

SECOND AMENDATORY AGREEMENT

THIS SECOND 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 **LINEBARGER GOGGAN BLAIR & SAMPSON, LLP**, with offices located at 600 Seventeenth Street, Suite 800 North, Denver, Colorado 80202-5462 (the "Law Firm"), collectively "the parties".

WITNESSETH:

WHEREAS, the City retained the Law Firm by an Agreement dated December 11, 2007, as amended by an Amendatory Agreement dated April 11, 2011, to provide designated legal and collection services for the City (the "Agreement"); and

WHEREAS, the parties now wish to amend the Agreement to extend its term for an additional eighteen (18) months, increase the Maximum Contract Amount for such extended term, modify the type of debts to be collected on behalf of the City, and revise other provisions in the Agreement as set forth in more detail below; and

NOW, THEREFORE, the parties agree as follows:

1. Effective as of December 1, 2013, the Law Firm will cease all collection and legal services related to the collection of "Class One Debts" and "Class Two Debts" as such terms are defined and discussed in the original agreement dated December 11, 2007. As of December 1, 2013, the Department of Finance will cease all referrals to the Law Firm for the collection of Class One and Class Two Debts.

2. As of December 1, 2013, the term "Class Three Debts" will have the definition set forth in Section 7 below. All services concerning Class Three Debts will be coordinated through the Department of Public Works.

3. As of December 1, 2013, the Law Firm will provide collection and legal services for a new category of debts, known as "Class Four Debts", as set forth in more detail in Section 7 below. All services concerning Class Four Debts will be coordinated through the Denver Police Department.

4. As of December 1, 2013, all references in the Agreement to "...the City's Accounts..." shall mean all unpaid fines, fees, violations, citations, assessments, or other charges imposed by the City under authority of law for Class Three and Class Four Debts. All references in the Agreement to the "...Department of Revenue..." or "...Revenue Department..." are

hereby deleted and replaced with the "...Denver Police Department...". All references in the Agreement, not including the City signature page attached to the original Agreement, to the "...Manager of Revenue..." are hereby deleted and replaced with the "...Chief of Police...".

5. As of December 1, 2013, subparagraph A of Article 1, entitled "**Scope of Professional Services**", is hereby deleted and restated to read as follows:

"A. Scope of Professional Services. The Law Firm shall provide professional legal services, in accordance with section 6.1.2 of the Denver City Charter and in conformance with any and all applicable rules of professional conduct, and professional collection services, collectively referred to as the "Services," concerning the City's Accounts that are referred to the Law Firm, including but not limited to: i) pre-litigation collection and legal services (such as debt validation, skip tracing, and pursuit of pre-judgment remedies); ii) comprehensive litigation (including, but not limited to, witness preparation, appearances in Court, drafting and filing of pleadings and other legal documents, services of process, discovery, trial preparation); iii) post-judgment legal and collection services (including, but not limited to, issuance of interrogatories, execution and recordation of garnishments and liens, and asset evaluation hearings); iv) representation of the City upon appeal of any case for which the Law Firm provided representation in the trial Court; v) representation of the City (including drafting and filing Proof of Claims and other legal documents) in appropriate Bankruptcy Courts for collection matters referred to the Law Firm by the City Attorney or the Director of the Municipal Operations Section of the Department of Law; and vi) any and all other legal and collection services necessary and appropriate to represent the City as requested. It is acknowledged that the Law Firm's authority to represent the City in bankruptcy matters shall extend only to matters involving the collection of debts related to the City's Accounts (Class Three and Class Four Debts) and shall not extend to any other bankruptcy matter involving the City."

