

LEGAL MEMORANDUM
PRIVILEGED AND CONFIDENTIAL

To: DUSPA Board of Directors
From: Bookhardt & O'Toole
Date: April 27, 2010
Re: Summary of Financial Consultant (Alex Brown) Agreement
Matter: DUSPA/General

Below is the summary of the Financial Consultant's Agreement Amendment that is being presented for second review by the Finance Committee. Therefore, Finance Committee action must be taken to approve the agreement.

1. **Alex Brown Consulting Agreement Amendment** between DUSPA and Alex Brown (the "Consultant") amends the Consulting Agreement dated April 30, 2009 (the "Original Agreement") to include certain federal requirements, the addition of certain tasks to be performed by the Consultant and the extension of the term of the Original Agreement. This Amendment commences in January, 2010, and ends on May 31, 2010 with an optional extension upon the written approval of DUSPA. The Consultant will be paid a total fee for professional services in the amount of \$40,000 (calculated based on a rate of \$8,000 per month for five months) for work completed on behalf of DUSPA during the time period from January 1, 2010 to May 31, 2010. Additionally, DUSPA agrees to pay the Consultant \$28,000 (for extra time and work above his original scope as the result of shifted responsibilities following a change in financial consulting services) during the federal loan development and application stage under the Original Agreement, upon presentation by the Consultant of supporting documentation acceptable to DUSPA, and subject to the availability of funds to make such payment. DUSPA also agrees to pay the Consultant financial modeling expenses of \$60,000 for financial modeling, also upon presentation by the Consultant of supporting documentation acceptable to DUSPA, and subject to the availability of funds to make such payment. Federal Requirements have been included in this Amendment as Exhibit A.

Board Action: The Finance Committee is reviewing this revised amendment for approval and presentation to the Board on April 29, 2010.

**AMENDED AND RESTATED
CONSULTING AGREEMENT**

THIS AMENDED AND RESTATED CONSULTING AGREEMENT (this “Agreement”) is made and entered into this ____ day of April, 2010, by and between the DENVER UNION STATION PROJECT AUTHORITY, a public, not-for-profit corporation, whose address is c/o William Mosher, Trammell Crow Company, 1225 17th Street, Suite 3050, Denver, Colorado 80202 (“DUSPA”), and ALEX BROWN CONSULTING, a sole proprietor, whose address is 4285 South Forest Court, Englewood, Colorado 80113 (“Consultant”).

WITNESSETH:

WHEREAS, DUSPA requires the services of an experienced financial consultant to provide financial advice and analysis to DUSPA, including consulting on major projects, financial modeling for tax increment financing (“TIF”) projects, financial impacts of TIF projects, bond issuance, intergovernmental grants, loans and financial agreements, and other related research and advice; and

WHEREAS, DUSPA believes the Consultant to be well able to undertake and perform such services for DUSPA, and desires to contract with the Consultant for the performing of such services as an independent contractor; and

WHEREAS, the Consultant was previously selected pursuant to a competitive process; and

WHEREAS, DUSPA and the Consultant entered into a Consulting Agreement dated April 30, 2009 (the “Original Agreement”); and

WHEREAS, the Consultant has performed in accordance with the terms of the Original Agreement and both DUSPA and the Consultant desire to extend the consulting relationship between the parties for an additional term; and

WHEREAS, Section 3 of the Original Agreement provides for the extension of the Original Agreement for two additional one year periods upon the written approval of DUSPA; and

WHEREAS, DUSPA and the Consultant desire to amend the Original Agreement to include: certain federal requirements, the addition of certain rights and tasks to be performed by the Consultant and the extension of the term of the Original Agreement; and

WHEREAS, the Consultant is ready, willing and able to undertake such services as an independent contractor; and

WHEREAS, the Consultant will sub-contract with other firms approved by DUSPA.

NOW, THEREFORE, in consideration of the premises, the mutual agreements herein contained, and subject to the terms and conditions hereinafter stated, it is hereby understood and agreed by the parties hereto as follows:

1. WORK TO BE PERFORMED: The Consultant, under the general direction of the Owner's Representative for DUSPA (the "Manager"), shall diligently perform the services and produce all the deliverables requested by the Manager and shall work in coordination with the Manager of Finance for the City and County of Denver and his designees. The work to be performed shall include all services presented by the Consultant in the proposal dated October 9, 2008, and the presentation to DUSPA dated November 3, 2008. Additional work shall be assigned by DUSPA, the Manager or other designated personnel as deemed necessary.

