

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 **BKD, LLP**, 111 South Tejon Street, Suite 800, Colorado Springs, Colorado 80903, a Missouri limited liability partnership, authorized to do business in Colorado and providing public accounting services (the "Accountant") collectively referred to as the "Parties."

W I T N E S S E T H:

WHEREAS, the City and the Accountant previously entered into an Agreement dated December 5, 2006 and amended March 18, 2008 relating to the Accountant's services as an independent, external auditor to audit financial statements of designated City funds for the City's fiscal year 2006 and if exercised for Renewal Terms (collectively, the "Agreement");

WHEREAS, the Audit Committee has determined to the retain of the Accountant for additional Renewal Terms; and

WHEREAS, the additional work term will require additional compensation;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and obligations herein set forth, the parties agree as follows:

1. That Attachment 3-B is attached hereto and incorporated herein. All references to "Attachment 3 and 3-A" are amended to read "Attachment 3, Attachment 3-A and Attachment 3-B as applicable" and Attachment 3-B supplements Attachment 3 and 3-A for the applicable period, without replacing the original Attachments' applicability for the Initial and Renewal Terms.

2. Article 5 entitled "**TERM**" under subparagraph 5(B) of the Agreement is amended to read as follows:

"B. **Renewal Terms.** The City shall have the unilateral option to renew and extend the Term for nine additional years. If the option is exercised, the First Renewal Term shall be from October 1, 2007, through September 30, 2008, for preparation of an audit for the calendar year ending December 31, 2007. If the option is exercised, the Second Renewal Term shall be from October 1, 2008, through September 30, 2009, for preparation of an audit for the calendar year ending December 31, 2008. If the option is exercised, the Third Renewal Term shall be from October 1, 2009, through September 30, 2010, for preparation of an audit for the calendar year ending December 31, 2009. If the option is exercised, the Fourth Renewal

Term shall be from October 1, 2010, through September 30, 2011, for preparation of an audit for the calendar year ending December 31, 2010. If the option is exercised, the Fifth Renewal Term shall be from October 1, 2011, through September 30, 2012, for preparation of an audit for the calendar year ending December 31, 2011. If the option is exercised, the Sixth Renewal Term shall be from October 1, 2012, through September 30, 2013, for preparation of an audit for the calendar year ending December 31, 2012. If the option is exercised, the Seventh Renewal Term shall be from October 1, 2013, through September 30, 2014, for preparation of an audit for the calendar year ending December 31, 2013. If the option is exercised, the Eighth Renewal Term shall be from October 1, 2014, through September 30, 2015, for preparation of an audit for the calendar year ending December 31, 2014. If the option is exercised, the Ninth Renewal Term shall be from October 1, 2015, through September 30, 2016, for preparation of an audit for the calendar year ending December 31, 2015. Such option to renew shall be exercised by the written notice of the Auditor to the Accountant following the action, if any, of the City Council in appropriating funds for the payment of services for another year for the amounts set forth in Article 6 hereof. If an appropriation and resulting encumbrance for this Agreement is not made for a future fiscal year, the City will be deemed to have thereby failed to exercise its option to renew this Agreement for such year, and this Agreement shall terminate on the expiration of the Term. It is expressly understood and agreed that if the City exercises its option to renew this Agreement, its obligation to make payments to the Accountant shall only extend to monies appropriated by the Denver City Council, paid into the City Treasury, and encumbered for the purposes of this Agreement. Fees for subsequent renewal periods shall conform to the amounts set forth in Articles 6 and 8 hereof and shall be documented in a revised engagement letter consistent in form to Attachment 1 and 1-A and accordingly reflected in Attachments 2 and 3, 3-A and 3-B, as applicable. The City recognizes that performance of subsequent year's audits is contingent upon Accountant's continued ability and willingness to accept the terms of the engagement."

3. Paragraph 6 entitled "**AUDIT SERVICES COMPENSATION**," under subparagraph 6(C) of the Agreement, is amended to read as follows:

