

SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

THIS SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (“**Second Amendment**”) is made and entered into this _____ day of _____, 2012 (“**Effective Date**”), by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “**City**”) and **Imagebase**, a Colorado limited liability company, whose address is 9145 East Kenyon Avenue, Suite 201, Denver, Colorado 80237 (the “**Contractor**”), individually referred to herein as a “**Party**” and jointly as the “**Parties**”.

WHEREAS, the Parties entered a Professional Services Agreement on August 11, 2009 (Clerk Filing # 09-724) as amended by a First Amendment dated November 30, 2010 (Clerk Filing # 09-724-A)(“**Agreement**”), with respect to a records digitization project;

WHEREAS, the Agreement described multiple phases for this project within the Scope of Project but only authorized and funded Phases I, II and Vb;

WHEREAS, the Parties now wish, by means of this Second Amendment, to acknowledge that Phases I and II have been completed and that Phase Vb (now included within Phase IV) is anticipated to be completed by the end of the first quarter of 2012, to revise the phasing schedule and other requirements as described in Exhibits A-2 and B to this Second Amendment, to modify certain costs and pricing as set forth in this Second Amendment and its exhibits, to provide for funding of Phase IV as set forth in the Second Amendment and its exhibits, and make such other changes as set forth in this Second Amendment;

In consideration of the mutual agreements contained in this Agreement, and subject to the terms and conditions stated in this Agreement, the Parties agree as follows:

I. That sub-sections A and C of section 1 of the Agreement is amended to read as follows:

1. WORK TO BE PERFORMED:

A. The Work: The Contractor shall diligently and professionally perform the services and produce all the deliverables regarding the digitization of the Denver Clerk and Recorder’s public records, as described in the scope of work attached hereto as **Exhibit A-1**, the scope of project (based on the proposal submitted by the Contractor to the City) attached hereto as **Exhibit A-2** (as modified in this Second Amendment), and the schedule and rates attached hereto as **Exhibit B** (as modified in this Second Amendment), with all three exhibits being incorporated herein by this reference (the “**Work**”). In no case shall the Work performed or the

deliverables provided be contrary or inconsistent with the requirements of section 30-10-407 of the Colorado Revised Statutes or other state statute with respect to the form, retention and maintenance of public records by the Clerk and Recorder.

* * *

C. Phases: The Work for Phases I and II, as described in Exhibit A-2 and Exhibit B to the Agreement, has been satisfactorily completed. The Work for Phases III and IV (now combined and referred to as Phase IV in this Second Amendment) is anticipated to start during the first quarter of 2012. The Phases for the remaining Work have been revised in Exhibit A-2 and the rates and schedule have been revised in Exhibit B, with both of these exhibits being attached to this Second Amendment and incorporated herein by reference. Phase IV-A through IV-E, as described in Exhibits A-2 and B, is being authorized and funded by this Second Amendment. The Contractor may commence the Work on Phase IV-A upon execution of this Second Amendment, but any Work on Phases IV-B through IV-E may not be commenced until authorized in writing by the Clerk and Recorder. Phases IV-F, IV-G, IV-H and Phases V-A through V-B are future Phases (“**Future Phases**”), included in Exhibits A-2 and B for informational purposes only, and must be authorized by another amendment to the Agreement or a separate contract. The Contractor shall not commence work on any Future Phases until the Contractor and the City execute another amendment to this Agreement or another contract.

II. That section 3 of the Agreement is amended to read as follows:

3. **TERM; EXTENSIONS**: The term of the Agreement, as amended by the Second Amendment, is from the Effective Date of this Agreement to December 31, 2016, unless terminated earlier or extended as provided in this Agreement (“**Term**”). Any amendments to this Agreement extending or modifying the Term shall conform with the requirements of section 16 of this Agreement.

III. That section 4 of the Agreement is amended to read as follows:

4. **COMPENSATION AND PAYMENT**:

A. Maximum Contract Amount: The Maximum Contract Amount to be paid by the City to the Contractor shall in no event exceed the sum of One Million Four Hundred Thousand Dollars (\$1,400,000.00) for Phases I, II, and IV-A through IV-E, as such Phases are described in Exhibit A-2 and the costs and pricing are prescribed in Exhibit B, as these exhibits are attached to this Second Amendment, unless the Agreement and this Second Amendment is

modified to increase said amount by a duly authorized and written amendment executed by the Parties in the same manner as the Agreement and this Second Amendment. The Maximum Contract Amount stated herein is not intended, and shall not be construed, as a promise or guarantee to the Contractor that all of the approved invoices for the Work will total or approximate the Maximum Contract Amount.

