

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 **JKS INDUSTRIES, LLC**, a Colorado limited liability company, with its principal place of business located at 5200 DTC Parkway, Suite 100, Greenwood Village, Colorado 80111 (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 22, 2020, an Amendatory Agreement dated August 19, 2022, and a Second Amendatory Agreement dated March 12, 2025, (collectively, the “Agreement”) to perform, and complete all of the Services and produce all the deliverables set forth in Section 2, Services to be Performed (“Services”) and Exhibit A, 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 16-FEMA Grant and Cooperative Agreement Specific Provisions, update paragraph 30-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 22, 2020**, and will expire on **December 21, 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:

“d. **Maximum Contract Amount:**

(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:**”, subparagraphs **a.** and **b.** are hereby deleted in their 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 16 of the Agreement entitled "**FEDERAL AND SPECIAL FUND REQUIREMENTS:**" 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."

7. Section 30 of the Agreement entitled "**PAYMENT OF CITY MINIMUM WAGE:**" is hereby deleted in its entirety and replaced with:

"**30. [RESERVED.]**"

8. **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**

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

10. 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-202580345-03 / ENVHL-202054421-03
JKS INDUSTRIES, 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-202580345-03 / ENVHL-202054421-03
JKS INDUSTRIES, LLC

By:

Signed by:

Albert C. Gonzales

BC4B2D2AFFD848F...

Name:

Albert C. Gonzales
(please print)

Title:

CEO
(please print)

ATTEST: [if required]

By:

Name:

(please print)

Title:

(please print)

EXHIBIT B-1

Cost Schedule

<u>Item</u>	<u>Classification</u>	<u>Work Description</u>	<u>Salaried Position</u> <u>(yes or no)</u>	<u>Hourly Position</u> <u>(yes or no)</u>	<u>Not Available to a Specific Prevailing Wage Classification</u>	<u>Straight Time Hourly</u>	<u>Overtime Hourly</u>
<u>1</u>	<u>Project Manager</u>	<u>Main Contact for Contract, Cost Proposals & Billing. Project Coordination</u>	Yes	No		\$95.00	N/A
<u>2</u>	<u>Superintendent</u>	<u>Project Contact and Oversight</u>	No	Yes		\$84.00	\$119.45
<u>3</u>	<u>Asbestos Supervisor (non-asbestos laborer)</u>	<u>State Certified Onsite Supervisor for Asbestos Worker & Laborer</u>	No	Yes		\$77.00	\$109.50
<u>4</u>	<u>Common Worker Field Supervisor</u>	<u>Onsite Supervisor for Common Worker & Laborer</u>	No	Yes		\$45.00	\$67.50
<u>5</u>	<u>Expert Witness</u>	<u>Litigation & Preparation</u>	No	Yes		\$150.00	N/A
<u>6</u>	<u>Administrative Support</u>	<u>As Needed Non-Field Laborer</u>	Yes	No		\$45.00	N/A
<u>Item</u>	<u>Classification</u>	<u>Work Description</u>	<u>Salaried Position</u> <u>(yes or no)</u>	<u>Hourly Position</u> <u>(yes or no)</u>	<u>Hourly Minimum Rate per Prevailing Wage (Rate + Fringes)</u>	<u>Straight Time Flat Rate*</u>	<u>Overtime Flat Rate*</u>
<u>7</u>	<u>Asbestos Laborer</u>	<u>State Certified Asbestos Worker Performing Abatement of asbestos or remediation of hazardous materials inside or outside of a building</u>	No	Yes	<u>\$29.58</u>	\$70.00	\$99.54
<u>8</u>	<u>Common Worker</u>	<u>Non-Asbestos & Non-Regulated Material/Demolition & Cleanup Laborer</u>	No	Yes	<u>\$21.73</u>	\$45.00	\$67.50
<u>9</u>	<u>Laborer</u>	<u>Yardman</u>	No	Yes	<u>\$27.03</u>	\$54.00	\$81.00
<u>10</u>	<u>Truck Driver</u>	<u>Pick-Up</u>	No	Yes	<u>\$31.03</u>	\$55.00	\$82.50
<u>11</u>	<u>Truck Driver</u>	<u>Tandem/Semi Truck and Water</u>	No	Yes	<u>\$31.66</u>	\$55.00	\$82.50
<u>12</u>	<u>Power Equipment Operator</u>	<u>Backhoe</u>	No	Yes	<u>\$21.29</u>	\$45.00	\$67.50
<u>13</u>	<u>Power Equipment Operator</u>	<u>Trackhoe</u>	No	Yes	<u>\$50.40</u>	\$67.00	\$100.50
<u>14</u>	<u>Power Equipment Operator</u>	<u>Front End Loader</u>	No	Yes	<u>\$22.04</u>	\$45.00	\$67.50
<u>15</u>	<u>Power Equipment Operator</u>	<u>Skid Loader</u>	No	Yes	<u>\$23.22</u>	\$45.00	\$67.50

<u>16</u>	<u>Power Equipment Operator</u>	<u>Wheel Excavator Supplemental Group 6</u>	No	Yes	<u>\$37.03</u>	\$65.00	\$97.50
<u>17</u>	<u>Power Equipment Operator</u>	<u>Bulldozer</u>	No	Yes	<u>\$49.25</u>	\$65.00	\$97.50
<u>18</u>	<u>Electrician</u>	<u>Licensed and Capable of Meeting CDPHE PPE Requirements for Asbestos Containment Entry</u>	No	Yes	<u>\$64.03</u>	\$90.00	\$127.98
<u>19</u>	<u>Plumber</u>	<u>Licensed and Capable of Meeting CDPHE PPE Requirements for Asbestos Containment Entry</u>	No	Yes	<u>\$70.80</u>	\$90.00	\$127.98
<u>*Hourly Rate Minus Prevailing Wage = Flat Rate</u>							