

## FIRST AMENDATORY AGREEMENT

**THIS FIRST AMENDATORY AGREEMENT** is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **THE WHITING-TURNER CONTRACTING COMPANY**, a Maryland corporation authorized to do business in the State of Colorado, whose address is 300 East Joppa Road, Baltimore, Maryland 21286 (the “Contractor”), each a “Party” and collectively the “Parties.”

### RECITALS:

**A.** The Parties entered into a Preconstruction Services Agreement dated **December 4, 2019** to provide preconstruction services for the National Western Center Equestrian Center project (the “Agreement”); and

**B.** Rather than enter into a new contract, the Parties desire to amend the Agreement to supplement the original **Exhibits B** and **E** that were attached to the Agreement with the attached **Exhibit B-1**, replace the original **Exhibit F** with the attached **Exhibit F-1**, and add compensation in the amount of **ONE MILLION NINE HUNDRED FIFTY-SIX THOUSAND DOLLARS AND ZERO CENTS (\$1,956,000.00)** to the Agreement for the purpose of business continuity.

**NOW THEREFORE**, in consideration of the premises and the Parties’ mutual covenants and obligations, the Parties agree as follows:

1. Section 6.1 of the Agreement, entitled “**Basic Services**” is amended to read as follows:

#### “**6.1 Basic Services.**

The Contractor’s Basic Services shall consist of all preconstruction and related work and services set forth in Article 5 and **Exhibits E** and **B (Basic Services and Proposal)**, respectively. The Contractor shall be compensated for all such services performed on a lump sum basis. The maximum amount payable for all Basic Services shall be the lump sum amount of **TWO MILLION FOUR HUNDRED FORTY-THREE THOUSAND SIX HUNDRED SIXTY DOLLARS AND 00/100 CENTS (\$2,443,660.00)**. Compensation shall be paid to the Contractor monthly, based upon pay applications and progress reports accepted and approved by the Project Manager. Upon successful completion of Pre-Construction Services,

the City may in its sole discretion elect to execute a CM/GC Construction Contract with Contractor.”

2. Section 6.3 of the Agreement, entitled “**Maximum Contract Amount**” is amended to read as follows:

“**6.3 Maximum Contract Amount.** The “Maximum Contract Amount” to be paid by the City to the Contractor under this Agreement shall not exceed the sum of **TWO MILLION FOUR HUNDRED FORTY-THREE THOUSAND SIX HUNDRED SIXTY DOLLARS AND 00/100 CENTS (\$2,443,660.00).**”

3. Section 6.4 of the Agreement, entitled “**Funding**” is amended to read as follows:

“**6.4 Funding.** It is expressly understood and agreed by the Contractor that the Contractor is undertaking this performance for a “not to exceed”, maximum fee for the Project. It is further understood and agreed by the Contractor that the total obligation of the City for all or any part of its payment obligations hereunder, whether direct or contingent, shall in no event extend beyond payment of the lesser of the amounts duly and lawfully encumbered for the purposes of the Agreement or the Maximum Contract Amount set forth above. The City has, as of the date first set forth above, duly and lawfully encumbered the sum of **TWO MILLION FOUR HUNDRED FORTY-THREE THOUSAND SIX HUNDRED SIXTY DOLLARS AND 00/100 CENTS (\$2,443,660.00)** for the purposes of this Agreement. With respect to all such performance and funding, the Contractor understands and agrees that the provision of any services which would cause the total amount payable to Contractor to exceed the amount of previously encumbered funds, is strictly prohibited. In the event the continuation of services by the Contractor would cause the amount payable to Contractor to exceed the amount payable under Sections 6.1 and 6.2, the Contractor agrees to give the Project Manager at least four (4) weeks’ written notice of the exhaustion of available funds. In the event additional funds are not made available within such four (4) week period, the Contractor agrees to stop providing services until such time as additional funds are made available and encumbered for the purposes of this Agreement. It shall be the responsibility of the Contractor to verify that the amounts already encumbered are sufficient to cover the entire cost of such work. Work or services

performed in excess of the amount encumbered or outside the scope of authorized work or services is undertaken or performed in violation of the terms of this Agreement and, as such, at the Contractor's own risk and sole cost and expense. Funding for the Project has been budgeted over several years, and the City reserves the right to suspend work and the Contractor will not be compensated monetarily for the time delay.”

4. **Exhibits B and E** of the Agreement shall be supplemented by **Exhibit B-1**, which is attached hereto and incorporated herein by reference. All references to **Exhibit B** in the Agreement shall automatically incorporate the attached **Exhibit B-1**. The new amounts detailed in **Exhibit B-1** shall be effective at the time of execution of this First Amendatory Agreement and shall only apply to new task orders issued after execution of this First Amendatory Agreement.

5. **Exhibit F** of the Agreement shall be replaced in its entirety by **Exhibit F-1**, which is attached hereto and incorporated herein by reference. All references to **Exhibit F** in the Agreement shall automatically incorporate the attached **Exhibit F-1**.

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

7. This First 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 TO FOLLOW]**

**Contract Control Number:** DOTI-202056090-01 [201952621-01]  
**Contractor Name:** THE WHITING-TURNER CONTRACTING COMPANY

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:**

DOTI-202056090-01 [201952621-01]  
THE WHITING-TURNER CONTRACTING COMPANY

By:  \_\_\_\_\_  
A03E0010A0D34B0...

