

09-1133-C

THIRD AMENDATORY AGREEMENT

THIS THIRD AMENDATORY AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City"), and **EXCEL ENVIRONMENTAL, INC.**, a Colorado corporation, with its principal place of business located at 1852 Jasper Street, Unit E, Aurora, Colorado 80011 (the "Contractor").

RECITALS

A. The City and the Contractor entered into an Agreement dated November 17, 2009, an Amendatory Agreement dated October 12, 2010, and a Second Amendatory Agreement dated November 30, 2010 concerning asbestos, lead-based paint and mold abatement for the Department of Environmental Health's ("DEH") (the "Agreement").

B. The parties wish to amend the Agreement to extend the term, increase the maximum contract amount, and make other changes as set forth below.

NOW, THEREFORE, the parties hereby agree as follows:

1. Section 2 of the Agreement, entitled "**TERM**", is deleted and replaced in its entirety by the following provision:

"2. TERM. The term of the Agreement is from November 17, 2009 through and including November 16, 2012; provided however, in accordance with Section 44, the parties may amend the Agreement to extend the duration of it for up to two additional one-year periods (the "Term"). Subject to the Manager's prior written authorization, Contractor shall complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the Manager."

2. Section 2 of the Agreement, entitled "**TERM**", is deleted and replaced in its entirety by the following provision:

3. Section 12 of the Agreement, entitled "**MAXIMUM CONTRACT AMOUNT**", is deleted and replaced in its entirety by the following provision:

"12. MAXIMUM CONTRACT AMOUNT. Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **TWO MILLION FOUR HUNDRED EIGHTY THOUSAND (\$2,480,000)** (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor beyond that specifically authorized in an NTP or Change Order thereto. Any services performed beyond those set forth therein are performed at Contractor's risk and without authorization under the Agreement."

4. The parties acknowledge that the Agreement identifies the following two sections as Section 5: "**SUBMITTALS**" and "**TIME IS OF THE ESSENCE.**" The Section 5 entitled

“SUBMITTALS” is unchanged and the Section 5 entitled “TIME IS OF THE ESSENCE” is amended to read “5.I “TIME IS OF THE ESSENCE.”

5. Section 45, entitled “ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS” is hereby added to the Contract to read as follows:

“45. 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.”

6. Except as amended in the Third Amendatory Agreement, the Agreement is affirmed, and ratified in each and every particular.

7. The Third Amendatory Agreement is not effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

8. The Contractor assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution, or action passed or taken, to enter into the Third Amendatory Agreement. The person or persons signing and executing the Third Amendatory Agreement on behalf of the Contractor hereby warrants and guarantees that the Contractor has fully authorized he or she or them to execute the Third Amendatory Agreement on behalf of the Contractor and to validly and legally bind the Contractor to all terms, performances and provisions in the Agreement as amended by the Third Amendatory Agreement set forth herein.

9. The Third Amendatory Agreement may be executed in two (2) counterparts, each of which is an original and together constitute the same instrument.

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Contract Control Number: OC91386

Vendor Name: Excel Enviromental, Inc.

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:

DOUGLAS J. FRIEDNASH, Attorney
for the City and County of Denver

By _____

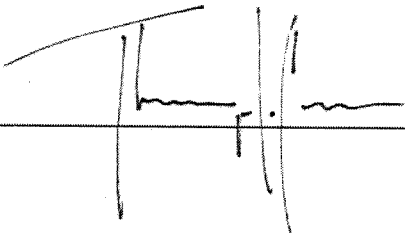
By _____

By _____



Contract Control Number: OC91386


Vendor Name: Excel Enviromental, Inc.

By:  _____

Name: Thomas A. Case
(please print)

Title: President
(please print)

ATTEST: [if required]

By:  _____

Name: Bart McTaggart
(please print)

Title: Vice President/Secretary
(please print)

