

## 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 **ICON ENGINEERING, INC.**, a Colorado corporation, whose address is 7000 South Yosemite Street, Suite 120, Centennial, Colorado 80112-2004 (the “Consultant”), jointly (the “Parties”).

### RECITALS:

**A.** The City and the Consultant entered into an On-Call Engineering Services Agreement dated March 14, 2011, (the “Agreement”) for professional engineering services on an as-needed basis. This Amendatory Agreement will provide an interim measure to address the influx of drainage related design work related to the 1-70 project until new on-call contracts are procured.

**B.** The parties wish to amend the Agreement to increase the maximum contract amount, extend the term, and add new indemnification language.

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

1. Section 3 – “**COMPENSATION, PAYMENT, AND FUNDING**,” Subsection 3.07(a) of the Agreement, entitled, “**Maximum Contract Amount; Funding**,” is amended to read 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 Consultant, for all Work performed under this Agreement, shall not exceed a maximum of **THREE MILLION DOLLARS (\$3,000,000.00)**. In no event shall the maximum payment to the Consultant, for all work and services performed throughout the entire term of this Agreement exceed the contract maximum amount set forth above.”

2. Section 4 – “**TERM AND TERMINATION**,” Subsection 4.01 of the Agreement, entitled, “**Term**,” is amended to read as follows:

**“4.01 Term.** The term of this Agreement shall commence on March 1, 2011, and shall expire on December 31, 2016, unless sooner terminated or extended by written amendment. The Consultant shall complete any task orders in progress as of the expiration date of this agreement and the term will extend until the work is completed or earlier terminated by the Manager.

3. Section 5 – “**GENERAL PROVISIONS**,” Subsection 5.08(a) of the Agreement, entitled, “**Indemnification**” is amended to read as follows:

**“5.08 Indemnification:**

- (a) To the fullest extent permitted by law, the Consultant hereby agrees to defend, indemnify, reimburse and hold harmless the City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages arising out of, resulting from, or related to work performed or services provided under this Agreement to the extent and for an amount equal to the total percentage of negligence or fault, whichever is greater, attributable to the Consultant and Consultant’s agents, representatives, subcontractors and suppliers.
- (b) If Consultant is providing architectural, engineering, surveying or other design services the extent of Consultant’s obligation to defend, indemnify and hold harmless will be determined after Consultant’s liability or fault, whichever is greater, as well as the liability or fault of Consultant’s agents, representatives, subcontractors and suppliers has been determined by adjudication, alternative dispute resolution or mutual agreement.
- (c) In all other cases, Consultant’s duty to defend and indemnify City shall arise at the time written notice of a claim is provided to City regardless of whether suit has been filed and even if Consultant is not named as a Defendant.
- (d) Consultant’s defense obligation includes all expenses incurred including, but not limited to, court costs and attorney fees incurred in defending and investigating claims or seeking to enforce this defense and indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City’s exclusive remedy.
- (e) Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Consultant under the terms of this indemnification obligation. The Consultant shall obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.
- (f) This defense and indemnification obligation shall survive the expiration or termination of this Agreement.
- (g) This defense and indemnification requirement does not require that Consultant defend, indemnify or hold the City harmless for the City’s own negligence.

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

5. 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:**

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:** PWADM-OC11006-01

**Contractor Name:** ICON ENGINEERING, INC

By: 

Name: DOUGLAS J. WILLIAMS  
(please print)

Title: PRESIDENT  
(please print)

**ATTEST: [if required]**

By: 

Name: MATTHEW J. CHISETTA  
(please print)

Title: PRINCIPAL  
(please print)

