

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 **OZ ARCHITECTURE OF DENVER, INC.**, (the “Design Consultant”), a Colorado corporation, whose address is 3003 Larimer Street, Denver, Colorado 80205.

WITNESSETH:

WHEREAS, the City and the Design Consultant previously entered into an Agreement dated April 29, 2008, and a First Amendatory Agreement dated November 18, 2008, whereby the Design Consultant agreed to provide professional design services on an on-call basis, to assist the City with the planning, design, and construction of various City projects (together, the “Agreement”); and

WHEREAS, the City desires to amend the Agreement to revise the delegation of authority, increase the maximum contract amount, and otherwise amend the Agreement as set forth below.

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 is 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 designates the Manager of Major Projects Office-Public Works as the Manager’s authorized representative for the purpose of designating a Project Manager, for the purpose of issuing a written Notice to Proceed and for purposes of administering, coordinating and finally approving the work performed by the Design Consultant under this Agreement. The Project Manager shall be responsible for the day-to-day administration, coordination and approval of work performed by the Design Consultant, except for approvals which are specifically identified in this Agreement as requiring the Manager’s approval. The Manager expressly reserves the right to designate another authorized representative to perform on the Manager’s behalf by written notice to the Design Consultant.”

2. Subsection f of Section 2.02 of the Agreement, entitled “**Professional Responsibility; Project Requirements,**” is amended to read in its entirety as follows:

“(f) The Design Consultant shall prepare the plans, specifications and other projects for each project in a format that complies with all City requirements as well as all state and federal requirements for that project. No funds will be paid to the Design Consultant for the preparation of contract documents in a form other than that considered usual and customary by the City’s Department of Public Works. It shall be the responsibility of the Design Consultant to contact the reviewing agencies and determine the acceptable format for the final documents. No documents will be considered final until approved by the City, even though any responsible federal and state agencies have approved such documents.”

3. Subsection b of Section 2.04 of the Agreement, entitled “**Coordination and Cooperation**,” is amended to read in its entirety as follows:

“(b) Coordination with the City and other involved agencies shall be a continuing work item through all phases of each assigned project. Such coordination shall consist of regular progress and review meetings with the City, work sessions with the Department of Public Works and user agencies, or as otherwise directed by the City. Such coordination may also include field and office reviews of plans and documents as required during the development of the design for any specific project. The Design Consultant shall document all such conferences and distribute notes to the City.”

4. Section 3.07 of the Agreement is amended to read in its entirety as follows:

“**3.07 Maximum Contract Amount; Funding:**

(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 **ONE MILLION, FOUR HUNDRED FORTY THOUSAND DOLLARS AND 00/100 (\$1,440,000.00)**. 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.

(b) Notwithstanding any other term, provision, or condition herein, all payment obligations under this Agreement shall be limited to the funds duly and lawfully appropriated and encumbered or otherwise made available by the Denver City Council for the particular projects assigned to the Design Consultant under this Agreement for the particular year(s) in which this Agreement is in effect, and paid into the Treasury of the City. As of the date of this Agreement, no funds have been appropriated for this Agreement. Instead, it is the City's intent to appropriate the funds necessary to compensate the Design Consultant for the work it performs on any assigned project, at the time it accepts each proposal for a specific project. The Manager of Public Works, upon reasonable written request, will advise the Design Consultant in writing of the total amount of appropriated and encumbered funds which are or remain available for payment for all work by the Design Consultant on a specific project.

(c) The issuance of any form of order or directive by the City which would cause the aggregate amount payable to the Design Consultant for a specific project to exceed the amount appropriated for the Design Consultant's work on a specific project is expressly

prohibited. In no event shall the issuance of any change order or other form of order or directive by the City be considered valid or binding if it requires additional compensable work to be performed, which work will cause the aggregate amount payable for such work to exceed the amount appropriated and encumbered, unless and until such time as the Design Consultant has been advised in writing by the Manager of Public Works that a lawful appropriation sufficient to cover the entire cost of such additional work, has been made. It shall be the responsibility of the Design Consultant to verify that the amounts already appropriated for the Design Consultant's Work on a project are sufficient to cover the entire cost of such Work, and any work undertaken or performed in excess of the amount appropriated is undertaken or performed in violation of the terms of this Agreement, without the proper authorization for such work, and at the Design Consultant's own risk and sole expense.”

