

AMENDATORY AGREEMENT

THIS REVIVAL AND AMENDATORY AGREEMENT is entered into _____, 2010 by the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City"), and **McKINSTRY ESSENTION, INC.**, a Washington corporation authorized to transact business in the State of Colorado, with its principal place of business located at 5005 Third Avenue South, Seattle, Washington 98124 (the "Consultant").

RECITALS

- A. The City and the Consultant entered into an Agreement dated December 1, 2009, to procure Level I and Level II Energy Audits and recommissioning services (the "Agreement").
- B. The City is a Recipient of a federal grant, Award DE-EE0000909/000, CFDA No. 81.128, Contract No. GC94011, which was obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 ("ARRA funds") in the amount of \$6,079,500.00.
- C. The City and the Consultant wish to extend the term of the Agreement for an additional year, add to the existing scope of work, and increase the total compensation to be paid.

NOW, THEREFORE, the parties hereby amend the Agreement as follows:

1. Recital C of the Agreement is amended to read as follows:

"C. The City is a Recipient of a federal grant, Award DE-EE0000909/000, CFDA No. 81.128, Contract No. GC94011, which was obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 ("ARRA funds") in the amount of \$6,079,500.00."
2. Paragraph 3 of the Agreement, entitled "**TERM**", is amended to read as follows:

"3. **TERM**: The Agreement will commence on November 15, 2009 and will expire on November 14, 2011 (the "Term"). Subject to the Manager's prior written authorization, the Consultant shall complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the Manager."
3. Subparagraphs a, d(1), and d(3) of Paragraph 4, entitled "**COMPENSATION AND PAYMENT**", are amended to read as follows:

“a. **Fee:** The Consultant’s sole compensation for services rendered and costs incurred under the Agreement is as set forth in **Exhibit C Building Activity List and Associated Fees** and **Exhibit C-1 2010-2011 Building Activity List and Associated Fees** and up to the amounts set forth in **Exhibits D Additional Services and Associated Fees** and **D-1 2010-2011 Additional Services and Associated Fees**. Amounts billed may not exceed the amounts set forth in Exhibits C, C-1, D, and D-1.”

“d. **Maximum Contract Amount:**

(1) Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed **EIGHT HUNDRED EIGHTY-TWO THOUSAND, SEVEN HUNDRED SEVENTY DOLLARS AND NO/XX (\$882,770.00)** (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 Consultant beyond that specifically described in Exhibit C. Any services performed beyond those set forth therein are performed at Consultant’s risk and without authorization under the Agreement.”

“(3) That portion of the Maximum Contract Amount which is allocated from ARRA funds is \$777,947.00.”

4. Exhibits C-1 and D-1 are attached and incorporated by reference herein.
5. 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 hereto have executed this Amendatory Agreement as of the date first written above.


ATTEST:

CITY AND COUNTY OF DENVER:

By: _____
STEPHANIE Y. O'MALLEY, Clerk
and Recorder, Ex-Officio Clerk of the
City and County of Denver

By: _____
MAYOR

RECOMMENDED AND APPROVED:

By: 
Manager, General Services

APPROVED AS TO FORM:
DAVID R. FINE
CITY ATTORNEY for the City and
County of Denver

REGISTERED AND COUNTERSIGNED:

By: _____
Manager of Finance

By: _____
Assistant City Attorney

Contract Control No. **GE91445(1)**

By: _____
Auditor

“CITY”

ATTEST: [If required by Corporate procedures]

McKINSTRY ESSENTION, INC.
Taxpayer (IRS) I.D. No. 91-2055773

By: _____

By: 

Title: _____

Name: CHRIS LAROCQUE
(please print)

Title: OPERATIONS MANAGER

“CONSULTANT”

Exhibit C-1 2010-2011 Building Activity List and Associated Fees
Exhibit D-1 2010-2011 Additional Services and Associated Fees

EXHIBIT C-1

2010-2011 BUILDING ACTIVITY LIST AND ASSOCIATED FEES

Energy Audits and Recommissioning

Facility/Activity	Level II	Recommissioning	Total Cost
Castro Building	\$29,800	\$15,100	\$44,900
Police Admin Building	\$38,412		\$38,412
Fire Station #2		\$12,200	\$12,200
Police District #2		\$25,399	\$25,399
Police District #3		\$25,418	\$25,418
Montclair Rec Center	\$15,500	\$8,500	\$24,000
Roslyn Admin Building (#5)	\$15,900	\$8,300	\$24,200
Minoru Yasui		\$10,000	\$10,000
Wastewater	\$24,800	\$14,000	\$38,800
	Audit/Recommissioning Total Cost		\$243,329

EXHIBIT D-1

2010-2011 ADDITIONAL SERVICES AND ASSOCIATED FEES

The following services will additionally be performed at the written direction of the City:

- **Facility Condition Assessment** - Verify building equipment lists, gather equipment nameplate data, establish preventive maintenance activities and schedules, assess equipment condition, and estimate equipment replacement costs. Facility Condition Assessment services may be performed at Castro, Police Admin Building, Minoru Yasui, and Wastewater.
- **Project Scope and Specification Preparation** - Assist City in defining project scopes and in developing system and equipment specifications for energy efficiency projects identified in audit and retro-commissioning reports.
- **Commissioning** - May include but is not limited to contracting assistance and design review, point testing of end devices, functional testing of equipment, training review and support, and documentation of sequence of operations and building deficiencies.

Facility Condition Assessment*	\$78,372
Additional Services** [which may include, but are not limited to, project scope and specifications preparation, project commissioning, and additional audits or facility condition assessments]	\$75,000

* This work is not included within Exhibit C-1. If this work is directed it will be billed on a Time and Materials (T&M) basis. The following rates will be used to calculate the billed costs for such work:

Facility Condition Assessment – Time and Materials Rates	
Construction Superintendent	\$84.00/hour
Commissioning Engineer	\$95.00/hour
Energy Engineer	\$95.00/hour
Program Manager	\$105.00/hour
Mechanical Engineer	\$105.00/hour
Project Director	\$135.00/hour
Word Processing & Administrative Assistant	\$55.00/hour
Subcontracted Consultants	Cost + 25 percent
Misc. & Produccible Materials	Cost + 25 percent
Reimbursable Mileage	\$0.50/mile

** This work is not included within Exhibit C-1. A proposal including proposed costs will be required before the City directs performance of additional services.