

## **FIRST AMENDATORY AGREEMENT**

**THIS FIRST 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 address for notice purposes is 300 Conshohocken State Road, Suite 450, West Conshohocken, PA 19428 (the “Contractor”).

### **BACKGROUND:**

**WHEREAS**, the City and Contractor entered into that certain Agreement, with a term that commenced on April 6, 2020 (the “Agreement”), by which Contractor agreed to provide various facility 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 seek to have the Agreement reviewed and approved by City Council;

**WHEREAS**, the parties seek to extend the Agreement until June 30, 2020, with an option to further extend and modify the maximum contract amount accordingly; and

**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. Section 3 of the Agreement is hereby modified by deletion of “May 5” which shall be replaced with “June 30”.
3. Section 3 of the Agreement shall be further modified by addition of the following language after the third sentence:

“The term of this Agreement may be extended for three months, from July 1, 2020 through September 30, 2020, by Director in her discretion (“Extension Option”). Director shall provide written notice to Contractor of the City’s election to exercise the Extension Option at least ten (10) days prior to expiration of the Term.”

4. Section 4.1.1. of the Agreement shall be modified by addition of the following language after the fourth sentence:

“Notwithstanding anything contained in this Agreement to the contrary, Director shall have authority to instruct Contractor to cease providing any service described in Exhibit A that is either unnecessary or provided by City or another provider. Contractor shall be paid for all services performed by Contractor pursuant to this Agreement, however, Contractor shall not be entitled to payment for any services described in Exhibit A not performed by Contractor at the written instruction of Director.”

5. Section 4.4.1 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 “NINE MILLION NINE HUNDRED NINETY-SEVEN THOUSAND DOLLARS AND NO CENTS (\$9,997,000.00)”.
6. Contractor consents to the use of electronic signatures by the City. This First 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 First 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 First 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.
7. The Parties agree that this First Amendatory Agreement shall be deemed effective as of April 13, 2020.
8. Except as herein amended, the Agreement is affirmed and ratified in each and every particular.

**[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]**

**Contract Control Number:** THTRS-202054328-01  
**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-202054328-01  
SMG

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

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

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

ATTEST: [if required]

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

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

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

**Contract Control Number:** THTRS-202054328-01  
**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:

\_\_\_\_\_

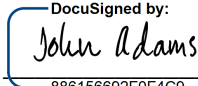
\_\_\_\_\_

By:

\_\_\_\_\_

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

THTRS-202054328-01  
SMG

By:  \_\_\_\_\_  
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Name: John Adams  
(please print)

Title: GM  
(please print)

ATTEST: [if required]

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

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

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