

NINTH AMENDATORY AGREEMENT

THIS NINTH AMENDATORY AGREEMENT (this “Amendatory Agreement”) is made and entered by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized pursuant to the Constitution of the State of Colorado (the “City”), and **SMG**, a Pennsylvania general partnership, whose local address is 700 14th Street, Denver, CO 80202 (the “Contractor”).

BACKGROUND:

WHEREAS, the City and Contractor entered into that certain Agreement, dated November 18, 2008, as amended by an Amendatory Agreement dated January 11, 2012, a Second Amendatory Agreement dated April 27, 2013, a Third Amendatory Agreement dated May 23, 2014, a Fourth Amendatory Agreement dated November 19, 2014, a Fifth Amendatory Agreement dated April 29, 2016, a Sixth Amendatory Agreement dated June 16, 2017, a Seventh Amendatory Agreement dated November 8, 2017, and an Eighth Amendatory Agreement dated September 13, 2018 (the “Agreement”), by which Contractor agreed to provide various stagehand staffing and payroll services to the City; and

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

WHEREAS, the parties expressly acknowledge that state and local health and safety restrictions affecting the CCC are on-going to promote public safety in connection with use of city venues;

WHEREAS, Contractor shall seek to minimize expenses incurred related to the Agreement during the health and safety restrictions period (as herein defined); and

WHEREAS, the City and Contractor benefit by amending the Agreement as it will provide clarity concerning the parties’ respective responsibilities, enable all parties to control costs pursuant to the Agreement, and ensure continuity of services by Contractor pursuant to the Agreement upon the conclusion of the health and safety restrictions period.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained in the Agreement and herein contained the parties agree as follows:

1. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Agreement.

2. In response to the COVID-19 crisis in the City and County of Denver, Colorado, the City and Contractor hereby agree to modify the Agreement to account for the temporary closure of certain city venues beginning on March 13, 2020, and continuing through and beyond the date of this Ninth Amendatory Agreement, as well as any extension(s) or reinstatement(s) thereof, and any other Federal, State, or local limitations on mass gatherings that render use of the CCC commercially impractical (“Health and Safety Restrictions Period”).
3. All references to “41” in Section 35 are hereby deleted and replaced with “45”.
4. The following language shall be added as a new Section 43:

“43. COSTS DURING THE HEALTH AND SAFETY RESTRICTIONS PERIOD: Notwithstanding anything contained in this Agreement to the contrary, due to the Health and Safety Restrictions Period as defined in the Ninth Amendatory Agreement, City and Contractor agree as follows: Contractor shall manage expenses for the duration of the Health and Safety Restrictions Period to ensure costs are incurred as described in **Exhibit E** which is attached hereto and incorporated herein by this reference. If necessary expenses during the Health and Safety Restrictions Period are identified that are not described in **Exhibit E**, such costs may be approved in advance writing by the Director, or her designee. Further, should services of an emergency nature be necessary and it not be possible to first consult with the Director prior to undertaking such emergency services, directly resulting expenses may be incurred by SMG (“Emergency Services”). Should Contractor incur costs during the Health and Safety Restrictions Period that are not for Emergency Services, not described in Exhibit E, or otherwise approved in advance writing by the Director, notwithstanding anything in this Agreement to the contrary, such amounts shall not be the responsibility of the City pursuant to the Agreement and shall not be reimbursable during or subsequent to the Temporary Closure. Nothing in this Section 43 shall be construed to diminish Contractor’s obligations to City in accordance with this Agreement during the Health and Safety Restrictions Period.”

5. This Amendment is intended to preserve the parties’ rights and obligations for resumption of activities after the Health and Safety Restrictions Period and to promote continuity of services at the conclusion of the Health and Safety Restrictions Period. To effect such intent, a new section 44 shall be added to the Agreement as follows:

“44. EFFECT OF TEMPORARY CLOSURE AND RESUMPTION OF SERVICES: The parties specifically agree that notwithstanding anything in the Agreement to the contrary, the number of events for which services are provided

pursuant to the Agreement will likely be smaller than estimated during 2020 and 2021. Additionally, Contractor agrees not to seek to terminate the Agreement in connection with the Health and Safety Restrictions Period. The City shall notify Contractor at least 30 days prior to the conclusion of the Health and Safety Restrictions Period (“Reopening Notice”). The Reopening Notice shall be sent by electronic mail to bmcclintock@asmglobal.com or overnight mail to Contractor and shall be deemed effective when sent by City. Upon submission of the Reopening Notice, Contractor shall undertake all actions necessary to resume providing all services required by the Agreement on the day after the date identified by City as the expiration date of the Health and Safety Restrictions Period (“Activation Date”). Should Contractor fail to provide requested services on and after the Activation Date, Contractor shall be in breach of this Agreement.”

6. A new Section 45 shall be added to the Agreement as follows:

“SECTION 45 PAYMENT OF CITY MINIMUM WAGE: Contractor shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City’s Minimum Wage Ordinance, Sections 20-82 through 20-84 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, Contractor expressly acknowledges that Contractor is aware of the requirements of the City’s Minimum Wage Ordinance and that any failure by contractor, 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.”

7. The parties agree that Exhibit B-5 will likely require modification prior to expiration of the term of the Agreement. From and after the date of this Ninth Amendatory Agreement, and notwithstanding anything contained in the Agreement to the contrary, Contractor and Director may mutually agree upon revisions and changes to Exhibit B-5 by a signed written agreement, without further formal amendment of the Agreement.
8. Contractor consents to the use of electronic signatures by the City. This Ninth Amendatory 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 Ninth Amendatory 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 Ninth Amendatory 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 basis that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

9. The Parties agree that this Ninth Amendatory Agreement shall be deemed effective as of January 1, 2021.

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

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Contract Control Number: THTRS-202057223-09/ALFRESCO #CE93004-09
Contractor Name: SMG

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-202057223-09/ALFRESCO #CE93004-09
SMG

DocuSigned by:
Bob Newman
By: 4D95ED9B18B7468...

Name: Robert Newman
(please print)

Title: President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Exhibit E

SMG shall manage expenses in regards to any permanently assigned House Crew during the Temporary Closure to ensure costs incurred are minimized based on facility need and event activity. Effective March 23, 2020 all permanently assigned House Crew were furloughed and commencing on May 1, 2020 layoffs were implemented of all permanently assigned House Crew as management of expenses. No such expenses shall be incurred without a written authorization from City (or booking agreement) during the Health and Safety Restrictions Period.