2. PROJECT MANAGEMENT:

A. DUSPA – The Consultant shall perform all work under the general direction of, and in coordination with, the Manager or other designated supervisory personnel. The Consultant agrees that during the term of this Agreement, it shall fully coordinate all services performed under this Agreement through the Manager or as otherwise directed by DUSPA. The Consultant shall submit deliverables, work product, correspondence, pay requests and all other documents related to this Agreement to the Manager. The Consultant shall also fully coordinate all services it performs with the City Finance Manager and any person or firm under contract with DUSPA doing work or providing services that affect the Consultant's work. The Consultant shall faithfully perform the services required by this Agreement in accordance with the standards of care, skill, training, diligence and judgment provided by highly competent individuals who perform services of a similar nature to those described in this Agreement.

B. Consultant – Alex G. Brown, of Alex Brown Consulting, shall be the principal-in-charge and single point of contact for the Consultant under this Agreement. It is understood and agreed that the Consultant will sub-contract with Bailey Partners and Public Resources Advisory Group as identified in the October 9, 2008 proposal for services submitted to DUSPA.

C. Consultant's Information – The parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.* In the event of a request to DUSPA for disclosure of such information, DUSPA shall advise the Consultant of such request in order to give the Consultant the opportunity to object to the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, DUSPA will tender all such material to the court for judicial determination of the issue of disclosure and the Consultant agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same. The Consultant shall defend, indemnify and save and hold harmless DUSPA, its officers, agents and employees, from any claims, damages, expenses, losses or costs arising out of the Consultant's intervention to protect and assert its claim of privilege against disclosure under this provision including, but not limited to, prompt reimbursement to DUSPA of all reasonable attorney's fees, costs and damages that DUSPA may incur directly or may be ordered to pay by such court.

D. Intellectual Property Rights – DUSPA and the Consultant intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, music, sketches, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions and any other work or recorded information created by the Consultant and paid for by DUSPA pursuant to this Agreement, in preliminary or final forms and on any media (collectively "Materials"), shall belong to DUSPA. The Consultant shall disclose all such items to DUSPA. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, *et seq.*, the Materials are a "work made for hire" and all ownership of copyright in the Materials shall vest in DUSPA at the time the Materials are created. To the extent that the Materials are not a "work made for hire," the Consultant hereby sells, assigns and transfers all right, title and interest in and to the Materials to DUSPA, including the right to secure copyright,

patent, trademark and other intellectual property rights throughout the world and to have and to hold such copyright, patent, trademark or other intellectual property rights in perpetuity.

E. Ownership of Work Product – All plans, drawings, reports, submittals and other documents submitted to DUSPA or its authorized agents by the Consultant shall become and are the property of DUSPA, and DUSPA may, without restriction, make use of such documents and underlying concepts as it sees fit. The Consultant shall not be liable for any damage which may result from any use of such documents for purposes other than those described in this Agreement.

F. Prohibition Against Employment of Illegal Aliens to Perform Work Under This Agreement –

(i) This Agreement is subject to Article 17.5 of Title 8, Colorado Revised Statutes, as now existing or hereafter amended (the “Certification Statute”). Compliance by the Consultant and its subcontractors with the Certification Statute, and the execution of the ‘Certification’, Exhibit C, attached hereto and incorporated by reference are both expressly made a contractual condition of this Agreement.

(ii) The Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Consultant shall not enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien or that fails to certify to the Consultant that it does not knowingly employ or contract with an illegal alien to perform work under this Agreement.

(iii) The Consultant represents, warrants and agrees that:

(a) It has verified or attempted to verify that it does not employ any illegal aliens, through participation in the Basic Pilot Employment Verification Program administered by the U.S. Social Security Administration and U.S. Department of Homeland Security (the “Basic Pilot Program” or “BPP”), as defined in § 8-17.5-101(1), C.R.S., or that if it is not accepted into the BPP prior to entering into this Agreement, it shall apply to participate in the BPP every three

months until either it is accepted into the BPP or it has completed its obligations under this Agreement, whichever occurs first.

(b) It will not use the BPP to undertake pre-employment screening of job applicants while performing its obligations under this Agreement.

(c) If it obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs with or contracts with an illegal alien, it will notify such subcontractor and DUSPA within three days, and terminate such subcontractor if within three days after such notice the subcontractor does not stop employing or contracting with the illegal alien, unless during such three day period the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

(d) It shall comply with all reasonable requests 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.

(e) If the Consultant fails to comply with any provision of this paragraph 2.F, DUSPA may terminate this Agreement for breach and the Consultant shall be liable for actual and consequential damages to DUSPA.

