

**REVIVAL AND THIRD AMENDATORY AGREEMENT**

**THIS REVIVAL AND THIRD AMENDATORY AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City"), and **PATTON BOGGS, LLP**, whose address is 1801 California Street, Suite 4900, Denver, Colorado 80202 (the "Consultant").

09-1024-C

**WITNESSETH:**

**WHEREAS**, the City retained the Consultant by an Agreement dated October 13, 2009, as amended by an Amendatory Agreement dated August 17, 2010, and a Second Amendatory Agreement dated November 29, 2010, to provide establish and promote positive governmental relations between the City and County of Denver and the federal government (together, the "Agreement"); and

**WHEREAS**, the City and the Consultant now wish to amend the Agreement further to extend its term for an additional year, increase the total amount of compensation to be paid to the Consultant for such additional term and services, and modify certain other provisions in the Agreement as set forth below.

**THEREFORE**, the parties agree as follows:

1. Article 2 of the Agreement, entitled "**TERM**", is amended to read as follows:
  - “2. **TERM:** The term of the Agreement shall commence on October 1, 2009, and expire on December 31, 2011, unless terminated sooner as provided for herein.”
  
2. Article 3 of the Agreement, entitled "**PAYMENT**", is amended to read as follows:
  - “3. **PAYMENT:**
    - A. For all work satisfactorily performed in accordance with Exhibit A, the City agrees to pay the Consultant, and the Consultant agrees to accept as the total compensation, an amount not to exceed Four Hundred Forty Five Thousand Five Hundred and 00/100 Cents (\$445,500.00), payable in twenty seven (27) monthly installments at a flat rate not to exceed Sixteen Thousand Five Hundred Dollars (\$16,500.00) per installment.

**B.** Effective as of May 1, 2010, for the work to be performed under Exhibit A-1 attached to the Amendatory Agreement dated August 17, 2010, the City agrees to pay the Consultant, and the Consultant agrees to accept as the total compensation for the work described in Exhibit A-1 (City Contract Control No. RC 00019), an amount not to exceed Forty Thousand Dollars and 00/100 Cents (\$40,000.00), payable as follows:

i) For the period beginning May 1, 2010, until July 31, 2010, Consultant will be paid in three (3) monthly installments at a flat rate not to exceed Four Thousand and 00/100 Dollars (\$4,000.00) per installment;

ii) For the period beginning August 1, 2010 until December 31, 2010, the Consultant will be paid in five (5) monthly installments at a flat rate not to exceed One Thousand Six Hundred and 00/100 Dollars (\$1,600.00) per installment; and

iii) For the period beginning January 1, 2011, until December 31, 2011, the Consultant will be paid in twelve (12) monthly installments at a flat rate not to exceed One Thousand Six Hundred Sixty Six and 66/100 Dollars (\$1,666.66) per installment.

The Consultant will be reimbursed for services actually performed as follows: 1) upon delivery directly to DHA of Consultant's monthly narrative report and invoice of services performed in accordance with Section 4 of said Agreement; 2) upon receipt by the City of written confirmation from the Consultant that it has provided said monthly narrative reports and/or invoices to DHA; and 3) upon receipt of funds by the City from DHA for services provided under City Contract Control No. RC 00019, as documented to DHA and confirmed to the City by the Consultant.

**C.** For all work satisfactorily performed in accordance with Exhibit A-2, the City agrees to pay the Consultant, and the Consultant agrees to accept an amount not to exceed Seventy Five Thousand Dollars (\$75,000.00) payable at an hourly rate to be agreed upon in writing by the Consultant and the Manager of the Department of Aviation.

