

FIRST AMENDATORY AGREEMENT

THIS FIRST AMENDATORY AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“**City**”), and **THE GERMAN AMERICAN CHAMBER OF COMMERCE – COLORADO CHAPTER**, a Colorado nonprofit corporation (the “**User**”).

RECITALS:

A. The Parties entered into an Agreement executed on or about September 13, 2018, (the “**Agreement**”) for the performance of certain services set forth in that Agreement; and

B. The Parties wish to modify some of the terms and conditions with regard to the performance of services under the Agreement; and

C. Rather than enter into a new contract, the terms and conditions of the Agreement shall be revised and amended from how they previously existed to extend the term and modify language regarding park closure hours, walkthrough reports and certain deadlines.

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

1. Section 2.2 of the Agreement entitled “**Event Dates**” is amended to read as follows:

“Except as otherwise agreed by the Manager and the User in writing, the Event will be held (including Load-In and Load-Out) during the months of November and December in any year of the event consistent with the Terms of this Agreement. By no later than September 1 each year, User shall confirm to Parks Permitting the dates of the proposed full Event for the following year, from the first date of Load-In through the last date of Load-Out (“**Event Dates**”). This requirement does not obligate the City to enter into a subsequent agreement or amend this agreement for the following or any other year. There is no requirement that the User present Permitted Activities on each and every day during the Event Dates, but the User shall provide prior written notification to the Manager if the User intends not to present all or certain Permitted Activities or anticipates not being able to present all or certain Permitted Activities for reasons other than Force Majeure for five (5) or more consecutive days or fifteen (15) or more total days during the Event Dates, excluding days for Load-In and Load-Out. The User shall remain responsible for maintaining and securing the Facilities and Personal Property at the Event Site despite the duration or reasons for not presenting Permitted Activities. The hours for public admission to the Event Site for each day of the Event shall be restricted to 7:00 a.m. through 10:00 p.m. during the Event Dates unless otherwise approved in writing and in advance by the Manager. However, the Park shall remain available for general public access during normal Park hours, between 5:00 a.m. and 11:00 p.m. Maintenance crews and watchmen and other

security assigned to protect the User's Facilities and Personal Property situated in the Event Site are allowed to be on site in the park during Parks Curfew for that purpose."

2. Section 4.2 of the Agreement entitled "Damage Deposit" is amended to read as follows:

"The User shall deposit with the City no later than twenty-one (21) calendar days prior to the first day of Load-In a damage deposit in the amount of Five Thousand Dollars (\$5,000.00) ("**Damage Deposit**"). The Damage Deposit is intended to assure that adequate compensation for costs is available to the City to cover any costs the City incurs or may incur in the event that the User or the User's Subcontractor should fail to clean up the Event Site, the surrounding park and other nearby property as to all waste, stains, litter and debris resulting from or associated with the Event, or in the event that the User or the User's Subcontractor should fail to repair or replace (with items of equal or better quality) all property damaged in the Event Site, the surrounding park or other nearby property which damages resulted from or were associated with the Event. The User shall perform all clean-up, repairs, and replacement without requiring the City to resort to claiming the Damage Deposit. Should the User fail to perform as specified herein by the end of last day of the Load-Out, the City shall be entitled to retain such portions of the Damage Deposit as reasonably necessary to perform the clean-up, repairs, and replacement, and if the City's costs for such work exceed the amount of the Damage Deposit, the City shall not be limited by the Damage Deposit in its claim for actual damages. If the City has no claim against the Damage Deposit, the Damage Deposit shall be returned to the User within thirty (30) calendar days following the last day of Load-Out, or if the entire amount of the Damage Deposit is not required for the City to perform clean-up, repairs, or replacement, the remaining portion of the Damage Deposit shall be returned to the User within sixty (60) calendar days following the final walk-through in April or May of the year following the Event, as provided in Section 4.3."

3. Section 4.3 of the Agreement entitled "Walk-Through Inspection and Records" is amended to read as follows:

"The User shall appoint a representative authorized to act on behalf of the User with respect to the duties and actions under this Section 4.3. The User's representative and the City Liaison or other representative of the City designated by the Manager shall arrange times for walk-throughs as specified herein. The pre-Event walk-through will be conducted no later than one (1) day prior to the first day of Load-In for the Event; and two post-Event walk-throughs will be conducted, one immediately following the conclusion of Load-Out and the other as mutually scheduled between April and May of the year following the Event. A report of the condition of the Event Site and the surrounding park and adjoining right of way (if any) before and after the Event and Load-In and Load-Out, including a narrative, explanation or description of conditions and contemporaneous pictures, shall be prepared and signed by both representatives. This report shall provide the basis for determining what clean-up, repairs and replacements are appropriate for the User to perform or the City to seek reimbursement from the Damage Deposit under Section 4.2. In the event there is a dispute as to what clean-up, repairs and replacements are appropriate

under Section 4.2, the City and the User may seek the opinion of an impartial but qualified third party to mediate the dispute. If that mediation should not resolve the dispute, the City and/or the User may seek judicial recourse as provided in this Agreement.”

4. Section 7.1 of the Agreement entitled “Term” is amended to read as follows:

“Term. The term of this Agreement will commence on November 7, 2018 and expire at 5:00 p.m. on December 29, 2019 (the "**Term**"), unless sooner terminated in accordance with the terms of this Agreement, including without limitation those provisions set forth in Article 8 herein. If the time needed to complete performance of any provisions of this Agreement extends beyond the Term specified above (including, but not limited to, any payment of Fees, the Damage Deposit, and inspections under Article 4 of this Agreement and any provisions that expressly survive the expiration or termination of this Agreement), this Agreement shall remain in full force and effect but only as to such provisions.”

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

6. This 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.

[SIGNATURE PAGES TO FOLLOW]

Contract Control Number: PARKS-201842674-01/201951797
Contractor Name: GERMAN AMERICAN CHAMBER OF COMMERCE
COLORADO CHAPTER

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:
COLORADO CHAPTER

PARKS-201842674-01/201951797
GERMAN AMERICAN CHAMBER OF COMMERCE

By: DocuSigned by:
Peter F. Einsle
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Name: Peter F. Einsle
(please print)

Title: President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)