

**BY AUTHORITY**

ORDINANCE NO. \_\_\_\_\_

COUNCIL BILL NO. CB12-0051

SERIES OF 2012

COMMITTEE OF REFERENCE:

BUSINESS, WORKFORCE, & SUSTAINABILITY

**A BILL**

**For an ordinance approving a proposed First Amendment to Agreement between the City and County of Denver and Parsons Transportation Group Inc. related to terminal and landside area redevelopment at Denver International Airport.**

**BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

**Section 1.** The proposed First Amendment to Agreement between the City and County of Denver and Parsons Transportation Group Inc. in the words and figures contained and set forth in that form of Agreement available in the office and on the web page of City Council, and to be filed in the office of the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver, under City Clerk's Filing No. 2009-0733-A, is hereby approved.

COMMITTEE APPROVAL DATE: January 20, 2012

MAYOR-COUNCIL DATE: January 24, 2012

PASSED BY THE COUNCIL: \_\_\_\_\_, 2012

\_\_\_\_\_ - PRESIDENT

APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_, 2012

ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
EX-OFFICIO CLERK OF THE  
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL: \_\_\_\_\_, 2012; \_\_\_\_\_, 2012

PREPARED BY: Deanne Durfee, Assistant City Attorney DATE: January 26, 2012

Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed ordinance. The proposed ordinance is submitted to the City Council for approval pursuant to § 3.2.6 of the Charter.

Douglas J. Friednash, City Attorney for the City and County of Denver

BY: \_\_\_\_\_, Assistant City Attorney DATE: January 26, 2012



## FIRST AMENDMENT TO AGREEMENT

**THIS FIRST AMENDMENT TO AGREEMENT** is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“City”), and **PARSONS TRANSPORTATION GROUP INC.**, an Illinois corporation authorized to transact business in the State of Colorado (“PTG” or “Consultant”) (jointly, the “Parties”).

### WITNESSETH:

**WHEREAS**, the Parties entered into an Agreement dated September 1, 2009 for program management services for the Terminal and Landside Redevelopment Program at Denver International Airport (Agreement); and

**WHEREAS**, the parties desire to amend the Agreement.

**NOW, THEREFORE**, for and in consideration of the premises and other good and valuable consideration, the parties hereto agree as follows:

1. Subsection A of Paragraph 2, “SCOPE OF WORK,” of the Agreement is amended to read in its entirety as follows:

A. At the direction and discretion of the Manager, PTG will provide professional, technical, and support personnel to perform planning, design, project management services, engineering inspection services, material testing services, and any other support services as required on projects designated for such services by the Manager, as further described in Exhibit A Scope of Work to the Agreement, and Exhibit A-1, Revised Scope of Work, and consistent with the terms and conditions of the Agreement. Exhibit A-1 is attached to this First Amendment. Wherever the Agreement refers to Exhibit A, such reference shall also include Exhibit A-1.

2. Subsection A of Paragraph 5, “MAXIMUM CONTRACT LIABILITY; FUNDING,” of the Agreement is amended to read in its entirety as follows:

A. In no event shall the City be liable for payment under the terms of this Agreement for any amount in excess of **ONE HUNDRED MILLION AND NO/100 Dollars (\$100,000,000.00)**. The Maximum Contract Liability may only be increased by amendment to this Agreement.

3. Subsection C of Paragraph 4, ‘COMPENSATION AND PAYMENT’, of the Agreement is deleted in its entirety.

4. Subsection C of Paragraph 7, “SUBCONSULTANTS AND SUBCONTRACTORS”, of the Agreement is amended to read in its entirety as follows:

C. PTG entered into a subconsultant agreement with Festina Lente LLP (FL), of which Mr. Santiago Calatrava (Calatrava) is a principal, to provide architectural and signature structural engineering design services for the Project, and pursuant to which Calatrava was to serve as the design director for agreed-upon portions of the Project (the "SCFL Subcontract). The parties acknowledge that FL and Calatrava have withdrawn from the Project; that PTG and the City have entered into a Termination Agreement, dated November 7, 2011, with FL on its behalf and on behalf of Calatrava for the termination of the subconsultant agreement between PTG and FL and Calatrava. The Parties acknowledge that services under Task Order #1 pertaining to FL and Calatrava were terminated by the Termination Agreement.

5. The Agreement is amended by adding a new Subsection D to Paragraph 7, "SUBCONSULTANTS AND SUBCONTRACTORS", to read in its entirety as follows:

**D. Mutual Release.** The City and PTG, desiring to enter into a mutual release to further effect an accord, satisfaction and release of all disputes that may exist arising out of the Parties' dealings with FL prior to execution of the Termination Agreement and this Amendment, for themselves and their successors and assigns, mutually waive, release and forever discharge each other and their respective managers, elected officials, appointed officials, directors, officers, shareholders, partners, principals, affiliates, employees, attorneys and agents from any and all claims of whatsoever kind and nature, character and description, whether in law or equity, whether sounding in tort, contract or under other applicable law, whether known or unknown, and whether anticipated or unanticipated, which they or each of them ever had, now have or may ever have, arising from any event, transaction, matter, circumstance or fact related to or in connection with, or based in whole or in part on, any adverse effects to the Project or the City arising from the FL Subconsultant Agreement or FL's acts or omissions; provided however, neither the City nor PTG waive, release or discharge the other from already-incurred payment obligations on the Project, or other rights, duties and obligations under the Original Agreement unrelated to the matters released herein or the Termination Agreement.

