

## AMENDATORY AGREEMENT

This **AMENDATORY AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **MULLER ENGINEERING COMPANY, INC**, a Colorado corporation whose address is 777 South Wadsworth Blvd., Suite 4-100, Lakewood, Colorado 80226 (the “Consultant”), jointly (“the Parties”).

### RECITALS:

**A.** The Parties entered into a Design Services Agreement dated May 20, 2021 (the “Agreement”) to provide professional design services.

**B.** The Parties wish to amend the Agreement to extend the term, increase the Maximum Contract Amount and to make such other amendments as are herein set forth.

**NOW THEREFORE**, in consideration of the premises and the Parties’ mutual covenants and obligations, the Parties agree as follows:

1. All references to “...Exhibit A...” in the Agreement shall be amended to read: “...Exhibit A and A-1...” as applicable. The Project Fee Estimating Sheet marked as **Exhibit A-1** attached to this Amendatory Agreement is hereby incorporated by reference.

2. All references to “...Exhibit C...” in the Agreement shall be amended to read: “...Exhibit C and Exhibit C-1...” as applicable. The Certificate of Liability Insurance marked as **Exhibit C-1** attached to this Amendatory Agreement is hereby incorporated by reference.

3. Section 3 of the Agreement entitled **SECTION 3 – COMPENSATION, PAYMENT, AND FUNDING** Sub section 3.03 (a) entitled “**Additional Services**” is amended to read as follows:

**“3.03 Additional Services.** If written pre-approval is acquired from the Project manager, and additional services are performed by the Design Consultant, the City agrees to pay the Design Consultant for such additional services in accordance with Section 2.08. The maximum amount to be paid by the City for all additional services under this contract is **ONE HUNDRED SEVENTY-FOUR THOUSAND EIGHT HUNDRED FIFTY-TWO DOLLARS AND ZERO CENTS (\$174,852.00).**”

4. Section 3 of the Agreement entitled **SECTION 3 – COMPENSATION, PAYMENT, AND FUNDING** Sub section 3.05 (a) entitled “**Maximum Contract Amount**” is amended to read as follows:

**“3.05 Maximum Contract Amount.**

(a) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **NINE HUNDRED EIGHTY-NINE THOUSAND EIGHT HUNDRED FIFTY-TWO DOLLARS AND ZERO CENTS (\$989,852.00)** (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 Design Consultant beyond that specifically described in Exhibit A and Exhibit A-1. Any services performed beyond those set forth therein are performed at Design Consultant's risk and without authorization under the Agreement.”

5. Section 4 of the Agreement entitled **SECTION 4 - TERM AND TERMINATION**

Sub section 4.01 entitled **“Term”** is amended to read as follows:

**“4.01 Term.** The Agreement will commence on May 20, 2021 and will expire on May 19, 2024, unless sooner terminated upon final completion of the Project.”

6. Section 5 of the Agreement entitled **SECTION 5 - GENERAL PROVISIONS**

Sub section 5.06 entitled **“No Discrimination in Employment”** is amended to read as follows:

**“5.06 No Discrimination in Employment.** In connection with the performance of work under the Agreement, the Consultant 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 Consultant shall insert the foregoing provision in all subcontracts.”

7. Section 5 of the Agreement entitled **SECTION 5 - GENERAL PROVISIONS**

Sub section 5.19 entitled **“No Employment of Illegal Aliens to Perform Work Under the Agreement”** is hereby deleted in its entirety and replaced with:

**“5.19 No Employment of a Worker without Authorization 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 Consultant certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement, nor will it knowingly employ or contract with

a worker without authorization to perform work under this Agreement in the future.

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

(3) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Consultant that it shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

(4) It is prohibited from using either the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and it is required 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 this Agreement knowingly employs or contracts with a worker without authorization, it will notify such subconsultant or subcontractor and the City within three (3) days. The Consultant shall also 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 worker without authorization, 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 a worker without authorization.

(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.

c) The Consultant is liable for any violations as provided in the Certification Ordinance. If Consultant violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If this Agreement is so terminated, the 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 the Consultant from submitting bids or proposals for future contracts with the City.”

8. As herein amended, the Agreement is affirmed and ratified in each and every particular.

9. This 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.

**Contract Control Number:** DOTI-202158427-01 [202264145-01]  
**Contractor Name:** MULLER ENGINEERING COMPANY, 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:

\_\_\_\_\_

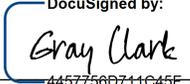
\_\_\_\_\_

By:

\_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

DOTI-202158427-01 [202264145-01]  
MULLER ENGINEERING COMPANY, INC.

By:  \_\_\_\_\_  
4457756D711C45F...