B. Allowable Expenses:

1) *Hourly Work*: Under Exhibit B, there are identified some circumstances where extra Work, not contemplated under the payment schedule, will be paid on an hourly basis (“**Hourly Work**”). It is agreed that the Hourly Work rate, including all expenses, shall not exceed thirty-five dollars (\$35.00) per hour. Any Hourly Work not identified in Exhibit B or any Hourly Work which is identified in Exhibit B but is anticipated to exceed one thousand dollars (\$1,000.00) in any 30-day period shall require the written approval of the Clerk Rep prior to commencing the Hourly Work. In the event that Hourly Work for any 90-day period billed to the City actually exceeds two thousand seven hundred fifty dollars (\$2,750.00) and no portion of that Hourly Work was pre-approved by the Clerk Rep, then all Hourly Work for the next 90-day period shall require the written approval of the Clerk Rep prior to commencing that Hourly Work. All Hourly Work, including but not limited to the reasons for the Hourly Work, the nature of the Hourly Work, and the dates and number of hours that Hourly Work is performed, shall be fully described in the invoices submitted by the Contractor for payment.

2) *Transportation Charge*: The Contractor shall be entitled to be paid thirty-five dollars (\$35.00) for each actual round trip required to retrieve microfilm from and return microfilm to the Colorado State Archives or other depository of said microfilm, which total amount for transportation charges shall not exceed one thousand dollars (\$1000.00) unless prior written approval of the Clerk Rep is obtained. The transportation charges shall be documented in the invoices submitted by the Contractor for payment.

3) *Hard Disk Drive Charge*: The City shall provide external hard disk drives (Western Digital 2TB or equivalent with USB 2.0 and 3.0 compatibility) to the Contractor for use in storing and providing deliverables to the City. Hard drives shall be provided to the Contractor by the City through a mutually agreed-upon process.

D. Conditions of Payment: A fully executed invoice complying with the requirements of this section 4 shall be a condition precedent to any obligation for the City to

make payment for Work performed by the Contractor. Invoices shall be submitted on a weekly basis unless other arrangements are made in writing with the Clerk Rep. The invoice submitted by the Contractor must fully document and itemize the Work rendered and all authorized and actually incurred costs and charges. Payment shall be made to the Contractor within thirty (30) days following confirmation by the Clerk Rep that the Work and the Hourly Work have been performed as stated on the invoice and other authorized expenses have been incurred as stated on the invoice. The invoice shall affirmatively represent that all of the Work specified in the invoice has been fully performed and completed and any Deficiency Notice has been satisfied. If the invoice does not contain this representation, the invoice is hereby deemed to contain said representation. The request for payment must be approved by the Clerk and Recorder or the Clerk and Recorder's authorized representative in writing in order to be eligible for compensation under this Agreement.

E. Subject to Appropriation; No Multiple Year Obligation. It is understood and agreed that any payment obligation of the City hereunder, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council for the purpose of this Agreement, encumbered for the purpose of the Agreement and paid into the Treasury of the City. The Contractor acknowledges that (i) the City does not by this Agreement, irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. Moreover, it is understood and agreed that each of the Phases identified in Exhibit A-2 of this Agreement (except Phase IV-A for the Second Amendment) will not be appropriated and encumbered until the fiscal year in which Work on a specific Phase will be initiated. Until the funds for a specific Phase have been fully appropriated and encumbered, the Contractor shall have no right to initiate Work on said Phase.

E. Amendments: The Contractor acknowledges that the City is not obligated to execute an amendment to this Agreement and that any work performed by Contractor beyond that specifically described or allowed under this Agreement or without a fully and properly executed amendment to this Agreement is performed at Contractor's risk and without authorization under this Agreement.

IV. That section 27 of the Agreement is amended to read as follows:

27. NO EMPLOYMENT OF ILLEGAL ALIENS:

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 Contractor 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 Contractor 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 subcontractor that fails to certify to the Contractor 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 Contractor 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 subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subcontractor and the City within three (3) days. The Contractor will also then terminate such subcontractor if within three (3) days after such notice the subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the

subcontractor provides information to establish that the 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 Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor 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 Contractor 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 Contractor from submitting bids or proposals for future contracts with the City.

V. A new section 36 is hereby added to and made part of the Agreement:

36. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS. The Contractor 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.

VI. Except as expressly amended by this Second Amendment, the Agreement is hereby affirmed and ratified in all particulars.

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