6. As of December 1, 2013, subparagraph B of Article 1, entitled "**Coordination with Department of Law/City Departments**", is hereby deleted and restated to read as follows:

"B. Coordination with Department of Law/City Departments. Mr. Scott McGlasson, Esq., shall serve as lead attorney and team leader for the Law Firm (the "Team Leader") and shall oversee the provision of the Services under this Agreement. The Team Leader shall be responsible for maintaining sufficient coverage by attorneys for all Court appearances made by the Law Firm on behalf of the City and shall further be available upon reasonable notice to consult with the City regarding the Services being provided. The Law Firm shall fully coordinate all Services hereunder with the City Attorney, or such other City representative as may be designated by the City Attorney, including designated representatives of the Denver Police Department and the Public Works Department. The City Attorney, or the City Attorney's designated representative,

shall have final authority over the provision of the Services, including but not limited to, any and all offers of settlement of any debt owed to the City. The Law Firm shall have no authority to accept settlement of any debt owed to the City, nor to authorize any judgment or settlement to be paid by the City, except upon: i) the prior written approval of the City Attorney or the City Attorney's designated representative; or ii) in accordance with written guidelines concerning settlement and/or payment plans provided to the Law Firm from the City and approved by the City Attorney or the City Attorney's designated representative. The City reserves the right, in the City's sole discretion, to reduce, modify, increase or eliminate at any time the balance of any debt assigned to the Law Firm. If the City determines to reduce or modify the balance of any debt assigned to the Law Firm, then the Law Firm shall only be entitled to recover collection fees on the amount actually collected."

7. As of December 1, 2013, Article 2, entitled "**Classification of Debts**", is hereby deleted and restated to read as follows:

"**2. COMPENSATION FOR SERVICES.** The intent of this Agreement is to compensate the Law Firm for collection and attorneys' fees only from monies that directly and proximately result from the Law Firm's successful collection of debts owed to the City. The "Compensation" to be provided to the Law Firm for services under this Agreement shall be as follows:

A. Classification of Debts. The Law Firm shall be compensated for the following:

(1) Parking Violations Debts (also known as "Class Three Debts"). "Class Three Debts" shall consist of all debts, fines, fees, and other unpaid charges owed to the City for parking violations issued by or on behalf of the City and County of Denver, pursuant to the Denver Revised Municipal Code.

(2) Photo Radar/Photo Red Light Violations Debts (also known as "Class Four Debts"). "Class Four Debts" shall consist of all debts, fines, fees, and other unpaid charges owed to the City for photo radar and photo red-light citations or violations issued by or on behalf of the City and County of Denver, pursuant to the Denver Revised Municipal Code.

The City reserves the right to determine in its sole discretion the date upon which an account receivable debt arises for Class Three or Class Four Debts.

B. Method of Compensation.

(1) Collection Fees.

a. **Class Three and Class Four Debts.** Except for those debts settled by the Law Firm in accordance with Article 2.B(1) c and d, below, the Law Firm may retain, as full and complete compensation for all

collection and legal activities concerning Class Three and Class Four Debts, an amount not to exceed all or a portion of the collection fees authorized by D.R.M.C. §53-4(b) according to the schedule set forth below that directly and proximately results from the Law Firm's services and successful collection of debts owed to the City.

<u>Amount of Debt</u>	<u>Authorized Collection Fee</u>	<u>Law Firm's Fee</u>
\$ 0.01 - \$50.00	\$20	\$20
\$ 50.01 - \$100.00	\$30	\$30
\$100.01 - \$150.00	\$40	\$40
\$150.01 - \$200.00	\$60	\$60
\$200.01 - \$300.00	\$80	\$80
\$300.01 and above	30% (of the debt amount)	81.67% (of the 30% collection fee)

(b) **Return of Funds to City.** Beginning on the second month of the term of this Agreement and for each month thereafter, the Law Firm shall by no later than the twentieth (20th) day of each month: 1) remit to the City by check, payable to the Manager of Revenue, all monies owed to the City for Class Three and Class Four Debts actually collected and/or recovered by the Law Firm less the Compensation for Class Three and Class Two Debts, as defined above; 2) any and all interest earned concerning Class Three and Class Four Debts as described in more detail below in subparagraph E of this Article 2; and 3) the Reports described in Article 4 below. The Law Firm shall be paid only from monies that directly and proximately result from the Law Firm's services and successful collection of Class Three and Class Four Debts owed to the City. If the collection efforts or Services provided by the Law Firm fail to recover any debt owed to the City, then the City shall have no obligation to provide any compensation, fees, expenses, costs, or funds to the Law Firm except as may be permitted in Article 2.B(3) of this Agreement. Moreover, if the City directly receives or intercepts monies from a debtor in satisfaction of a debt that was previously referred to the Law Firm for collection and legal services, then the Law Firm shall have no right to any compensation for debt collection and other services provided.

