

FIRST AMENDATORY AND REVIVAL AGREEMENT

THIS FIRST AMENDMENT TO SERVICES AGREEMENT (“Amendment”) is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a home rule municipal corporation of the State of Colorado (the “**City**”) and the **STATE OF COLORADO** (the “**State**”), acting by and through the Department of Personnel & Administration. Both City and State may be referred to individually as a “**Party**”, and shall collectively hereinafter be referred to as “**Parties**” to this Amendment.

WITNESSETH:

WHEREAS, the Parties entered into a Services Agreement commencing on April 17, 2020 (the “**Agreement**”) whereby the City agreed to procure food and beverage, laundry and cleaning services and provide certain IT related services at the Colorado Convention Center located at 700 14th Street, Denver, Colorado; and

WHEREAS, the Parties wish to amend, reinstate and revive the Agreement to extend the term, add funds to ensure continuity of services and adequate funding of the facility, and clarify the parties’ respective responsibilities concerning FEMA reimbursement and compliance; and

WHEREAS, the State presented to the City, and City Council approved an amendment on July 20th, 2020, to extend the term and add funds to the Agreement (“**Initial Amendment**”); and

WHEREAS, the Initial Amendment did not clarify the Parties’ FEMA responsibilities; and

WHEREAS, the State of Colorado subsequently requested that the FEMA provisions described herein be included in a mutually-agreed upon First Amendment, and that instead of executing the Initial Amendment, that this First Amendment and Revival agreement be utilized by the Parties to accomplish mutually agreed-upon objectives; and

WHEREAS, the City is already requiring its subcontractors honor the obligations described in the new Paragraph 36 of this Amendment, and shall continue to enforce such obligations with its subcontractors.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and obligations herein set forth, the Parties agree to the following modifications:

1. The Initial Amendment is hereby declared null and void by the Parties, and will not be executed by the State, or in any way modify the terms of the Agreement.

2. Section 5(d)(1) of the Agreement shall be modified by deletion of “FOUR HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$450,000.00)” which shall be replaced with “SEVEN HUNDRED SIXTY-EIGHT THOUSAND DOLLARS AND NO CENTS (\$768,000.00)”.

3. Paragraph 4 of the Agreement shall be modified by deletion of “June 30, 2020” which shall be replaced with “December 31, 2020,” so that the Agreement, as amended, will expire on December 31, 2020, unless otherwise earlier terminated or extended, provided however, that the State’s payment obligations are limited to the Maximum Contract Amount.

4. A new Paragraph 36 shall be added to the Agreement as follows:

“The City shall require that the following terms be included in any subcontract agreement for services rendered pursuant to this Agreement:

“FEMA GRANT AND COOPERATIVE AGREEMENT SPECIFIC PROVISIONS: During the performance of this Agreement, the Contractor agrees as follows:

Federal Equal Opportunity Clause

The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment

advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

The Contractor will include the above language in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Compliance with the Contract Work Hours and Safety Standards Act

Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the aforementioned overtime requirements described in this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in the overtime requirements of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in the overtime requirements of this section.

Withholding for unpaid wages and liquidated damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the above violation; liability for unpaid wages; liquidated damages paragraph of this section.

Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in ‘overtime requirements’, ‘violation; liability for unpaid wages; liquidated damages’, ‘withholding for unpaid wages and liquidated damages’ of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in the paragraphs described in this section as well as this ‘subcontracts’ paragraph.

FOR AGREEMENTS IN EXCESS OF \$150,000 the Clean Air Act and Federal Water Pollution Control Act Provisions Apply

Clean Air Act: The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401, *et seq.* The Contractor agrees to report each violation to the Colorado Department of Public Health and Environment (“CDPHE”) and understands and agrees that the CDPHE will, in turn, report each violation as required to assure notification to the City, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA and HHS.

Federal Water Pollution Control Act: The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, *et seq.* The Contractor agrees to report each violation to the CDPHE and understands and agrees that the CDPHE will, in turn, report each violation as required to assure notification to the City, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA and HHS.

Suspension and Debarment

This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by the City. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other

award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 44 C.F.R. PART 18-CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements (To be submitted with each bid or offer exceeding \$100,000)

The undersigned certifies, to the best of his or her knowledge, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801, *et seq.*, apply to this certification and disclosure, if any.

PROCUREMENT OF RECOVERED MATERIALS

In the performance of this Agreement, the Contractor shall make maximum use of products containing recovered materials that are EPA items unless the product cannot be acquired competitively within a timeframe providing for compliance with the contract performance schedule;

Meeting contract performance requirements; or

At a reasonable price.

Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <http://www.epa.gov/cpg/products.htm>.

ADDITIONAL PROVISIONS

The Contractor agrees to provide any agency or department of the State of Colorado, the City, the FEMA Administrator, the Comptroller General of the United States, HHS or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide the FEMA Administrator, HHS or authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement.

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA or HHS pre-approval.

This is an acknowledgement that FEMA or HHS financial assistance will be used to fund the Agreement only. The Contractor will comply with all applicable federal laws, regulations, executive orders, FEMA or HHS policies, procedures, and directives.

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, the Contractor, or any other party pertaining to any matter resulting from the Agreement.

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement.”

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

6. Execution of Amendment. This Amendment is expressly subject to, and shall not be or become effective or binding on the City until approval by its City Council. Once executed by all parties and the State’s State Controller or authorized designee, it shall be effective as of July 1, 2020.

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Contract Control Number:
Contractor Name:

THTRS-202056374-01
STATE OF COLORADO

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-202056374-01
STATE OF COLORADO

By: _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

Each person signing this Amendment represents and warrants that the signer is duly authorized to execute this Amendment and to bind the Party authorizing such signature.

<p align="center">CONTRACTOR City and County of Denver</p> <hr/> <p>By: Name & Title of Person Signing for Contractor Date: _____</p>	<p align="center">STATE OF COLORADO Jared S. Polis, Governor Department of Personnel & Administration Kara Veitch, Executive Director</p> <hr/> <p>By: Name & Title of Person Signing for Agency or IHE Date: _____</p>
<p align="center">2nd State or Contractor Signature if Needed</p> <hr/> <p>By: Name & Title of Person Signing for Signatory Date: _____</p>	<p align="center">LEGAL REVIEW Philip J. Weiser, Attorney General</p> <p>By: _____ Assistant Attorney General</p> <p>Date: _____</p>
<p>In accordance with §24-30-202, C.R.S., this Amendment is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p align="center">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p align="center">By: _____ Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval</p> <p align="center">Effective Date: _____</p>	