

## AMENDATORY AGREEMENT

**THIS AMENDATORY AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), and **STUDIOTROPE LLC** (the “Design Consultant”), a Colorado limited liability company, whose address is 2942 Welton Street, Denver, Colorado 80205.

### WITNESSETH:

**WHEREAS**, the City and the Design Consultant previously entered into an On-Call Design Services Agreement dated May 6, 2008 for on-call design services (the “Agreement”); and

**WHEREAS**, the City desires to increase the total compensation of the Agreement, and name the Department of Public Works as the authority under the Agreement.

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

1. Section 1.02 of the Agreement, entitled “**Line of Authority for Contract Administration**” is hereby amended to read in its entirety as follows:

“**1.02 Line of Authority for Contract Administration.** The City’s Manager of Public Works (“Manager”) is the City’s representative responsible for authorizing and approving the work performed under this Agreement. The Manager hereby designates the Project Manager as the authorized representative of the Manager for any project for which services are provided. The Project Manager shall direct the services performed under this Agreement, subject to the final authority and decisions of the Manager. Communication between the Design Consultant and the City shall be directed through the Project Manager.”

2. Section 3.07(a) of the Agreement, entitled “**Maximum Contract Amount; Funding.**” is hereby amended to read in its entirety as follows:

“(a) It is understood and agreed by the parties hereto that payment or reimbursement of all kinds to the Design Consultant, for all Work performed under this agreement, shall not exceed a maximum of **NINE HUNDRED SIXTY THOUSAND AND 00/100 DOLLARS (\$960,000.00)**. In no event shall the maximum payment to the Design Consultant, for all work and services performed throughout the entire term of this Agreement exceed the contract maximum amount set forth above.”

3. Section 5.07(b) of the Agreement, entitled “**Proof of Insurance**”, is hereby amended to read in its entirety as follows:

“(b). **Proof of Insurance:** Design Consultant shall provide a copy of this Agreement to its insurance agent or broker. Design Consultant may not commence services or work relating to the Agreement prior to placement of coverage. Design Consultant certifies that the certificate of insurance attached as **Exhibit D**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City’s contract number be referenced on the Certificate. The City’s acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor’s breach of this Agreement or of any of the City’s rights or remedies under this Agreement. The City’s Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.”

4. Section 5.10 of the Agreement, entitled “**Contract Documents; Order of Precedence**”, is hereby amended to read in its entirety as follows:

“**5.10 Contract Documents; Order of Precedence.** This Agreement consists of Sections 1 through 5, which precede the signature page, and the following attachments, which are incorporated herein and made a part hereof by reference:

- Exhibit A Design Consultant’s Proposal (Including scope of work, key personnel, billing rates)
- Exhibit B FPM CAD Standards Guide
- Exhibit C FPM Required Record Documents
- Exhibit D Certificate of Insurance

In the event of an irreconcilable conflict between a provision of Sections 1 through 5 and the listed attachments, or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which provision shall control to resolve such conflict, is as follows, in descending order:

- Sections 1 through 5
- Exhibit D
- Exhibit C
- Exhibit B
- Exhibit A

5. Section 5.19 of the Agreement, entitled “**No Employment of Illegal Aliens to Perform Work Under the Agreement,**” is hereby amended to read in its entirety as follows:

“**5.19 No 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 Design Consultant 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 Design Consultant 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 subconsultant or subcontractor that fails to certify to the Design Consultant 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 Design Consultant 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 subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Design Consultant will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant 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 Design Consultant is liable for any violations as provided in the Certification Ordinance. If Design Consultant 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 Design Consultant 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 Design Consultant from submitting bids or proposals for future contracts with the City.”

6. Section 5.25 of the Agreement, entitled “**Notices**,” is hereby amended to read in its entirety as follows:

“**5.25 Notices.** Notices, bills, invoices or reports required by this Agreement shall be sufficiently delivered if sent in the United States mail, postage prepaid, to the Parties at the following addresses:

to the City:	Manager of Public Works 201 West Colfax Avenue, Dept. 608 Denver, Colorado 80202
with a copy to:	Assistant City Attorney 201 West Colfax Avenue, Dept. 1207 Denver, Colorado 80202
to the Consultant:	Studiotrope LLC 2942 Welton Street Denver, Colorado 80205
	Attention: Joseph Montalbano

The addresses may be changed by the Parties by written notice.”