c. **Settlement of Class Three and Class Four Debts.** With respect to all collection and legal activities concerning Class Three and Class Four Debts in which the settlement of a debt is negotiated and accepted by the Law Firm for less than the full amount of the debt due to the City in accordance with the written approval of or guidelines from the City, the Law Firm shall be compensated in accordance with the fee schedule set forth in Exhibit C attached to the original Agreement dated December 11, 2007 and in accordance with the Settlement guidelines set forth in Exhibit D attached thereto.

d. **Payment Plans Using Periodic Installments for Class Three and Class Four Debts.** With respect to all collection and legal

activities concerning Class Three and Class Four Debts, in which the Law Firm establishes a periodic payment plan in accordance with the written approval of or guidelines from the City, the Law Firm shall be compensated in accordance with the fee schedule set forth in Exhibit C and in accordance with the Payment Agreement guidelines set forth in Exhibit D attached to the original Agreement. The parties may modify the fee schedule for payment plans by implementing the provisions concerning changes to Exhibit C as set forth in section 2.B.(1)e below.

e. Changes to Exhibits C and D. The parties may modify Exhibit C from time to time by memorializing in writing a revised and restated fee schedule as set forth herein. In addition, the City may modify Exhibit D from time to time by memorializing in writing revised and restated Settlement guidelines as set forth herein. Each revised and restated exhibit will be executed by the Law Firm, the City Attorney, the Manager of the Department of Public Works, or the Denver Police Chief or the designated representative of said officials, approved as to form by the Department of Law, and placed on file with City Clerk by one of the recommending and approving agencies to this Agreement. Each revised and restated exhibit shall bear an exhibit label beginning with the Exhibit letter reference "C" or "D," as appropriate, followed by "1" and continuing in consecutive numeric order with the Exhibit letter preceding each number (i.e., Exhibit C-1, C-2, D-2, D-2, etc.). Each and every revised exhibit will be executed by the City and the Law Firm in two (2) original counterparts. Upon the date of execution thereof and compliance with the conditions of this sub-subparagraph g, each revised exhibit will be deemed to be a part this Agreement, incorporated herein as if originally set forth herein and shall further be subject to all other terms and conditions of this Agreement. In no event will any modification to an exhibit result in an increase to the Maximum Contract. Any modification to an exhibit agreed to by the parties that requires an increase in the Maximum Contract Amount shall instead be evidenced by a written Amendatory Agreement prepared and executed by both parties in the same manner as this Agreement.

(2) Attorneys' Fees. In the event that the Law Firm successfully obtains an award of Attorneys' Fees by a court of competent jurisdiction and to the extent that such attorneys' fees are recoverable by law or other binding agreement, the Law Firm may retain said fees. For purposes of this Agreement, "Attorneys' fees" shall mean an award of fees by the Court to the Law Firm for services actually provided and expenses actually incurred in connection with the recovery and receipt of debts owed to the City. In no event shall the term "Attorneys' fees" include the amount of any debt, or any portion thereof, owed to the City and recovered by the Law Firm.

