

## SECOND AMENDATORY AGREEMENT

THIS SECOND AMENDATORY AGREEMENT made between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado (the "City"), and MCKINSTRY ESSENTION, INC., a Washington corporation authorized to transact business in the State of Colorado, with its principal place of business located at 5005 Third Avenue South, Seattle, Washington 98124 (the "Consultant").

### RECITALS

- A. The City and the Consultant entered into an Agreement dated December 1, 2009, as amended November 29, 2010, to procure Level I and Level II Energy Audits and recommissioning services (the "Agreement").
- B. The City is a Recipient of a federal grant, Award DE-EE0000909/000, CFDA No. 81.128, Contract No. GC94011, which was obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 ("ARRA funds") in the amount of \$6,079,500.00.
- C. The City and the Consultant wish to extend the term of the Agreement for an additional year, add to the existing scope of work, and increase the total compensation to be paid.

NOW, THEREFORE, the parties hereby amend the Agreement as follows:

1. Paragraph 3 of the Agreement, entitled "**TERM**", is amended to read as follows:

"3. **TERM**: The Agreement will commence on November 15, 2009 and will expire on December 31, 2012 (the "Term"). Subject to the Manager's prior written authorization, the Consultant 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. Subparagraphs a, d(1), and d(3) of Paragraph 4, entitled "**COMPENSATION AND PAYMENT**", are amended to read as follows:

"a. **Fee**: The Consultant's sole compensation for services rendered and costs incurred under the Agreement is as set forth in **Exhibit C Building Activity List and Associated Fees** and **Exhibit C-1 2010-2011 Building Activity List and Associated Fees** and up to the amounts set forth in **Exhibits D Additional Services and Associated Fees, D-1 2010-2011 Additional Services and**

D9-1202-B

**Associated Fees, and D-2 2010-2012 Additional Services and Associated Fees.** Amounts billed may not exceed the amounts set forth in Exhibits C, C-1, D, D-1, and D-2.”

“d. **Maximum Contract Amount:**

(1) Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed **ONE MILLION FORTY SEVEN THOUSAND, SEVEN HUNDRED SEVENTY DOLLARS AND NO/XX (\$1,047,770.00)** (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 Consultant beyond that specifically described in Exhibits C, C-1, D, D-1, and D-2. Any services performed beyond those set forth therein are performed at Consultant’s risk and without authorization under the Agreement.”

...

(3) That portion of the Maximum Contract Amount which is allocated from ARRA funds is \$852,947.00.”

4. A new section 34, entitled “**ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS,**” is added to the Agreement and reads as follows:

“34. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** Contractor 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.”

5. Exhibit D-2 is attached and incorporated by reference herein.

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

Contract Control Number: GENRL-GE91445-02

Contractor Name: MCKINSTRY ESSENTION INC

By: Joseph Hagar 3/6/2012

Name: Joseph Hagar  
(please print)

Title: Director of Finance  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



**Contract Control Number:** GENRL-GE91445-02

**Contractor Name:** MCKINSTRY ESSENTION 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 \_\_\_\_\_



**EXHIBIT D-2**

**2010-2012 ADDITIONAL SERVICES AND ASSOCIATED FEES**

The following services will additionally be performed at the written direction of the City:

- **Facility Condition Assessment** - Verify building equipment lists, gather equipment nameplate data, establish preventive maintenance activities and schedules, assess equipment condition, and estimate equipment replacement costs. May include, upon written direction by the City, evaluation of facility energy data, investigation of facility building automation system, basic functional testing, and re/retro-commissioning.
- **Project Scope and Specification Preparation** - Assist City in defining project scopes and in developing system and equipment specifications for energy efficiency projects identified in audit and retro-commissioning reports.
- **Commissioning** - May include, upon written direction by the City, but is not limited to contracting assistance and design review, point testing of end devices, functional testing of equipment, training review and support, and documentation of sequence of operations and building deficiencies.
- **Facility Management Assessment** – Assess and evaluate operational and organizational structure of General Services Facilities Management in the context of recent audits and retro-commissioning, identify opportunities and recommendations for process improvement with specific metrics and benchmarks.

Facility Condition Assessment*	\$128,372 (as amended)
Additional Services** [which may include, but are not limited to, project scope and specifications preparation, project commissioning, and additional audits or facility condition assessments]	\$150,000 (as amended)
Facility Management Assessment**	\$40,000 (as amended)

\* This work is not included within Exhibit C-1. If this work is directed it will be billed on a Time and Materials (T&M) basis. The following rates will be used to calculate the billed costs for such work:

<b>Facility Condition Assessment – Time and Materials Rates</b>	
Construction Superintendant	\$84.00/hour
Commissioning Engineer	\$95.00/hour
Energy Engineer	\$95.00/hour
Program Manager	\$105.00/hour
Mechanical Engineer	\$105.00/hour
Project Director	\$135.00/hour
Word Processing & Administrative Assistant	\$55.00/hour

Subcontracted Consultants	Cost + 25 percent
Misc. & Produccible Materials	Cost + 25 percent
Reimbursable Mileage	\$0.50/mile

\*\* This work is not included within Exhibit C-1. A proposal including proposed costs will be required before the City directs performance of additional services or facility management assessments.