3. **TERM:** Effective upon execution, the term of this Agreement shall be from January 1, 2010 to and including May 31, 2010, the projected month of closing both the Transportation Infrastructure Finance and Innovation Act (“TIFIA”) loan and the Railroad Rehabilitation and Improvement Financing (“RRIF”) loan (the “Projected Closing”), unless terminated earlier pursuant to this Agreement. The term of this Agreement may be extended by DUSPA for two additional one year periods upon the written approval of DUSPA, with the understanding that a written quarterly work plan (“QWP”) shall be submitted by the Consultant to the Manager on a quarterly basis.

4. COMPENSATION AND PAYMENT:

A. Fees –

(i) The Consultant shall be paid a total fee for professional services in the amount of \$40,000 (calculated based on a rate of \$8,000 per month for five months) for work completed on behalf of DUSPA during the time period from January 1, 2010 through and including the Projected Closing. Thereafter, the Consultant may provide additional services on a quarterly basis, if requested by the Manager. Such requests for quarterly services shall be made by the Manager and the activities required to fill such request shall be provided in writing by the Consultant to the Manager, accompanied by a QWP, an estimate of time required, and a not-to-exceed amount, all based on an hourly rate of \$200.

(ii) All fees will be paid in equal monthly installments, subject to DUSPA's availability of funds. Such monthly payments for work performed by the Consultant subsequent to December 31, 2009 shall be paid within 30 days of closing both the RRIF and TIFIA loans. The Consultant acknowledges that funds may not be available to DUSPA to meet the equal monthly payment requirement. DUSPA agrees to use its best efforts to secure funding and will immediately pay amounts past due upon receipt of funds available for this purpose.

(iii) The amount of time spent by the Consultant working for DUSPA pursuant to the Original Agreement was in excess of the Consultant's original estimate as the result of work-related duties that were shifted to Consultant for completion and/or continuation. The Consultant expended considerable time working for DUSPA during the federal loan development and application stage; Consultant was required to expend additional time, as required, to in order to undertake work it assumed in the transition of certain finance services. The fee for the Consultant's additional time is \$28,000, based upon the hourly fee amount set forth in Section 4.A(i) above. Subject to the limitations outlined in this Section 4, DUSPA agrees to pay the Consultant \$28,000 as a lump sum for the excess time spent working for DUSPA as set forth in this Section 4.A(iii), upon receipt of supporting documentation acceptable to DUSPA and from the Consultant

evidencing that such amount is due and owing, contingent upon the availability of funds, and subject to Section 4.D hereof.

(iv) In addition to the compensation set forth above, DUSPA shall pay the Consultant reasonable, actual expenses incurred in connection with the development of a financial model to compensate third party financial modeling specialists to date and through and including May 31, 2010, upon presentation by the Consultant of documentation acceptable to DUSPA evidencing such expenses, contingent upon the availability of funds and subject to Section 4.D hereof. The Consultant has incurred and expects to further incur financial modeling expenses in the not-to-exceed amount of \$60,000. Subject to the limitations outlined in this Section 4, DUSPA hereby agrees to pay the Consultant the additional financial modeling fees set forth in this Section 4.A(iv) upon presentation by the Consultant of documentation acceptable to DUSPA evidencing such fees are due and owing, contingent upon the availability of funds and subject to Section 4.D hereof. Preparation of any additional models will occur only upon written instructions from the Manager to the Consultant, and pursuant to the terms set forth in this Section 4.A(i). It is understood that this work will be performed by Public Resources Advisory Group. If requested by the Manager, a written proposal for this scope of work, to include fees and expenses, shall be submitted by the Consultant to the Manager.

B. Invoicing – The Consultant shall, unless otherwise agreed upon, submit invoices to the Manager on a monthly basis.

C. Expenses – The Consultant shall be entitled to reimbursement of reasonable expenses incurred for travel, lodging, meals and related costs for out of state travel approved by DUSPA.

D. Appropriation – The parties agree that DUSPA's payment obligation, whether direct or contingent, shall extend only to funds appropriated by the DUSPA Board of Directors from the funds of DUSPA, and designated for the purpose of this Agreement. The parties agree that (i) DUSPA does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of DUSPA.

5. **STATUS OF THE CONSULTANT:** The parties agree that the status of the Consultant shall be that of an independent contractor retained on a contractual basis to perform services for limited periods of time. It is not intended, nor shall it be construed, that the Consultant or its employees are employees or officers of DUSPA.

6. **TERMINATION:** DUSPA has the right to terminate this Agreement, with or without cause, on thirty (30) days written notice to the Consultant, signed by the Manager. However, nothing herein shall be construed as giving the Consultant the right to perform services under this Agreement beyond the time when such services become unsatisfactory to the Manager.