(3) Litigation Costs. The parties intend that the City's preferred method to compensate the Law Firm for the costs of litigation shall be for the Law Firm to recover all said costs from monies obtained from the Law Firm's successful collection of debts owed to the City (either as a result of the Law Firm's collection activity or as a result of an award of attorneys fees). The

Law Firm shall implement and maintain sufficient record keeping practices to memorialize the amount of litigation costs incurred for the City's Accounts. Until such time as the Law Firm recovers litigation costs from collection activity or an award from the Court, the Law Firm may submit a monthly invoice to the City for reimbursement of said costs for only the accounts of the City for which the Law Firm has initiated litigation. For purposes of this Agreement only, the initiation of litigation shall be deemed to have occurred upon the Law Firm's preparation of a summons and complaint and attempted service of process. If the Law Firm subsequently recovers monies for litigation costs, in whole or in part, that the City previously reimbursed to the Law Firm, then the Law Firm shall remit to the City said monies with their next regular monthly remittance of collected monies.

The categories for which the City will reimburse the Law Firm for litigation costs and expenses are as follows:

a. In-House Copying. Ten Cents (\$.10) per page for documents copied by the Law Firm that are directly related to the services hereunder not to exceed Five Hundred Dollars (\$500) per month. The City will reimburse the Law Firm for the costs of in-house copying services over Five Hundred Dollars (\$500), upon the prior approval of the City Attorney or the City Attorney's designee;

b. Outside Copying. Upon the prior approval of the City Attorney or the City Attorney's designee, the actual costs incurred by the Law Firm for documents sent to a printer or other outside contractor for reproduction, enlargement, reduction, display or mounting;

c. Telephone. The actual costs incurred by the Law Firm for all necessary long distance telephone calls and long distance document transmission less any and all discounts available to the Law Firm;

d. Computerized Legal and Investigative Research. The actual costs incurred by the Law Firm in using certain components of computerized legal research or computerized investigative systems (i.e. Westlaw or Lexis, credit bureau services), as designated by the City Attorney or the City Attorney's designee, less any discounts received by Law Firm from providers not to exceed the total amount of Five Hundred Dollars (\$500). The City will reimburse Law Firm for the costs of legal research services over Five Hundred Dollars (\$500), upon the prior approval of the City Attorney or the City Attorney's designee;

e. Other Investigative Costs. The actual costs incurred by the Law Firm to employ any investigation services believed by Law Firm to be competent and necessary for the investigation, adjustment, preparation, and management of any and all matters handled by the Law Firm provided that the hourly charge to the City does not exceed Twenty Dollars (\$20) per hour;

f. Postage. Upon the prior approval of the City Attorney or the City Attorney's designee, the actual costs incurred by the Law Firm for mailing to a large service list (more than 50 recipients);

g. Facsimile Costs. Costs of outgoing facsimiles only, at a rate of Thirty-Five Cents (\$.35) per page;

h. Travel. Travel expenses at a rate of Forty-Eight and a Half Cents (\$.0485) per mile, provided, however, that mileage or other costs for local travel to and from the City business offices will not be reimbursed without the prior approval of the City Attorney or the City Attorney's designee. Any billing for any other reasonable travel costs or expenses incurred by the Law Firm shall require the approval of the City Attorney or the City Attorney's designee in advance;

i. Delivery Services. The actual costs incurred by the Law Firm for only necessary special delivery services to the City or on behalf of the City. Delivery services may include internal or in-house delivery services as long as the costs of such in-house delivery services do not exceed the costs of outside messenger services; and

j. Court Reporter Services, Docket/Filing Fees, Service of Process. The actual fees paid by the Law Firm for court reporter services, docket and filing fees, if any, actual costs of process servers, and reasonable witness appearance fees.

Any billing for any other reasonable expenses incurred by the Law Firm shall require the approval of the City Attorney or the City Attorney's designee in advance.

C. Invoice for Reimbursements of Costs. To obtain reimbursement from the City for the Law Firm's actual costs, the Law Firm shall submit to the City a monthly invoice itemizing all eligible expenses incurred during the billing period in such format as designated by the City Attorney or the City Attorney's designated representative. All invoices shall reference the Contract Control number of this Agreement as designated below on the City's signature page. The City reserves the right to require such additional documentation as it deems appropriate to support the periodic invoice of the Law Firm. Any questions regarding the eligibility of an expense must be resolved in writing by the City prior to the incurrence of such expense by the Law Firm. A partner of the Law Firm shall verify the monthly invoice. Invoices are confidential attorney-client privileged documents and shall remain as such until and unless otherwise directed by the City Attorney. The City shall use its best efforts to pay invoices within thirty (30) days of receipt.

