereto and incorporated herein by this reference.

8. Section 19 of the Agreement, entitled “**NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THIS AGREEMENT:**”, is hereby deleted to read as follows:

“19. NO EMPLOYMENT OF A WORKER WITHOUT AUTHORIZATION TO PERFORM WORK UNDER THE AGREEMENT:

“a. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”).

“b. Contractor certifies that:

“(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement, nor will it knowingly employ or contract with a worker without authorization to perform work under this Agreement in the future.

“(2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., and confirm the employment eligibility of all employees who are

newly hired for employment to perform work under this Agreement.

- “(3) It will not enter into a contract with a subconsultant or subcontractor that fails to certify to Contractor that it shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.
- “(4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under this Agreement, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
- “(5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization, it will notify such subconsultant or subcontractor and the City within three (3) days. Contractor shall also terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the worker without authorization, unless during the three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with a worker without authorization.
- “(6) It will comply with a reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

“c. Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If this Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the City. Any termination of a contract due to a

violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Contractor from submitting bids or proposals for future contracts with the City.”

9. Section 22 of the Agreement, entitled “**NO DISCRIMINATION IN EMPLOYMENT:**”, is amended to read as follows:

“**22. NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under the Agreement, Contractor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. Contractor shall insert the foregoing provision in all subcontracts.”

10. Contractor consents to the use of electronic signatures by the City. This 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 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 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 ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

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

12. 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.

**[THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK;
SIGNATURE PAGES FOLLOW.]**

Contract Control Number: THTRS-202261883-02/202261883-02
Contractor Name: Denver - DBA, MCITP/MCTS Computer & Limousine Services, S-Corp

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-202261883-02/202261883-02
Denver - DBA, MCITP/MCTS Computer & Limousine
Services, S-Corp

DocuSigned by:
Gabe Yesho
By: 1F35DCBDE1C34D6...

Name: Gabe Yesho
(please print)

Title: CEO
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT C-2
Separate Declaration
Regarding Independent Status

Separate Declaration Regarding Independent Status

It is understood and agreed by and between the City and Denver-DBA, MCITP/MCTS Computer & Limousine Services, S-Corp as the "Contractor" that the status of the Contractor shall be that of an independent contractor and of a person retained on a contractual basis to perform professional or technical services for limited periods of time as described in Section 9.1.1(E)(x) of the Charter of the City and it is not intended, nor shall it be construed, that the Contractor or any employee or subcontractors is an employee, officer, or agent of the City under Chapter 18 of the Denver Revised Municipal Code for purposes of unemployment compensation, workers' compensation, or for any purpose whatsoever.

Without limiting the foregoing, the parties hereby specifically acknowledge that the Contractor is not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by the Contractor or some other entity besides the City, that the Contractor is not entitled to workers' compensation benefits from the City, and that the Contractor is obligated to pay federal and state income taxes on any monies earned pursuant to this Agreement.

The parties recognize and agree that the Contractor is engaged in an independent occupation and profession and is free from control and direction in the performance of the services contracted for herein consistent with that mandated by C.R.S. 8-40-202(2)(a). It is understood and agreed by the parties that the City does not (a) require the Contractor to work exclusively for the City, provided that the Contractor may have elected to work for exclusively for the City for the period of time specified in the term of this Agreement; (b) establish a quality standard for the Contractor, provided that the parties agree that while the City may provide plans regarding its expectancy of the work to be performed by the Contractor, the City will not oversee the actual work of the Contractor or instruct the Contractor as to how the work will be performed; (c) pay a salary or hourly wage to the Contractor instead of the fixed contract rate stated herein; (d) terminate the work of the Contractor for cause during the term of this Agreement unless the Contractor violates the terms of this Agreement or fails to produce a work product or result that meets the specific terms provided in the Agreement; (e) provide any training for the Contractor other than minimal orientation to the site or other parameters of the Contractor activity; (f) provide tools or benefits to the Contractor; (g) dictate the time of performance; except that the Agreement completion date together with the range of negotiated and mutually agreeable work hours has been established herein; (h) pay the Contractor personally instead of making City warrants payable to the professional name of the Contractor, except that in this Agreement the Contractor is an individual and sole proprietor; and (i) combine the regular operations of the City in any way with the professional or business operations of the Contractor instead of maintaining office operations separately and distinctly.

[Signature]
Manager, Department

[Signature]
Signature of Contractor

STATE OF COLORADO)
CITY AND)ss
COUNTY OF DENVER)

Subscribed and sworn to before me this 21 day of March, 2022,
by Ginger White as Manager, Department.

Witness my hand and official seal.

My commission expires: 2/18/2026

DAVID MCCAMMON
Notary Public
State of Colorado
Notary ID # 20224005451
My Commission Expires 02-08-2026

[Signature]
Notary Public
1345 Champa St. Denver, CO
Address

STATE OF COLORADO)
CITY AND)ss
COUNTY OF DENVER)

Subscribed and sworn to before me this 17 day of March,
2022 by Gebremeriam Yeshe, as Contractor.

Witness my hand and official seal.

My commission expires: 10/28/2024

JESSICA GALLEGOS
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20204037872
MY COMMISSION EXPIRES 10/28/2024

[Signature]
Notary Public
15960 E. Andrews Dr.
Address