In addition, DUSPA may immediately, by written notice to the Consultant, terminate this Agreement in the event the Consultant or any of its subcontractors, officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Consultant's business.

The Consultant has the right to terminate this Agreement for cause by giving not less than thirty (30) days written notice to the Manager.

If this Agreement is terminated by the Consultant, or if this Agreement is terminated by DUSPA for cause, the Consultant shall be compensated for, and such compensation shall be limited to: (i) the sum of the amounts contained in invoices which have been submitted to and approved by DUSPA; (ii) the reasonable value to DUSPA of the work which the Consultant performed prior to the date of the termination notice, but which had not yet been approved for payment; and (iii) the cost of any work that is needed to accomplish an orderly termination of the Agreement and is approved in writing by the Manager. If this Agreement is terminated without cause and without the fault of the Consultant, the Consultant shall also be compensated for any reasonable costs it has actually incurred in performing services prior to the date of the termination.

If this Agreement is terminated, DUSPA shall take possession of all materials, equipment, tools and facilities owned by DUSPA that Consultant is using by whatever method

DUSPA deems expedient. The Consultant shall deliver to DUSPA all drafts or other documents it has completed or partially completed under this Agreement, together with all other items, materials and documents which have been paid for by DUSPA; and these documents and materials shall be the property of DUSPA. Copies of work product incomplete at the time of termination shall be marked "DRAFT-INCOMPLETE." DUSPA shall use any and all such incomplete documents or incomplete data at its own risk.

Upon termination of this Agreement by DUSPA, the Consultant shall not have any claim against DUSPA by reason of such termination or by reason of any act incidental to termination, except for compensation for work satisfactorily performed as described in this Agreement.

7. **EXAMINATION OF RECORDS:** The Consultant agrees that any duly authorized representative of the DUSPA, including auditors on behalf of DUSPA, shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any books, documents, papers and records of the Consultant related to this Agreement.

8. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event shall any action by a party constitute or be construed to be a waiver by that party of any breach of covenant or default which may then exist on the part of the other party. A party's action or inaction when any breach exists shall not impair or prejudice the remedy available to that party with respect to such breach as set forth herein. No assent, expressed or implied, to any breach of any provisions of this Agreement shall be deemed to be a waiver of any other breach.

9. **INSURANCE:**

A. **General Conditions** – The Consultant agrees to secure, at or before the time of execution of this Agreement, the insurance covering all operations, goods or services provided pursuant to this Agreement as set forth herein. The Consultant shall keep the required insurance coverage in force at all times during the term of this Agreement, or any extension, during any warranty period and for three (3) years after termination of this Agreement. The required insurance shall be underwritten by an insurer licensed to do business in Colorado and rated by A.M. Best Company as "A-" VIII or better. The Consultant shall notify DUSPA immediately should any of the policies required herein be canceled or should any coverage be reduced before

the expiration date thereof by sending written notice to the address specified herein, and a lack of the required insurance shall be deemed to be a default of the Consultant's obligations under this Agreement. If any policy is in excess of a deductible or self-insured retention, DUSPA shall be notified by the Consultant. The Consultant shall be responsible for the payment of any deductible or self-insured retention. DUSPA reserves the right to require the Consultant to provide a bond, at no cost to DUSPA, in the amount of the deductible or self-insured retention to guarantee payment of claims. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit liability of the Consultant. The Consultant shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

B. Proof of Insurance – The Consultant shall provide a copy of this Agreement to its insurance agent or broker. The Consultant further agrees to have its agent or broker provide proof of the Consultant's required insurance on www.ins-cert.com and link the information to DUSPA. DUSPA reserves the right to require the Consultant to provide a certificate of insurance, a policy or other proof of insurance as required by DUSPA.

C. Additional Insureds – For general liability insurance, the Consultant's insurer shall name DUSPA as an additional insured.

D. Waiver of Subrogation – For the commercial general liability insurance only, the Consultant's insurer shall waive subrogation rights against DUSPA.

E. Sub-consultants – The Consultant shall include all sub-consultants, subcontractors, independent contractors, suppliers or other entities as insureds under its policies or shall ensure that all sub-consultants maintain the coverages required by this Agreement. The Consultant agrees to provide proof of insurance for all such subcontractors, independent contractors, suppliers or other entities upon request by DUSPA.