The Law Firm shall attach to all invoices and billings provided hereunder a completed copy of the Invoice Review document, a blank copy of which is attached hereto as **Exhibit B** and incorporated herein by reference. The City reserves the right to require such additional documentation as it deems appropriate to support the monthly invoice of Law Firm.

D. No Other Methods of Payment for Collection or Attorneys' Fees. The Law Firm shall have no expectation to receive from the City and the City shall not be obligated to provide compensation for collection or attorneys' fees by any other method of payment including, but not limited, to "Hourly Fees," "Out of Pocket Expenses," "Reimbursement of Costs," or "Flat Rates". The City does not intend and shall have no obligation to appropriate funds to provide the Compensation to be provided to the Law Firm.

E. Bank Account and Interest. For Class Three and Class Four Debts, the Law Firm will establish and maintain, at a Denver bank acceptable to the City, a separate interest bearing account that will be used solely in connection with the funds received under this Agreement (which account is at times referred to as the "City's Bank Account"). Except as may be permitted by this Agreement, the City's Bank Account shall not be commingled with any other funds or monies. If the Law Firm determines that it is in the best interests of the City to close the City's Bank Account, then it will establish another similar account at a bank located in Denver within thirty (30) days of the date of opening such new account and will notify the City in writing. The City, through the Manager of Revenue, shall have final approval over the bank chosen by the Law Firm. All requirements of this subparagraph concerning the City's Bank Account shall apply to the substitute bank. Within thirty (30) days of the date of execution of this Agreement, the Law Firm shall deliver to said bank an authorization signed by the Law Firm stating that:

(1) The bank account is maintained pursuant to an agreement with the City; and

(2) The Law Firm authorizes the bank to forthwith comply with any written request made by the City to furnish any bank statements, canceled checks or other information in the possession or control of the bank relating to this bank account; and

(3) The Law Firm authorizes the bank to forthwith comply with any written requests made by the City to transfer the balance of funds remaining in the account as designated by the City upon the expiration or earlier termination of this Agreement. If such request is made, the Law Firm shall submit to the City a written list of any and all outstanding checks and unpaid expenses within ninety (90) days from the expiration date or effective date of termination. The City will be responsible for honoring valid checks and paying valid expenses written or incurred prior to the expiration date or effective date of termination as documented by the Law Firm.

The Law Firm shall deliver to the City a copy of the authorization

with the signature of an authorized bank representative indicating that the authorization has been received and accepted by the bank. The Law Firm shall notify the City in writing within thirty (30) days of the date of execution of this Agreement, of the persons authorized by the Law Firm to receive, handle or disburse monies under this Agreement.

F. Appropriations. Any other provision of this Agreement notwithstanding, in no event shall the City be liable, during the initial term hereof and all three extension periods, if exercised, for payment for services rendered and expenses incurred by the Law Firm under the terms of this Agreement for any amount in excess of Five Million Twenty Thousand Dollars (\$5,020,000) (the “Maximum Contract Amount”) payable as follows:

(1) For litigation costs for Class One, Class Two, and Class Three Debts incurred on or before November 31, 2013, the City’s total obligation will not exceed the amount of Five Hundred Twenty Thousand Dollars (\$520,000.00); and

(2) For all collection fees incurred on or before November 31, 2013, for Class Three Debts only, the City’s total obligation will not exceed the annual amount of Six Hundred Thousand Dollars (\$600,000.00);

(3) For all collection fees incurred from December 1, 2013, until May 31, 2015, for Class Three and Class Four Debts, the City’s total obligation will not exceed the amount of Nine Hundred Thousand Dollars (\$900,000.00); and

The Law Firm acknowledges that the City has not appropriated and will not appropriate funds for the purpose of paying collection and attorneys’ fees for Class Three and Class Four Debts. The City is not obligated to execute an amendment to this Agreement for any further phase of work other than the work described herein, and that any work performed by Law Firm beyond that specifically described is performed at the Law Firm’s risk and without authorization under this Agreement.