Name: Gray Clark  
(please print)

Title: President  
(please print)

ATTEST: [if required]

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

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

# Exhibit A-1

## PROJECT FEE ESTIMATING SHEET

CLIENT:	<b>City of Denver</b>	PROJECT NO.:	21019.01	PROPOSAL NO.:	920.67
		PREPARED BY:	CLK	DATE:	5/15/2022
PROJECT:	<b>West Colfax Pedestrian and Transit Improvements - Stormwater Added Services</b>	CHECKED BY :		PROPOSED TOTAL FEE .....	\$19,852.00

### Minimum Scope of Services

Item No.	Task Description	PERSONNEL						EXPENSES (\$\$)				TOTALS						
		Chris Kroeger	John Yager	Taylor Hogan	Richard Spann	John Gonzalez		O/C	T/L	REPRO	OTHER	(a) hours	(b) fee	(c) expns	(d) subtotal			
		Sr. P.M. 8 \$205	Sr. P.M. 7 \$194	D.E. 3 \$130	D.E. 3 \$130	CADD. 4 \$117	ADMIN. \$87	<<<Billing Rate										
<b>Flo2D 100-year Floodplain Analysis</b>																		
1	Coordination/meetings		4			4									8	\$1,340	\$0	\$1,340.00
2	Review existing conditions Flo2D model provided by City and County of Denver. Collect data from model to be used for proposed condition comparison.		4	8	16	4									32	\$4,972	\$0	\$4,972.00
3	Perform proposed condition analysis of W. Colfax Avenue street cross section using Flowmaster. Compare existing and proposed conditions and prepare writeup summarizing comparison and include in drainage memorandum.		8			20									28	\$4,240	\$0	\$4,240.00
	<b>Subtotal =</b>																	<b>\$10,552.00</b>
<b>Storm Sewer Hydraulic Analysis</b>																		
4	Coordination/meetings		4			4									8	\$1,340	\$0	\$1,340.00
5	Calculate existing inlet capacity for inlets along W. Colfax Avenue between Sheridan Boulevard to Stuart Street.		4			12									16	\$2,380	\$0	\$2,380.00
6	Evaluate whether added storm sewer improvements would be beneficial east of the Stuart Street intersection after the Stuart Street outfall is constructed.		4			12									16	\$2,380	\$0	\$2,380.00
7	Prepare writeup summarizing comparison of existing conditions and proposed storm sewer improvements, discussion of Stuart Street outfall and impact on project, and include in drainage memorandum.		8			12									20	\$3,200	\$0	\$3,200.00
	<b>Subtotal =</b>																	<b>\$9,300.00</b>
(a)	Total Hours		36	8	16	68	0	0	-	-	-	-	-	-	128	-	-	-
(b)	Fee, Billing Rate		\$7,380	\$1,552	\$2,080	\$8,840	\$0	\$0	-	-	-	-	-	-	-	\$19,852	-	-
(c)	Total Expenses		-	-	-	-	-	-	\$0	\$0	\$0	\$0	\$0	\$0	-	-	\$0	-
	<b>Total, Fee(b+c)</b>		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	<b>\$19,852.00</b>

Item Assumptions/Exclusions

- 2 Assumption is that existing conditions Flo2D model covers the entire project corridor.
- 2 Assumption is that existing conditions Flo2D model is accurate and that a "corrected effective" model will not need to be prepared.
- 3 It is assumed that the proposed improvements will negatively effect the 100-year floodplain. Scope of work does not include design adjustments or additional modeling that may be required to result in no negative impact.
- 5 Inlet capacity calculations will only be performed for inlets along Colfax Avenue between Sheridan Boulevard to Stuart Street.
- 7 The writeup will only include a discussion of the anticipated impacts the planned Stuart Street outfall will have on the corridor. The Wolff Street outfall will not be evaluated but the impacts can be assumed to be similar to the Stuart Street outfall.



## DESCRIPTIONS (Continued from Page 1)

As required by written contract or written agreement, the following provisions apply subject to the policy terms, conditions, limitations and exclusions: The Certificate Holder and owner are included as Automatic Additional Insured's for ongoing and completed operations under General Liability; Designated Insured under Automobile Liability; and Additional Insured under Umbrella / Excess Liability but only with respect to liability arising out of the Named Insured's work performed on behalf of the certificate holder and owner. The General Liability, Automobile Liability, Umbrella/Excess insurance applies on a primary and non contributory basis. A Blanket Waiver of Subrogation applies for General Liability, Automobile Liability, Umbrella/Excess Liability and Workers Compensation. The Umbrella / Excess Liability policy provides excess coverage over the General Liability, Automobile Liability and Employers Liability.

Please note that Additional Insured status does not apply to Professional Liability or Workers' Compensation.

RE: Project: West Colfax Pedestrian and Transit Improvement Project.

Additional Insureds: The City and county of Denver, its elected and appointed officials, employees and volunteers.