Name: Paul Schmitt  
(please print)

Title: Sr Vice President  
(please print)

ATTEST: [if required]

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

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

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





Exhibit F-1

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 7/27/2020
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**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

<b>PRODUCER</b> Riggs, Counselman, Michaels & Downes, Inc. 555 Fairmount Avenue Towson MD 21286	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2"><b>CONTACT NAME:</b> Courtney Mitchell</td> </tr> <tr> <td><b>PHONE (A/C. No. Ext):</b> 410-339-7263</td> <td><b>FAX (A/C. No.):</b> 410-339-7234</td> </tr> <tr> <td colspan="2"><b>E-MAIL ADDRESS:</b> cmitchell@rcmd.com</td> </tr> <tr> <td colspan="2" style="text-align: center;"><b>INSURER(S) AFFORDING COVERAGE</b></td> </tr> <tr> <td><b>INSURER A:</b> Travelers Property Casualty Company of America</td> <td style="text-align: right;"><b>NAIC #</b> 25674</td> </tr> <tr> <td><b>INSURER B:</b> Travelers Indemnity Company</td> <td style="text-align: right;">25658</td> </tr> <tr> <td><b>INSURER C:</b></td> <td></td> </tr> <tr> <td><b>INSURER D:</b></td> <td></td> </tr> <tr> <td><b>INSURER E:</b></td> <td></td> </tr> <tr> <td><b>INSURER F:</b></td> <td></td> </tr> </table>	<b>CONTACT NAME:</b> Courtney Mitchell		<b>PHONE (A/C. No. Ext):</b> 410-339-7263	<b>FAX (A/C. No.):</b> 410-339-7234	<b>E-MAIL ADDRESS:</b> cmitchell@rcmd.com		<b>INSURER(S) AFFORDING COVERAGE</b>		<b>INSURER A:</b> Travelers Property Casualty Company of America	<b>NAIC #</b> 25674	<b>INSURER B:</b> Travelers Indemnity Company	25658	<b>INSURER C:</b>		<b>INSURER D:</b>		<b>INSURER E:</b>		<b>INSURER F:</b>	
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<b>INSURED</b> The Whiting - Turner Contracting Company 300 E Joppa Rd Baltimore MD 21286	WHIT-TU-01																				

**COVERAGES** **CERTIFICATE NUMBER: 1231430235** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS														
B	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	Y		VTC2KCO5788B20AIND20	8/1/2020	8/1/2021	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>EACH OCCURRENCE</td><td>\$ 2,000,000</td></tr> <tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td>\$ 1,000,000</td></tr> <tr><td>MED EXP (Any one person)</td><td>\$ 10,000</td></tr> <tr><td>PERSONAL &amp; ADV INJURY</td><td>\$ 2,000,000</td></tr> <tr><td>GENERAL AGGREGATE</td><td>\$ 4,000,000</td></tr> <tr><td>PRODUCTS - COMP/OP AGG</td><td>\$ 4,000,000</td></tr> <tr><td>Total Aggregate</td><td>\$ 25,000,000</td></tr> </table>	EACH OCCURRENCE	\$ 2,000,000	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000	MED EXP (Any one person)	\$ 10,000	PERSONAL & ADV INJURY	\$ 2,000,000	GENERAL AGGREGATE	\$ 4,000,000	PRODUCTS - COMP/OP AGG	\$ 4,000,000	Total Aggregate	\$ 25,000,000
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**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
 Job #018085: Equestrian Center & Parking Garage, 4655 Humboldt Street, Denver, CO 80216. City of Denver, Elected and Appointed Officials, Employees and Volunteers are Add'l Insured under GL on a primary & non-contributory basis as required by written contract. 30 days notice of cancellation, 10 days notice of cancellation for non-payment of premium.

<b>CERTIFICATE HOLDER</b>  City and County of Denver 201 West Colfax Avenue Denver CO 80202	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
7/27/2020

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<b>PRODUCER</b> HMS Insurance Associates, Inc. 20 Wight Ave Suite 300 Hunt Valley MD 21030	<b>CONTACT NAME:</b> <b>PHONE (A/C. No. Ext):</b> 410-337-9755 <b>FAX (A/C. No):</b> <b>E-MAIL ADDRESS:</b> squidley@hmsia.com
<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> WHITCON-01 The Whiting-Turner Contracting Company 300 East Joppa Road Towson MD 21286	<b>INSURER A :</b> Indian Harbor Insurance Company <b>NAIC #</b> 36940  <b>INSURER B :</b> <b>INSURER C :</b> <b>INSURER D :</b> <b>INSURER E :</b> <b>INSURER F :</b>

**COVERAGES**      **CERTIFICATE NUMBER: 1737425076**      **REVISION NUMBER:**

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A	Professional Liability Claims Made Retro Date 07/31/1998			CEO744604302	8/1/2020	8/1/2022	Per Claim Aggregate      1,000,000 1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
 RE: Job #018085 Equestrian Center & Parking Garage 5125 Race Court Denver, CO 80216

<b>CERTIFICATE HOLDER</b>  City and County of Denver 201 West Colfax Avenue Denver CO 80202	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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