Any and all payment obligations of the City hereunder, whether direct or contingent, or for any other incidental cause shall extend only to funds appropriated by the Denver City Council for the purpose of this Agreement, paid into the Treasury of the City and encumbered for the purposes of this Agreement. The City does not and will not irrevocably pledge present case reserves for payments in future fiscal years. This Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. The City shall not be liable for the payment of taxes, late charges or penalties of any nature, except as provided in D.R.M.C. §20-107 to §20-115.”

8. Effective as of the date of this Second Amendatory Agreement, as written below on the City signature page, Paragraph 3 of the Agreement, entitled “**TIME OF PERFORMANCE**”, is hereby deleted and restated to read as follows:

“3. **TIME OF PERFORMANCE.** The term of this Agreement will begin on December 1, 2007, and expire on May 31, 2015.”

9. As of December 1, 2013, subparagraph E of Article 4 of the Agreement, entitled “**Delivery of Reports**”, is hereby deleted and restated to read as follows:

“E. **Delivery of Reports.** All Reports concerning Class Three Debts shall be delivered to the attention of Senior Financial Analyst, Division of Finance and Administration, Department of Public Works, 201 West Colfax Avenue, Dept. 611, Denver, Colorado 80202. All Reports concerning Class Four Debts shall be delivered to the attention of Ted Porras, Traffic Operations Unit – Photo Enforcement, Denver Police Department, 3381 Park Avenue West, Denver, CO 80216. The City reserves the right to require such additional information on the monthly financial statement or to request and receive other documentation, as it deems appropriate to review the services provided by the Law Firm. All reports submitted to the City shall be marked as confidential attorney-client privileged documents and shall remain as such until and unless otherwise directed by the City Attorney.”

10. Effective as of the date of this Second Amendatory Agreement, as written below on the City signature page, Article 19 of the Agreement, entitled “**NO DISCRIMINATION OF EMPLOYMENT**”, is amended to read as follows:

“19. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under the Agreement, the Law Firm may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability. The Law Firm shall insert the foregoing provision in all subcontracts.”

11. Effective as of December 1, 2013, Article 14 of the Agreement, entitled “**NOTICES**”, is amended to read as follows:

“14. **NOTICES.** Any notice, request, demand, consent, approval or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given when personally delivered, when received if sent by telex or telecopier, when delivered if sent by Federal Express or Federal mail, or three (3) days after having been mailed by United States registered or certified

mail, return receipt requested, postage prepaid, addressed to the party for whom it is intended at the following address:

To the City: Director, Municipal Operations Section
Denver City Attorney
City and County of Denver
201 West Colfax Avenue, Dept 1207
Denver, Colorado 80202

Senior Financial Analyst
Division of Finance and Administration
Department of Public Works
201 West Colfax Avenue, Dept. 611
Denver, Colorado 80202

and

Denver Police Department
Traffic Operations Unit – Photo Enforcement
Attn: Ted Porras
3381 Park Avenue West
Denver, CO 80216

To the Law Firm: Attn: Mr. Scott McGlasson, Esq.
Linebarger Goggan Blair & Sampson LLP
2323 Bryan Street, Suite 1600
Dallas, TX 75201

Either party may change its address for purposes of receipt of any such communication by giving ten (10) days' prior written notice of such change to the other party in the manner above prescribed.”

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

13. This Second Amendatory Amendment may be executed in two (2) counterparts, each of which is an original and constitute the same instrument.

14. This 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.

15. Law Firm consents to the use of electronic signatures by the City. This Second 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 the Agreement, as amended, solely because it or any amendment is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement or any amendment 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 ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

[SIGNATURE PAGE FOLLOWS]