

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 **DAVID EVANS AND ASSOCIATES, INC.** (the "Consultant"), an Oregon corporation registered to do business in Colorado, whose address is **1331 17TH STREET SUITE 900 DENVER, CO 80202**, collectively "the parties".

RECITALS:

A. The City and the Consultant previously entered into an Agreement dated March 26, 2013, (the "Agreement"), to provide professional engineering services and related technical services to support the Department's Capital Project Management Division on an "as needed" basis; and

B. Pursuant to paragraph 4.01 of the Agreement the parties wish to extend the Term of the Agreement, and increase the maximum contract amount of the Agreement, with all other terms and conditions of the Agreement remaining unchanged unless modified herein.

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

1. Paragraph **4.01 Term** is hereby modified in its entirety to read as follows:

Term: The term of this Agreement shall commence April 1, 2013 and shall expire on September 30, 2017, 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."

2. The amount of "THREE MILLION AND 00/100 DOLLARS (\$3,000,000.00)" in Paragraph **3.07(a) Maximum Contract Amount; Funding**, is modified to read as "FOUR MILLION AND 00/100 DOLLARS (\$4,000,000.00)".
3. Paragraph **5.08 Indemnification** is hereby modified in its entirety 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.

(Remainder of Page Left Blank Intentionally)

Contract Control Number: PWADM-201309559-01

Contractor Name: DAVID EVANS AND ASSOCIATES, INC.

By: *Anthony R. Marcello*

Name: *Anthony R. Marcello*
(please print)

Title: *Vice President*
(please print)

ATTEST: [if required]

By: *Sara K. Ciasto*

Name: *Sara K. Ciasto*
(please print)

Title: *Associate*
(please print)



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 _____