" C. If the First Renewal Term (2007 Audit) option is exercised, the total aggregate cost of audit services under that Renewal Term shall not exceed One Million One Hundred Ninety Six Thousand Dollars (\$1,196,000.00.) If the Second Renewal Term (2008 Audit) option is exercised, the total aggregate cost of audit

services under that Renewal Term shall not exceed One Million Two Hundred Fifty Five Thousand Eight Hundred Dollars (\$1,255,800.00). If the Third Renewal Term (2009 Audit) option is exercised, the total aggregate cost of audit services under that Renewal Term shall not exceed One Million Three Hundred Eighteen Thousand Six Hundred Dollars (\$1,318,600.00). If the Fourth Renewal Term (2010 Audit) option is exercised, the total aggregate cost of audit services under that Renewal Term shall not exceed One Million Three Hundred Eighty Four Thousand Five Hundred Twenty-Five Dollars (\$1,384,525.00). If the Fifth Renewal Term (2011 Audit) option is exercised, the total aggregate cost of audit services under that Renewal Term shall not exceed One Million Ninety Seven Thousand Five Hundred Dollars (\$1,097,500.00). If the Sixth Renewal Term (2012 Audit) option is exercised, the total aggregate cost of audit services under that Renewal Term shall not exceed One Million One Hundred Seventeen Thousand Five Hundred Dollars (\$1,117,500.00). If the Seventh Renewal Term (2013 Audit) option is exercised, the total aggregate cost of audit services under that Renewal Term shall not exceed One Million One Hundred Thirty Seven Thousand Nine Hundred Fifty Dollars (\$1,137,950.00). If the Eighth Renewal Term (2014 Audit) option is exercised, the total aggregate cost of audit services under that Renewal Term shall not exceed One Million One Hundred Fifty Nine Thousand Dollars (\$1,159,000.00). If the Ninth Renewal Term (2015 Audit) option is exercised, the total aggregate cost of audit services under that Renewal Term shall not exceed One Million One Hundred Eighty Thousand Six Hundred Dollars (\$1,180,600.00).”

4. Paragraph 8 of the Agreement, entitled “**TOTAL COMPENSATION**,” is amended to read as follows:

“8. **TOTAL COMPENSATION**: The Accountant shall be paid for all services and expenses of any kind actually rendered to the City during the combined Initial Term and all Renewal Terms pursuant to this Agreement, an amount not to exceed Eleven Million Forty Seven Thousand Fifty Dollars (\$11,047,050.00), unless this Agreement is amended in accordance with its terms, to increase such amount.

It is expressly understood and agreed that the obligation of the City for all payments made under this Agreement shall only extend to payment of moneys appropriated by the Denver City Council, paid into the Treasury of the City and County of Denver, and appropriated for the purpose of this Agreement. The Accountant acknowledges that (i) the City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this

Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.”

5. Paragraph 12 of the Agreement, entitled “**PROHIBITION AGAINST EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THIS AGREEMENT**” is amended to read as follows:

“12. **PROHIBITION AGAINST EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:**

a. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”).

b. The Accountant certifies that:

1. At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

2. It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

c. The Accountant also agrees and represents that:

1. It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

2. It shall not enter into a contract with a sub-consultant or subcontractor that fails to certify to the Accountant that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

3. It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

4. It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Accountant to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

5. If it obtains actual knowledge that a sub-consultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such sub-consultant or subcontractor and the City within three (3) days. The Accountant will also then terminate such sub-consultant or subcontractor if within three (3) days after such notice

the sub-consultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the sub-consultant or subcontractor provides information to establish that the sub-consultant or subcontractor has not knowingly employed or contracted with an illegal alien.

6. It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

d. The Accountant is liable for any violations as provided in the Certification Ordinance. If Accountant violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Accountant shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Accountant from submitting bids or proposals for future contracts with the City.”

6. That a new paragraph 35 is added to read:

“35. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Consultant consents to the use of electronic signatures by the City. The 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 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 the 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 ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

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

Remainder of page left intentionally blank.

Contract Control Number:

Vendor Name:

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:

By _____

By _____

By _____



Contract Control Number: CE62122

Vendor Name: B K D LLP

By: 

Name: Christopher Travis Webb
(please print)

Title: Managing Partner
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



CITY AND COUNTY OF DENVER
Attachment 3 - B
2011-2015

The monthly invoices (billings) paid under the contract for the 2011 audit will be as follows:

Report	Est. Date of Report	Billing Number								Totals
		1	2	3	4	5	6	7	8	
CAFR	05/31/12	30,000	30,000	60,000	120,000	90,000	150,000	40,000	30,000	550,000
CAFR Billing Dates-Est.		11/04/11	12/02/11	01/06/12	02/03/12	03/02/12	04/06/12	05/04/12	05/31/12	
Single Audit	05/31/12	23,750	23,750	40,000	60,000	70,000	60,000	10,000	10,000	297,500
Single Audit Billing Dates-Est.		11/04/11	12/02/11	01/06/12	02/03/12	03/02/12	04/06/12	05/04/12	05/31/12	
DIA and PFCs	05/31/12	8,000	8,000	18,000	38,000	19,000	38,000	12,000	9,000	150,000
DIA and PFCs Billing Dates-Est.		11/04/11	12/02/11	01/06/12	02/03/12	03/02/12	04/06/12	05/04/12	05/31/12	
Wastewater	05/31/12	2,500	2,500	7,000	15,000	14,000	20,000	5,000	4,000	70,000
Wastewater Billing Dates-Est.		11/04/11	12/02/11	01/06/12	02/03/12	03/02/12	04/06/12	05/04/12	05/31/12	
Deferred Compensation	05/31/12	2,000	2,000	4,000	4,000	5,000	8,000	3,000	2,000	30,000
Deferred Compensation Billing Dates-Est.		11/04/11	12/02/11	01/06/12	02/03/12	03/02/12	04/06/12	05/04/12	05/31/12	
Totals		66,250	66,250	129,000	237,000	198,000	276,000	70,000	55,000	1,097,500