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

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

IN WITNESS WHEREOF, the parties have executed, through their respective lawfully empowered representatives, this Amendatory Agreement as of the day and year first above written.

ATTEST:


CITY AND COUNTY OF DENVER

\_\_\_\_\_  
STEPHANIE Y. O'MALLEY,  
Clerk and Recorder, Ex-Officio Clerk  
of the City and County of Denver

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

RECOMMENDED AND APPROVED:

APPROVED AS TO FORM:  
City Attorney for the  
City and County of Denver

By:   
Manager of Public Works

By: \_\_\_\_\_  
Assistant City Attorney

REGISTERED AND COUNTERSIGNED:

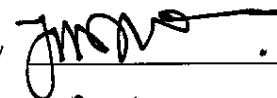
By: \_\_\_\_\_  
Manager of Finance  
Contract Control No. OC84015(1)

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

“CITY”

STUDIOTROPE LLC

I.R.S. Identification No. 20-0087609

By  . JOSEPH MONTALBANO

Title PARTNER

“DESIGN CONSULTANT”

Exhibit D – Certificate of Insurance

**EXHIBIT D**  
**CERTIFICATE OF INSURANCE**

# ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID MS  
STUDI-1

DATE (MM/DD/YYYY)  
10/01/10

**PRODUCER**  
Willis HRH-BRC.  
dba Brown/Raynor Corporation  
8200 E. Maplewood Ave., #100  
Englewood CO 80111  
Phone: 303-773-1373 Fax: 303-773-1685

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**INSURED**  
  
Studiotrope, LLC  
2942 Welton Street  
Denver CO 80205

INSURERS AFFORDING COVERAGE		NAIC #
INSURER A:	<b>Pinnacol Assurance</b>	<b>41190</b>
INSURER B:	<b>Hartford Fire Ins. Company</b>	<b>19682</b>
INSURER C:	<b>Lloyd's of London</b>	<b>B2094</b>
INSURER D:		
INSURER E:		

## COVERAGES

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
B	X	<b>GENERAL LIABILITY</b>	34SB AVR7867	09/03/10	09/03/11	EACH OCCURRENCE \$ <b>1,000,000</b>
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ <b>300,000</b>
		<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$ <b>10,000</b>
		GEN'L AGGREGATE LIMIT APPLIES PER:				PERSONAL & ADV INJURY \$ <b>1,000,000</b>
		<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				GENERAL AGGREGATE \$ <b>2,000,000</b>
B	B	<b>AUTOMOBILE LIABILITY</b>	34SB AVR7867	09/03/10	09/03/11	COMBINED SINGLE LIMIT (Ea accident) \$ <b>1,000,000</b>
		<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$
		<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
		<input checked="" type="checkbox"/> HIRED AUTOS				PROPERTY DAMAGE (Per accident) \$
		<input checked="" type="checkbox"/> NON-OWNED AUTOS				
		<b>GARAGE LIABILITY</b>				AUTO ONLY - EA ACCIDENT \$
		<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC \$
		<b>EXCESS/UMBRELLA LIABILITY</b>				AUTO ONLY: AGG \$
		<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				EACH OCCURRENCE \$
		DEDUCTIBLE				AGGREGATE \$
		RETENTION \$				\$
A		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>	9212907	09/03/10	09/03/11	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				E.L. EACH ACCIDENT \$ <b>100000</b>
		OTHER				E.L. DISEASE - EA EMPLOYEE \$ <b>100000</b>
		Professional Liab	PSTU01208	09/10/10	09/10/11	E.L. DISEASE - POLICY LIMIT \$ <b>500000</b>
		DEDUCTIBLE \$5,000				Per Claim \$ <b>1,000,000</b>
						Per Agg \$ <b>2,000,000</b>

### DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

The City and County of Denver, its elected and appointed officials, employees and volunteers are named as additional insured with regards to General Liability and Auto Liability.

### CERTIFICATE HOLDER

CITY090

City & County of Denver  
201 W. Colfax, Dept 614  
Denver CO 80202

### CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

*Matthew D. Dwyer*