

**SECOND AMENDATORY
ON-CALL OWNER’S REPRESENTATIVE SERVICES AGREEMENT**

This **SECOND AMENDATORY ON-CALL OWNER’S REPRESENTATIVE SERVICES AGREEMENT** (“Agreement” or “Contract”) is entered into between the **CITY AND COUNTY OF DENVER** (the “City”), a home rule and municipal corporation of the State of Colorado, and **TRIUNITY, INC.**, a Colorado corporation, whose address is 1875 Lawrence Street, Suite 1100, Denver, Colorado 80202 (the “Consultant”), jointly, (the “Parties”).

RECITALS:

A. The Parties entered into an On-Call Owner’s Representative Services Agreement dated March 2, 2023, and an Amendatory On-Call Owner’s Representative Services Agreement dated June 26, 2023, (collectively, the “Agreement”) to perform, and complete all of the services and produce all the deliverables set forth on Exhibit A, the Scope of Services, to the City’s satisfaction.

B. The Parties wish to amend the Agreement to add section 2.03 (i), Federal Requirements, update section 3.05 Maximum Contract Amount, update section 4.01-Term, update section 4.02-Termination, add 7.32 Compliance with Denver Wage Laws, and supplement exhibit 6, Federal Terms and Conditions.

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

1. Section 2 of the Agreement entitled “**CONSULTANT’S SERVICES**”, subsection **2.03** entitled “**Professional Requirements; Task Requirements**,” is hereby added to the Agreement as follows:

“(i) **Federal Requirements.** Consultant understands that the City intends to seek reimbursement of amounts paid Consultant from federal funding sources. Consultant shall, to the maximum extent feasible, provide all services so that they are eligible for reimbursement from anticipated federal funding sources and in a manner consistent with obtaining federal funding for projects. The full extent of federal requirements is not known at this time. Consultant shall comply will all applicable federal requirements as they are identified as if they were set forth separately in this Agreement.”

2. Section 3. of the Agreement entitled “**COMPENSATION, PAYMENT AND FUNDING**”, subsection **3.05** entitled “**Maximum Contract Amount.**” is hereby deleted in its entirety and replaced with:

“**3.05.1 Maximum Contract Amount.** It is understood and agreed by the parties hereto that payment or reimbursement of all kinds to the Consultant, for all Work performed under this Agreement, shall not exceed a maximum of **TWENTY-FOUR MILLION SEVEN HUNDRED THOUSAND DOLLARS AND NO CENTS (\$24,700,000.00)**. In no event shall the maximum payment

to the Consultant, for all work and services performed throughout the entire term of this Agreement exceed the contract maximum amount set forth above.

3.05.2 The Consultant further understands that this Agreement is funded, in whole or in part, with federal funds as set forth in a federal financial assistance award. The Consultant 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 Consultant may mutually amend the Agreement, or the City may unilaterally terminate this Agreement. If the federal government terminates the federal financial assistance awards, disallows the costs associated with this Agreement, or otherwise reduces the funds awarded or actually paid to the City under, the City reserves the right to make any necessary reductions to this Agreement."

3. Section 4. of the Agreement entitled "**TERM AND TERMINATION**", subsection **4.01** entitled "**Term.**" is hereby deleted in its entirety and replaced with:

"4.01 Term. The term of this Agreement shall commence on **January 1, 2023**, and shall expire on **September 30, 2028**, (the "Term"), unless sooner terminated or extended by written amendment. The Consultant shall complete any Task Orders in progress as of the expiration date of this Agreement and the Term will extend until the work is completed or earlier terminated by the Manager."

4. Section 4. of the Agreement entitled "**TERM AND TERMINATION**", subsection **4.02** entitled "**Termination.**" is hereby deleted in its entirety and replaced with:

"4.02 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 ten (10) days prior written notice to the Consultant. However, nothing gives the Consultant the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Executive Director or the date on which the Consultant receives the notice of termination.

(b) The Manager may terminate this Agreement for cause at any time if the Consultant's services become unsatisfactory, in the sole discretion of the Manager. The City shall have the sole discretion to permit the Consultant to remedy the cause of a contemplated termination for cause without waiving the City's right to terminate the Agreement.

(c) In the event of a termination for cause, or in the event the Consultant becomes unable to serve under this Agreement, the City may take over work to be done otherwise, and the Consultant shall be liable to the City for all reasonable cost in excess of what the City would have paid the Consultant had there been no termination for cause.

(d) The City may, for convenience, cancel and terminate this Agreement by giving not less than thirty (30) days' prior written notice to the Consultant, which notice shall state the date of cancellation and termination.

(e) If the Consultant's services are terminated, postponed or revised, or if the Consultant shall be discharged before all the work and services contemplated have been completed, or if the task is, for any reason, stopped or discontinued, the Consultant shall be paid only for the portion of work or services which has been satisfactorily completed at the time of such dismissal, termination, cancellation, postponement, revision or stoppage.

(f) All documents relating to the work completed or partially completed shall be delivered by the Consultant to the City in the event of any dismissal, termination, cancellation, postponement, revision or stoppage.

(g) In the event of any dismissal, termination, cancellation, postponement, revision or stoppage, the Consultant shall cooperate in all respects with the City. Such cooperation shall include, but not be limited to, assisting the City during a transition to another Consultant, if applicable.

(h) 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 Consultant shall cease all work under the Agreement immediately, or within the time set forth in the Notice to Stop Work. Consultant 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 Consultant 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."

5. Section 7 of the Agreement entitled "**GENERAL PROVISIONS**", subsection **7.32** entitled "**Compliance with Denver Wage Laws.**" is hereby added to the Agreement as follows:

"7.32 Compliance with Denver Wage Laws. All services provided pursuant to this Agreement shall be performed in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver and any grant providing funding for this Agreement. By executing this Agreement, the Consultant expressly acknowledges that the Consultant is aware of the requirements of the City's Minimum Wage and Civil Wage Theft Ordinances and that any failure by the Consultant, 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."

6. This Second Amendatory On-Call Owner's Representative Services 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: DOTI-202683395-02 [202265837-02]
Contractor Name: Trinity, Inc.

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-202683395-02 [202265837-02]
Triunity, Inc.

By: ^{Signed by:} Danielle Smith
E6B3CD95EFF1495...

Name: Danielle Smith
(please print)

Title: West Region Manager
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)