

SECOND AMENDATORY AGREEMENT

THIS SECOND AMENDATORY AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), and **CONVERGEONE, INC.**, a Minnesota corporation, whose address is 10900 Nesbitt Ave S, Bloomington, MN 55437 (the “Contractor”), individually a “Party” and collectively the “Parties.”

WHEREAS, the Parties entered into an Agreement dated October 24, 2018, and an Amendatory Agreement dated March 6, 2020, to provide the City with a replacement emergency 911 phone system (the “Agreement”); and

WHEREAS, the Agreement expired by its terms on October 15, 2023, and rather than enter into a new agreement, the Parties wish to revive and reinstate all terms and conditions of the Agreement as they existed prior to the expiration of the term and to amend the Agreement as set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties incorporate the recitals set forth above and amend the Agreement as follows:

1. Effective October 16, 2023, all references to Exhibit C in the existing Agreement shall be amended to read Exhibits C and C-1, as applicable. Exhibit C-1 is attached and will control from October 16, 2023.

2. Section 4 of the Agreement, titled “**TERM**,” is amended to read as follows:

“4. **TERM**: The term of the Agreement (“Term”) shall commence on October 15, 2018, and expire, unless sooner terminated, on October 14, 2024. The term shall extend past the end date to account for any full year of annual services that are paid for in advance.”

3. Subsection 5(A) of the Agreement, titled “**Fee**,” is amended to read as follows:

“A. **Fee**: The City shall pay, and the Contractor shall accept as the sole compensation for services rendered and costs incurred under this Agreement the fees described in the attached Exhibits. Amounts billed may not exceed rates set forth in the Exhibits and will be made in accordance with any agreed upon payment milestones.”

4. Subsection 5(D)(i) of the Agreement, titled “**Maximum Contract Liability**,” is amended to read as follows:

“(i) Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed Five Million Two Hundred Forty-Four Thousand Two Hundred Sixty-Seven Dollars and Ninety-One Cents (\$5,244,267.91) (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 the Exhibits. Any services performed beyond those in the Exhibits or performed outside the Term are performed at the Contractor’s risk and without authorization under the Agreement.”

5. Section 8 of the Agreement, titled “**EXAMINATION OF RECORDS**,” is amended to read as follows:

“8. **EXAMINATION OF RECORDS AND AUDITS**: Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City’s election in paper or electronic form, any pertinent books, documents, papers and records related to the Contractor’s performance pursuant to this Agreement,

provision of any goods or services to the City, and any other transactions related to this Agreement. The Contractor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under this Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require the Contractor to make disclosures in violation of state or federal privacy laws. The Contractor shall at all times comply with D.R.M.C. § 20-276.”

6. Section 24 of the Agreement, titled “**NO DISCRIMINATION IN EMPLOYMENT**,” is amended to read as follows:

“**24. NO DISCRIMINATION IN EMPLOYMENT**: In connection with the performance of work under this Agreement, the Contractor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Contractor shall insert the foregoing provision in all subcontracts.”

7. Section 39, titled “**LIMITATION OF LIABILITY**,” is hereby incorporated into the Agreement and reads as follows:

“**39. LIMITATION OF LIABILITY**: To the extent permitted by law, the Parties acknowledge and agree to the following: (a) the City acknowledges that the Services may not function properly: (i) during any disruption of power at the City’s location; (ii) during any disruption of internet connectivity to the City’s location; (iii) during any period in which the City’s VoIP telephony service provider or Local Exchange carrier has cancelled or suspended delivery of services to the City for any reason (including suspension or cancellation for failure to pay or other default); (iv) during any period of Service outage or failure beyond the Contractor’s reasonable control (including natural disasters, widespread telephony or Internet network failures or a service failure of the Contractor or its third party suppliers); (v) if the City’s equipment fails to function, is not properly configured or is defective.” (b) SHOULD CITY, OR ANY PARTY CLAIMING TO HAVE IN ANY WAY RELIED UPON THE SERVICES, SUFFER ANY LOSS, DAMAGE, COST OR EXPENSE FROM ITS USE, OR OPERATION OF THE SERVICES, THEN THE MAXIMUM AGGREGATE AMOUNT OF LIABILITY OF CONTRACTOR, ITS OFFICERS, EMPLOYEES AND AGENTS WILL BE LIMITED TO THREE TIMES THE AMOUNT OF FEES PAID OR PAYABLE TO CONTRACTOR BY CITY DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE FIRST ACT GIVING RISE TO LIABILITY FOR THE SERVICES THAT CAUSED OR ALLEGEDLY CAUSED SUCH LOSS, DAMAGE, COST OR EXPENSE. IN NO EVENT SHALL CONTRACTOR BE LIABLE OR OBLIGATED IN ANY MANNER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, COLLATERAL, CONSEQUENTIAL, STATUTORY, OR PUNITIVE DAMAGES.