Billing number one will be submitted once risk assessment information gathering commences and related planning has begun. Invoices for interim billings will be submitted as work progresses. Single Audit fees assume testing a total of 17 major programs at an average cost of \$17,500 per program tested. Final billings will be adjusted to reflect the actual number of Single Audit programs tested.

The monthly invoices (billings) paid under the contract for the 2012 audit will be as follows:

Report	Est. Date of Report	Billing Number								Totals
		1	2	3	4	5	6	7	8	
CAFR	05/31/13	30,000	30,000	60,000	120,000	90,000	150,000	46,875	36,875	563,750
CAFR Billing Dates-Est.		11/02/12	12/07/12	01/04/13	02/01/13	03/01/13	04/05/13	05/03/13	05/31/13	
Single Audit	05/31/13	23,750	23,750	40,000	60,000	70,000	60,000	10,000	10,000	297,500
Single Audit Billing Dates-Est.		11/02/12	12/07/12	01/04/13	02/01/13	03/01/13	04/05/13	05/03/13	05/31/13	
DIA and PFCs	05/31/13	8,000	8,000	18,000	38,000	19,000	38,000	13,875	10,875	153,750
DIA and PFCs Billing Dates-Est.		11/02/12	12/07/12	01/04/13	02/01/13	03/01/13	04/05/13	05/03/13	05/31/13	
Wastewater	05/31/13	2,500	2,500	7,000	15,000	14,000	20,000	5,875	4,875	71,750
Wastewater Billing Dates-Est.		11/02/12	12/07/12	01/04/13	02/01/13	03/01/13	04/05/13	05/03/13	05/31/13	
Deferred Compensation	05/31/13	2,000	2,000	4,000	4,000	5,000	8,000	3,375	2,375	30,750
Deferred Compensation Billing Dates-Est.		11/02/12	12/07/12	01/04/13	02/01/13	03/01/13	04/05/13	05/03/13	05/31/13	
Totals		66,250	66,250	129,000	237,000	198,000	276,000	80,000	65,000	1,117,500

Billing number one will be submitted once risk assessment information gathering commences and related planning has begun. Invoices for interim billings will be submitted as work progresses. Single Audit fees assume testing a total of 17 major programs at an average cost of \$17,500 per program tested. Final billings will be adjusted to reflect the actual number of Single Audit programs tested.

CITY AND COUNTY OF DENVER
Attachment 3-B
2011-2015

The monthly invoices (billings) paid under the contract for the 2013 audit will be as follows:

Report	Est. Date of Report	Billing Number								Totals
		1	2	3	4	5	6	7	8	
CAFR	05/30/14	30,000	30,000	60,000	120,000	90,000	150,000	53,925	43,925	577,850
CAFR Billing Dates-Est.		11/01/13	12/06/13	01/03/14	02/07/14	03/07/14	04/04/14	05/02/14	05/30/14	
Single Audit	05/30/14	23,750	23,750	40,000	60,000	70,000	60,000	10,000	10,000	297,500
Single Audit Billing Dates-Est.		11/01/13	12/06/13	01/03/14	02/07/14	03/07/14	04/04/14	05/02/14	05/30/14	
DIA and PFCs	05/30/14	8,000	8,000	18,000	38,000	19,000	38,000	15,800	12,800	157,600
DIA and PFCs Billing Dates-Est.		11/01/13	12/06/13	01/03/14	02/07/14	03/07/14	04/04/14	05/02/14	05/30/14	
Wastewater	05/30/14	2,500	2,500	7,000	15,000	14,000	20,000	6,750	5,750	73,500
Wastewater Billing Dates-Est.		11/01/13	12/06/13	01/03/14	02/07/14	03/07/14	04/04/14	05/02/14	05/30/14	
Deferred Compensation	05/30/14	2,000	2,000	4,000	4,000	5,000	8,000	3,750	2,750	31,500
Deferred Compensation Billing Dates-Est.		11/01/13	12/06/13	01/03/14	02/07/14	03/07/14	04/04/14	05/02/14	05/30/14	
Totals		66,250	66,250	129,000	237,000	198,000	276,000	90,225	75,225	1,137,950

Billing number one will be submitted once risk assessment information gathering commences and related planning has begun. Invoices for interim billings will be submitted as work progresses. Single Audit fees assume testing a total of 17 major programs at an average cost of \$17,500 per program tested. Final billings will be adjusted to reflect the actual number of Single Audit programs tested.

