

### THIRD AMENDATORY AGREEMENT

**THIS THIRD AMENDATORY AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, (the "City"), and **MULLER ENGINEERING COMPANY, INC.**, (the "Design Consultant") a Colorado corporation, whose address is Irongate 4, Suite 100, 777 Wadsworth Boulevard, Lakewood, Colorado 80226.

#### RECITALS:

**WHEREAS**, The City and the Design Consultant previously entered into an Agreement dated November 27, 2007, relating to engineering services on an "as needed" basis (the "Agreement"); and amended by Amendatory Agreement dated December 23, 2008 and by Second Amendatory Agreement dated September 29, 2009, relating to design services on an "as needed" basis (the "Agreement"); and

**WHEREAS**, Section E.1 of Article IX of the Agreement allows the City at its sole option to extend the initial term for up to four (4) consecutive one (1) year renewal terms, upon written amendment of the Agreement and the Council approval for each renewal term, the City desires to exercise its option to extend the Agreement for an additional one-year renewal term and the parties desire to amend the Agreement to extend the term;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and obligations herein set forth the parties agree as follows:

1. Section E.1 of Article IX of the Agreement, entitled "**Term and Termination:**" is hereby amended to read in its entirety as **follows**:

"1. The initial term of the Agreement shall commence upon execution and shall end one (1) year later; provided, however, that any work in progress that was initiated during the term of this Agreement shall continue and be paid for hereunder until the completion thereof. All terms and conditions of the Agreement shall remain in full force and effect until such completion. This initial term may be extended, at the sole option of the City, for up to four (4) consecutive one (1) year renewal terms, upon written amendment of this Agreement and Council approval for each renewal term. In no event, however, shall the Design Consultant's

performance under this Agreement, including the four (4) possible extensions, exceed a five (5) year period ending on the month and day of the execution of this Agreement. In addition, nothing contained herein shall obligate the City to extend the Agreement beyond the initial term.

The City hereby exercises its sole option to extend the term for a one (1) year renewal term, ending on November 26, 2011.”

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

**[THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]**

IN WITNESS WHEREOF, the City and the Design Consultant have executed, through their respective lawfully empowered representatives, this Third Amendatory Agreement as of the day and year first above written.

**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: \_\_\_\_\_  
JOHN W. HICKENLOOPER,  
Mayor

**RECOMMENDED AND APPROVED:**

By: *Yvesley B. Surman*  
Manager of Public Works

**APPROVED AS TO FORM:**  
DAVID R. FINE, Attorney  
For the City and County of Denver

**REGISTERED AND COUNTERSIGNED:**

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

By: \_\_\_\_\_  
Manager of Finance  
Contract Control No. OC71225 (3)

By: \_\_\_\_\_  
DENNIS GALLAGHER, Auditor of  
the City and County of Denver

**"CITY"**

**MULLER ENGINEERING  
COMPANY INC.**  
Taxpayer ID No. 84-0819965

By: *Robert A. Smith*  
Title: *President*

**"DESIGN CONSULTANT"**