THE LIABILITIES LIMITED HEREIN APPLY: (i) TO LIABILITY FOR NEGLIGENCE; (ii) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, EQUITY, TORT, OR OTHERWISE (INCLUDING BREACH OF WARRANTY AND STRICT LIABILITY IN TORT); (iii) EVEN IF CONTRACTOR IS INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (iv) EVEN IF CITY'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. THIS LIMITATION IS SEPARATE AND INDEPENDENT OF ANY OTHER REMEDY LIMITATIONS AND SHALL NOT FAIL IF SUCH OTHER LIMITATION OR REMEDY FAILS. IF APPLICABLE LAW LIMITS THE APPLICATION OF THE PROVISIONS HEREIN, CONTRACTOR'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMISSIBLE. THESE PROVISIONS WILL NOT CREATE ANY THIRD-PARTY BENEFICIARY RIGHTS OR BENEFITS TO PARTIES OTHER THAN CITY. NOTHING HEREIN SHALL LIMIT THE CONTRACTOR'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT."

8. Section 40, titled "**END OF TERM**," is hereby incorporated into the Agreement and reads as follows:

"**40. END OF TERM:** To facilitate any agreed upon extensions in a timely manner, the Contractor shall negotiate any extension of this Agreement in good faith and provide the City all required order forms and updated pricing information to the City no later than ninety (90) days prior to the expiration of Term of this Agreement. If the Contractor does not intend to extend the Term of this Agreement, the Contractor shall provide prompt notice to the City but not later than one hundred eighty (180) days prior to the expiration of the Term of its intent to let this Agreement lapse without an extension or replacement contract."

9. Except as amended here, the Agreement is affirmed and ratified in each and every particular.

10. This Second Amendatory Agreement is not 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.

11. The following attached exhibits are hereby incorporated into and made a material part of this Agreement: **Exhibit C-1**, Unit Pricing.

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Contract Control Number: TECHS-202369280-02 (TECHS-201844499-02)
Contractor Name: CONVERGEONE, INC.

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:

TECHS-202369280-02 (TECHS-201844499-02)
CONVERGEONE, INC.

By:  _____
E7565494027F42D...

Name: Greg Miles
(please print)

Title: Senior Vice President, Public Sector
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



**Exhibit C-1, Unit Pricing
Change Request Form
Maintenance/Managed Services Agreement Renewal
(Interim Extension)**

Date:	10-10-2023	Customer Name:	City & County of Denver 911
Company Code	VTWCITDEN0001	Address: 12025 E 45TH AVE & 950 Josephine St.	
Purchase Order #:	PENDING	City: Denver	
		State, Zip Code: CO. 80239 & 80206	

Maintenance/Managed Services (“Services”) Interim Month to Month Extension

Contract Number	Extension Start Date	Extension End Date	Description of Work	Monthly Fee
TECHS-202369280-02 (TECHS-201844499-02) ConvergeOne Internal Contract #196594, 209544,209548, 306219, 306221,306955, 321507,321726	10-15-2023	7-14-2024	C1-VIPER Managed Services & Wide Area Network (WAN) Services & Intrado Support Services	\$50,757.39
TECHS-202369280-02 (TECHS-201844499-02) ConvergeOne Internal Contract #221762	10-15-2023	7-14-2024	Co-location services at C1 Datacenter for VIPER Node B	\$1,133.00
TECHS-202369280-02 (TECHS-201844499-02)	10-15-2023	10-14-2024	Cisco Smartnet Services	\$1,106.20

The Maintenance Agreement or Managed Services Agreement referenced above is due to expire by the terms of the MSA or statement of work. Customer and ConvergeOne by this Change Request Form agree that ConvergeOne shall continue to perform the Services, and Customer shall continue to pay the Monthly Fee for the Services, on a month to month basis until such time as the Services are either renewed for a specific renewal term or are terminated. Extension of coverage does not include manufacturer support which may impact ConvergeOne’s ability to provide support during the extension period.