6. The Agreement is amended by adding a new Subsection E to Paragraph 7, "SUBCONSULTANTS AND SUBCONTRACTORS", to read in its entirety as follows:

**E.** PTG entered into a subconsultant agreement with M. Arthur Gensler Jr. and Associates, Inc. dated March 18, 2010, as amended contemporaneously herewith, to provide certain design services for the Project, and has or will enter into additional subconsultant agreements with other design professionals ("Design Subcontracts"). PTG hereby assign its rights, but not its obligations, under the Gensler Subcontract to the City. The Parties agree that PTG shall assign its rights (but not its obligations) of any other design professional subcontracts to the City as requested by the City on mutually agreeable terms. Prior to and after such assignments, the City shall have complete and direct access to the Design Subcontract subconsultants. To the extent the City exercises direction and control over Design Subconsultants, the City assumes responsibility for the impacts of its direction and control on the Project schedule and budget.

7. Paragraph 14, "INDEMNIFICATION," of the Agreement is amended to read in its entirety as follows:

**14. INDEMNIFICATION:**

PTG hereby agrees to indemnify, defend, reimburse, and hold harmless the City, its elected officials, officers, agents, and employees from, for, and against: (1) any and all loss of or damage to property or injuries to or death of any person or persons, including property and employees or agents of the City; and (2) all claims, losses, damages, liability, costs, or expenses including reasonable attorney fees and costs, fines, suits, actions, or proceedings of any kind, directly or indirectly resulting from or arising in relation to PTG's performance of this Agreement, or its occupancy of City-owned property or other property upon which work is performed under this Agreement, and including acts and omissions of PTG's officers, employees, representatives, suppliers, invitees, contractors, and agents; provided, however, that PTG's obligation to indemnify or hold harmless the City, its officers, agents, and employees under this Article shall not apply to the extent that liability or damages result from the negligence of the City's officers, agents, and employees. This indemnification is not limited to third party claims, and shall survive the termination of this Agreement. The insurance coverage forms and amounts specified in this Agreement are minimum insurance requirements, and do not alter PTG's obligations under this indemnification, nor do they lessen or limit the liability of PTG under this Agreement. The City is not obligated look to the proceeds of any applicable insurance prior to exercising its rights and remedies under this indemnification. PTG shall maintain, at its own expense, any additional forms and amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

This indemnification, however, shall not extend to Claims resulting from or arising in relation to adverse effects to the Project caused in whole or in part by acts or omissions of FL or its withdrawal from the Project.

8. Subsection A of Paragraph 18, "COMPLIANCE WITH PATENT, TRADEMARK AND COPYRIGHT LAWS," of the Agreement is amended to read in its entirety as follows:

A. PTG agrees that all work performed under this Agreement shall comply with all applicable patent, trademark, and copyright laws, rules, regulations, and codes of the United States. PTG will not utilize any protected patent, trademark, or copyright in performance of its work unless it has obtained proper permission and all releases and other necessary documents. If PTG prepares any design documents which specify any material, equipment, process, or procedure which is protected, PTG shall disclose such patents, trademarks, and copyrights in the construction drawings or specifications.

The City hereby sublicenses to PTG the Licensed Designs, as that term is defined in the Termination Agreement, for the purpose of completing the Project. Consistent

with the Termination Agreement, PTG shall not, however, cause excluded elements of FL or Santiago Calatrava LLC's copyrighted designs to be disclosed or expressed unless pursuant to the written consent of FL. The indemnification of the City by PTG in Article 18B shall not extend to any claim of copyright infringement or breach of the Termination Agreement alleged or brought by FL or Santiago Calatrava LLC to the extent such claim arises from the City's direction or control of PTG's Design Subconsultants.

9. The Agreement is amended by adding a new Paragraph 43, 'NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT' to read in its entirety as follows:

**43. 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 sub-consultant 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 either the E-Verify Program.
- (4) It is prohibited from using either 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 sub-consultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such sub-consultant or subcontractor and the City within three (3) days. The Consultant will also then terminate

such sub-consultant or subcontractor if within three (3) days after such notice the sub-consultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the sub-consultant or subcontractor provides information to establish that the sub-consultant 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.

10. The Agreement is amended by adding a new paragraph 44, "ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS," to read as follows:

**44. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:**

Consultant 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.

11. **Exhibit B** is hereby replaced with a new **Exhibit B-1** for services provided after the effective date of this First Amendment to Agreement, a copy of which is attached to this First Amendment to Agreement. All references to **Exhibit B** shall mean **Exhibit B-1** for services provided after the effective date of this First Amendment to Agreement.

12. **Exhibit D** is hereby replaced with a new **Exhibit D-1** for services provided after the effective date of this First Amendment to Agreement, a copy of which is attached to this First Amendment to Agreement. All references to **Exhibit D** shall mean **Exhibit D-1** for services provided after the effective date of this First Amendment to Agreement. These Multiplier Factors are established by multiplying 1.1 (to account for 10% profit) times the sum of one plus the audited overhead rate; or as may be otherwise established by the City and the Consultant.

Multiplier Factors of Exhibit D-1 may be adjusted each year based on changes to audited overhead rates.

13. Except as provided herein, all provisions, terms and conditions of the Existing Agreement shall remain in full force and effect as if fully set forth herein.

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IN WITNESS WHEREOF, the parties hereunto set their hands and affixed their seals at Denver, Colorado as of the day on the City's signature page.

**Contract Control Number:** CE95003(1)

**Vender Name:** PARSONS TRANSPORTATION GROUP INC.

By: 

Name: T. E. BARRON  
(please print)

Title: PRESIDENT  
(please print)

**ATTEST: [if required]**

By: 

Name: Thomas E. Allen  
(please print)

Title: Contracts Manager  
(please print)