The monthly invoices (billings) paid under the contract for the 2014 audit will be as follows:

Report	Est. Date of Report	Billing Number								Totals
		1	2	3	4	5	6	7	8	
CAFR	05/29/15	30,000	30,000	60,000	120,000	90,000	150,000	61,150	51,150	592,300
CAFR Billing Dates-Est.		11/07/14	12/05/14	01/02/15	02/06/15	03/06/15	04/03/15	05/01/15	05/29/15	
Single Audit	05/29/15	23,750	23,750	40,000	60,000	70,000	60,000	10,000	10,000	297,500
Single Audit Billing Dates-Est.		11/07/14	12/05/14	01/02/15	02/06/15	03/06/15	04/03/15	05/01/15	05/29/15	
DIA and PFCs	05/29/15	8,000	8,000	18,000	38,000	19,000	38,000	17,750	14,750	161,500
DIA and PFCs Billing Dates-Est.		11/07/14	12/05/14	01/02/15	02/06/15	03/06/15	04/03/15	05/01/15	05/29/15	
Wastewater	05/29/15	2,500	2,500	7,000	15,000	14,000	20,000	7,700	6,700	75,400
Wastewater Billing Dates-Est.		11/07/14	12/05/14	01/02/15	02/06/15	03/06/15	04/03/15	05/01/15	05/29/15	
Deferred Compensation	05/29/15	2,000	2,000	4,000	4,000	5,000	8,000	4,150	3,150	32,300
Deferred Compensation Billing Dates-Est.		11/07/14	12/05/14	01/02/15	02/06/15	03/06/15	04/03/15	05/01/15	05/29/15	
Totals		66,250	66,250	129,000	237,000	198,000	276,000	100,750	85,750	1,159,000

Billing number one will be submitted once risk assessment information gathering commences and related planning has begun. Invoices for interim billings will be submitted as work progresses. Single Audit fees assume testing a total of 17 major programs at an average cost of \$17,500 per program tested. Final billings will be adjusted to reflect the actual number of Single Audit programs tested.

CITY AND COUNTY OF DENVER
Attachment 3-B
2011-2015

The monthly invoices (billings) paid under the contract for the 2015 audit will be as follows:

Report	Est. Date of Report	Billing Number								Totals
		1	2	3	4	5	6	7	8	
CAFR	05/31/16	30,000	30,000	60,000	120,000	90,000	150,000	68,550	58,550	607,100
CAFR Billing Dates-Est.		11/06/15	12/04/15	01/01/16	02/05/16	03/04/16	04/01/16	05/06/16	05/31/16	
Single Audit	05/31/16	23,750	23,750	40,000	60,000	70,000	60,000	10,000	10,000	297,500
Single Audit Billing Dates-Est.		11/06/15	12/04/15	01/01/16	02/05/16	03/04/16	04/01/16	05/06/16	05/31/16	
DIA and PFCs	05/31/16	8,000	8,000	18,000	38,000	19,000	38,000	19,800	16,800	165,600
DIA and PFCs Billing Dates-Est.		11/06/15	12/04/15	01/01/16	02/05/16	03/04/16	04/01/16	05/06/16	05/31/16	
Wastewater	05/31/16	2,500	2,500	7,000	15,000	14,000	20,000	8,650	7,650	77,300
Wastewater Billing Dates-Est.		11/06/15	12/04/15	01/01/16	02/05/16	03/04/16	04/01/16	05/06/16	05/31/16	
Deferred Compensation	05/31/16	2,000	2,000	4,000	4,000	5,000	8,000	4,550	3,550	33,100
Deferred Compensation Billing Dates-Est.		11/06/15	12/04/15	01/01/16	02/05/16	03/04/16	04/01/16	05/06/16	05/31/16	
Totals		66,250	66,250	129,000	237,000	198,000	276,000	111,550	96,550	1,180,600

Billing number one will be submitted once risk assessment information gathering commences and related planning has begun. Invoices for interim billings will be submitted as work progresses. Single Audit fees assume testing a total of 17 major programs at an average cost of \$17,500 per program tested. Final billings will be adjusted to reflect the actual number of Single Audit programs tested.