

## REVIVAL AND SECOND AMENDATORY AGREEMENT

This **REVIVAL AND SECOND AMENDATORY AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), and **MILE HIGH FESTIVALS LLC**, a Colorado limited liability company whose address is 712 S. Memphis Way, Aurora, Colorado 80017 (the “Contractor”), jointly (“the Parties”).

### RECITALS:

**A.** The Parties entered into that certain Agreement dated April 5, 2022, and a First Amendatory Agreement dated June 10, 2022 (collectively, the “Agreement”) for production of the Five Points Jazz Festival.

**B.** The Agreement expired by its terms on July 31, 2022; and

**C.** The Parties wish to revive and reinstate all of the terms and conditions of the Agreement in order to amend the Agreement to increase funding and extend the Term to provide for final payment.

**NOW THEREFORE**, in consideration of the premises and the Parties’ mutual covenants and obligations, the Parties agree to revive and reinstate the Agreement and further agree as follows:

1. Section 4 of the Agreement, entitled “**TERM:**”, is hereby deleted in its entirety and replaced with:

“This Agreement will commence on January 19, 2022, and will expire on September 30, 2022 (the “Term”). Subject to the Executive Director’s prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term of this Agreement will extend until the work is completed or earlier terminated by the Executive Director.”

2. In Section 4 of the Agreement, entitled “**COMPENSATION AND PAYMENT; PAYMENT OF MINIMUM WAGE:**”, in Subsection d., entitled “**Maximum Contract Amount:**”, paragraph (1) is hereby deleted in its entirety and replaced with:

“(1) **Maximum Contract Amount:** Notwithstanding any other provision of this Agreement, the City's maximum payment obligation will not exceed **FIVE HUNDRED TWENTY-TWO THOUSAND NINETY-TWO DOLLARS AND FIFTY CENTS (\$522,092.50)** (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 the Contractor beyond that specifically described in **Exhibit A**. Any services performed beyond those in **Exhibit A** are performed at the Contractor's risk and without authorization under this Agreement.”

3. All references to “Exhibit B, B-1” in the Agreement shall be amended to read: “Exhibit B-2”. The Budget marked as Exhibit B-2 is attached hereto and incorporated herein by this reference.

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

5. This Revival and 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-202264302-02 [202261868-02]  
**Contractor Name:** MILE HIGH FESTIVALS 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:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

THTRS-202264302-02 [202261868-02]  
MILE HIGH FESTIVALS LLC

DocuSigned by:  
*Norman Harris*  
By: E2347D368224438...

Name: Norman Harris  
(please print)

Title: PRESIDENT  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

## Exhibit B-2

Payment shall be arranged in installments based on work-related milestones and other expenses required to retain services of subcontractors and vendors for materials and services needed for the festival. Two different fee schedules will apply, the “Producer Fee Schedule” and the “Rental Expenses” schedule.

Initial payment will be issued **net-5** from the date a City of Denver purchase order **is issued** under contract THTRS-202261868 and a complete and responsive invoice from the Contractor has been received. A fully complete and responsive invoice requires, in addition to the requirement set forth in the Prompt Pay Ordinance, that all goods and services to be delivered or completed to satisfaction, certified payrolls have been submitted when “prevailing wages” apply, and that the invoice adheres to the terms and conditions of the City’s Purchase Order.

Subsequent payments will be issued **net-5** from the date on which a complete and responsive invoice from the Contractor is received.

### PRODUCER FEE SCHEDULE

The total production fee shall not exceed \$130,260.

Fee will be paid in installments of:

- Within 30 days of contract execution – 45% of fee.
- Proof of securing required pre-approved sub-contractor(s) has been obtained – 25% of fee - subject to review and approval by the A&V project manager.
- Completion of all steps as highlighted in the Office of Special Events (OSE) Special Event Planning Guide and subsequent receipt of Special Events Permit – 25% of fee - subject to review and approval by the A&V project manager.
- Upon completion of final debrief and evaluation – 5% of fee.

The A&V project manager has final determination on whether the Contractor has met the milestone requirements and whether payment is authorized.

### RENTAL & OTHER EXPENSES

The total rental and other expenses shall not exceed \$391,832.50.

A&V will compensate at cost, deposits and/or other fees paid that are incurred in the course of festival production. Examples include but are not limited to equipment deposits, rental expenses, and permit fees.