

FOURTH AMENDATORY AGREEMENT

THIS FOURTH AMENDATORY AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), and **MERRICK & COMPANY**, (the “Design Consultant”), a Colorado corporation, whose address is 2450 South Peoria Street, Aurora, Colorado 80014.

WITNESSETH:

WHEREAS, the City and the Design Consultant previously entered into a Design Services Agreement dated November 27, 2007, which Agreement was amended by Amendatory Agreement dated December 23, 2008, a Second Amendatory Agreement dated September 29, 2009, and a Third Amendatory Agreement dated October 18, 2010, for on-call design services (jointly, 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; and

WHEREAS, the City desires to exercise its option to extend the Agreement for an additional one-year renewal term, the parties desire to amend the Agreement to extend the term, and the parties desire to otherwise amend the Agreement as set forth below.

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. **Term and Termination:** 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 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 previously exercised its sole option to extend the term for three additional one year terms ending November 26, 2009, November 26, 2010, and November 26, 2011. The City hereby exercises its sole option to extend the term for a one (1) year renewal term, ending on November 26, 2012.”

2. A new Section is added to Article IX of the Agreement and reads as follows:

“AA. 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 Design 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 Design 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 subconsultant or subcontractor that fails to certify to the Design 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 the E-Verify Program.

(4) It is prohibited from using 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 Design 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 subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Design Consultant will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant 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 Design Consultant is liable for any violations as provided in the Certification Ordinance. If Design 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 Design 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 Design Consultant from submitting bids or proposals for future contracts with the City.”

3. A new Section is added to Article IX of the Agreement and reads as follows:

“BB. **Electronic Signatures and Electronic Records.** Design 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.”

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

Contract Control Number:

Vendor Name:

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 _____



Contract Control Number: OC71224

Vendor Name: MERRICK & COMPANY

By: *Bonny S. Fox*

Name: *Bonny S. Fox*
(please print)

Title: *Vice President*
(please print)

ATTEST: [if required]

By: *Karen L. Weiss* *11-9-2011*

Name: *KAREN L. WEISS*
(please print)

Title: *NOTARY - COUNTY OF ARAPAHOE*
(please print)

MY COMMISSION EXPIRES 11/26/2011