5. Section 5.07(b) of the Agreement, entitled “**Proof of Insurance**”, is amended to read 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.”

6. Section 5.10 of the Agreement, entitled “**Contract Documents; Order of Precedence**”, is amended to read 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 | 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 C
- Exhibit B
- Exhibit A
- Exhibit D”

7. Section 5.19 of the Agreement is amended to read 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.”

8. Section 5.25 is amended to read 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. 601
Denver, Colorado 80202

To the Design Consultant Oz Architecture of Denver, Inc.
3012 Huron Street, Suite 100
Denver, Colorado 80202

Attention: Joe Levi

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

9. A new section is added to the Agreement and reads as follows:

“5.29 Electronic Signatures and Electronic Records: Design 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.”

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

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: OC85011

Vendor Name: OZ ARCHITECTURE

By: Joseph P. Leui

Name: JOSEPH P. LEUI
(please print)

Title: CEO
(please print)

ATTEST: [if required]

By: Scott Hiens

Name: Scott Hiens
(please print)

Title: Controller
(please print)



EXHIBIT D



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
9/13/2011

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 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).

PRODUCER Van Gilder Insurance Corp. 1515 Wynkoop, Suite 200 Denver CO 80202	CONTACT NAME: PHONE (A/C No. Ext): 303-837-8500 FAX (A/C No): 303-831-5295 E-MAIL ADDRESS: PRODUCER CUSTOMER ID #: OZARC
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INSURED OZ Architecture of Denver, Inc. 3012 Huron Street Denver CO 80202	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td>INSURER A: <u>Travelers Insurance</u></td> <td style="text-align: center;">0</td> </tr> <tr> <td>INSURER B: <u>Hartford Insurance Group</u></td> <td style="text-align: center;">0</td> </tr> <tr> <td>INSURER C: <u>Evanston Insurance Company</u></td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: <u>Travelers Insurance</u>	0	INSURER B: <u>Hartford Insurance Group</u>	0	INSURER C: <u>Evanston Insurance Company</u>		INSURER D:		INSURER E:		INSURER F:	
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INSURER E:															
INSURER F:															

COVERAGES **CERTIFICATE NUMBER: 1459806719** **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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS																				
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC			6805250L363	10/1/2010	10/1/2011	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$																				
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			BA5335L402	10/1/2010	10/1/2011	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$																				
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$10,000			CUP3391T130	10/1/2010	10/1/2011	EACH OCCURRENCE \$4,000,000 AGGREGATE \$4,000,000 \$ \$																				
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	34WBGNX4686	10/1/2010	10/1/2011	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">X</td> <td style="width: 10%;">WC STATUTORY LIMITS</td> <td style="width: 5%;"></td> <td style="width: 5%;">OTH-ER</td> <td style="width: 75%;"></td> </tr> <tr> <td></td> <td>E.L. EACH ACCIDENT</td> <td></td> <td></td> <td style="text-align: right;">\$1,000,000</td> </tr> <tr> <td></td> <td>E.L. DISEASE - EA EMPLOYEE</td> <td></td> <td></td> <td style="text-align: right;">\$1,000,000</td> </tr> <tr> <td></td> <td>E.L. DISEASE - POLICY LIMIT</td> <td></td> <td></td> <td style="text-align: right;">\$1,000,000</td> </tr> </table>	X	WC STATUTORY LIMITS		OTH-ER			E.L. EACH ACCIDENT			\$1,000,000		E.L. DISEASE - EA EMPLOYEE			\$1,000,000		E.L. DISEASE - POLICY LIMIT			\$1,000,000
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	E.L. DISEASE - POLICY LIMIT			\$1,000,000																							
C	Professional Liability Claims Made			AB820031	11/1/2010	10/1/2011	Per Claim \$2,000,000 Annual Aggregate \$5,000,000																				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 The City and County of Denver, its elected and appointed officials, employees and volunteers are named as additional insured with regards to the commercial general liability policy and the business auto liability policy.
RE: On-Call Architectural Services Contract #0C85011

CERTIFICATE HOLDER City and County of Denver; Department of Public Works 201 W. Colfax Avenue Denver CO 80202	CANCELLATION 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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