**D.** For all services, the Consultant will be reimbursed for services actually performed in accordance with Exhibit A, A-1, and A-2 to this Agreement as fully documented and described by Consultant's monthly narrative report and invoice which shall be in a format and with a level of detail acceptable to the City. The total amount of compensation to be paid to the Consultant for the services set forth in Exhibit A, Exhibit A-1, and Exhibit A-2 will not exceed Five Hundred Sixty Thousand Five Hundred and 00/100 Dollars (\$560,500.00) (the "Maximum Contract Amount"). The City will not

be liable to the Consultant for work performed under City Contract Control No. RC 00019 except for work actually performed by the Consultant and payment actually received by the City from DHA in accordance with the terms of said Agreement. The Consultant hereby waives and discharges any and all liabilities, claims, suits, rights, demands, actions, expenses, attorney's fees, interest, compensation, judgments, and any and all damages of any kind or nature, either in law or in equity, which might exist against the City, and all other related persons and entities, both past and present, including but not limited to the City's departments, agencies, insurers, attorneys, agents, employees, officers, contractors, elected and appointed officials, and assigns for damages of any nature including but not limited to the services provided to DHA under City Contract Control No. RC 00019 for which the City has not received payment from DHA; EXCEPT, however, this waiver will not apply to any claims by the Consultant for funds actually received by the City from DHA in accordance with the terms of City Contract Control No. RC 00019. This waiver will survive the expiration or earlier termination of this Agreement.

**E.** For all services, under Exhibits A, A-1, and A-2, there are no reimbursable expenses allowed under the Agreement. All of Consultant's expenses are contained in the Consultant's applicable monthly flat rate of payment. Therefore, the Maximum Contract Amount includes payment for any and all reasonable expenses relating to the provision of services under this Agreement including but not limited to the following: parking, long distance telephone charges, postage, travel, mileage, food and lodging associated with any necessary travel, copies, and messenger services.

**F.** For services provided under Exhibit A, A-1, and A-2, the City reserves the right to require such additional documentation as it deems appropriate to support the monthly invoice of the Consultant. An officer of the Consultant shall verify invoice submitted to the City and to DHA. The City shall use its best efforts to pay invoices submitted for services provided under Exhibit A, A-1, and A-2 to this Agreement within thirty (30) days of receipt of invoices.

**G.** 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 A, A-1 or A-2. Any services performed beyond those set forth therein are performed at Consultant's risk and without authorization under the Agreement.

**H.** The City's payment obligation, whether direct or contingent, for all services under Exhibit A, A-1, and A-2, extends only to funds appropriated annually by the Denver City Council, paid

into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years, and the Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.”

3. Article 14 of the Agreement, entitled “**NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT**”, is amended to read as follows:

**“14. 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 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 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 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 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 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 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 the 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 Consultant from submitting bids or proposals for future contracts with the City.”

4. As herein amended, the Agreement is revived, reaffirmed, and ratified in each and every particular.

5. This Revival and Third Amendatory Agreement may be executed in two (2) counterparts, each of which is an original and constitute one and the same instrument.

6. This Revival and Third 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.

7. Consultant consents to the use of electronic signatures by the City. This Revival and Third Amendatory 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, as amended, solely because it or any amendment 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 or any amendment 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.

**IN WITNESS WHEREOF**, the parties have executed this Revival and Third Amendatory Agreement as of the date first written above.

**ATTEST:**

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

**APPROVED AS TO FORM:**

DAVID R. FINE  
CITY ATTORNEY  
for the City and County of Denver

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

**CITY AND COUNTY OF DENVER:**

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

**RECOMMENDED AND APPROVED:**

By: \_\_\_\_\_  
Mayor's Office

By: \_\_\_\_\_  
Manager of Department of Aviation

**REGISTERED AND COUNTERSIGNED:**

By: \_\_\_\_\_  
Manager of Finance  
Contract Control No. CE 91376(3)

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

**"CITY"**

**ATTEST:** [If required by Corporate procedures]

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

Title: \_\_\_\_\_

**PATTON BOGGS, LLP**  
Taxpayer (IRS) I.D. No. 52-0749196

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

Name: Robert M. Bearman  
(please print)

Title: Denver Office Managing Partner

**"CONSULTANT"**