F. General Liability – The Consultant shall maintain limits of \$1,000,000 for each occurrence claim, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations for each occurrence, and \$2,000,000 policy aggregate. All general liability insurance policies must provide the following:

- (i) If any aggregate limit is reduced by twenty-five percent (25%) or more by paid or reserved claims, the Consultant shall notify DUSPA within ten (10) days and reinstate the aggregates required;
- (ii) Unlimited defense costs in excess of policy limits;
- (iii) Contractual liability covering the indemnification provisions of this Agreement;
- (iv) A severability of interests provision;
- (v) Waiver of exclusion for lawsuits by one insured against another;
- (vi) A provision that coverage is primary; and
- (vii) A provision that coverage is non-contributory with other coverage or self-insurance provided by DUSPA.

For all general liability insurance, if the policy is a claims-made policy, then the retroactive date must be on or before the date of this Agreement, or the first date when any goods or services were provided to DUSPA, whichever is earlier.

G. Automobile Liability – The Consultant shall maintain combined single limits of \$1,000,000 applicable to all vehicles operating on DUSPA property and elsewhere.

H. Professional Liability – The Consultant shall maintain a minimum of \$1,000,000 of Errors and Omissions or other Professional Liability Insurance per claim and in the aggregate.

10. INDEMNIFICATION: The Consultant shall defend, release, indemnify and hold harmless DUSPA, its directors, officers, agents and employees as well as those professionals engaged by the Consultant who are employed by the City and County of Denver from and against: (1) any and all damages, including loss of use, to property, including DUSPA property, or (2) injuries to or death of any person or persons (including officers, agents and employees of DUSPA), and (3) any and all claims, demands, suits, causes of action, liabilities, fines, penalties, costs, expenses (including reasonable attorneys fees, expert witness fees and all associated

defense fees), or proceedings of any kind or nature, including workers' compensation claims, of or by anyone, regardless of the legal theory(ies) upon which premised, directly caused by the acts or omissions of the Consultant or those performing under it in connection with its performance under this Agreement or its use or occupancy of real or personal property hereunder, including acts or omissions of the officers, employees, agents, contractors, representatives, invitees or licensees of the Consultant. The Consultant's obligation to indemnify or hold harmless DUSPA, its directors, officers, agents and employees under this paragraph shall not apply to liability or damages proximately caused by and apportioned to the negligence of DUSPA's officers, agents and employees.

This indemnity clause shall also cover DUSPA's defense costs, in the event that DUSPA, in its sole discretion, elects to provide its own defense. DUSPA retains the right to disapprove counsel, if any, selected by the Consultant to fulfill the foregoing defense indemnity obligation, which right of disapproval shall not be unreasonably exercised.

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 DUSPA's protection in the performance of this Agreement.

The Consultant shall require all contracts with subcontractors performing work under this Agreement to contain an indemnification provision identical to this Paragraph 10.

11. COLORADO GOVERNMENTAL IMMUNITY ACT: The parties agree that DUSPA is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

12. TAXES, CHARGES AND PENALTIES: The Consultant shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under this Agreement and shall allow no lien, mortgage, judgment or execution to be filed against DUSPA property, including but not limited to land, facilities, improvements or equipment.

13. ASSIGNMENT AND SUBCONTRACTING:

A. Assignment – The Consultant agrees that it will not assign or transfer any of its rights or obligations under this Agreement without first obtaining the written consent of the Manager, which consent may be withheld at the sole and absolute discretion of the Manager. A transfer will include a merger, consolidation, liquidation or change of ownership by which fifty percent (50%) or more of the outstanding voting stock is transferred. Any attempt by the Consultant to assign or transfer its rights or obligations without the prior written consent of the Manager shall, at the option of the Manager, terminate this Agreement and all rights of the Consultant. Any assignment, and any consent thereto, shall not become effective until the assignee executes a document satisfactory to the Manager wherein assignee (1) assumes the obligations under this Agreement; and (2) agrees to be bound by all of the terms, covenants and conditions of this Agreement.

B. Subcontracting – The Consultant agrees that it will not subcontract any of its obligations under this Agreement, except as specifically identified in Section 2.B of this Agreement, without first obtaining the written consent of the Manager, which consent may be withheld in the absolute discretion of the Manager. The Consultant shall submit to the Manager a request to subcontract, which sets forth the role of the proposed subcontractor in the specified Scope of Work. If DUSPA consents to the subcontract, such action shall not be construed to create any contractual relationship between DUSPA and the Consultant's subcontractor. The Consultant shall remain fully responsible to DUSPA according to this Agreement.

14. NO THIRD PARTY BENEFICIARY: The parties agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to enforcement, shall be strictly reserved to the parties. Nothing contained in this Agreement shall give any claim or right of action to any third person. The parties intend that any person other than DUSPA or the Consultant receiving services or benefits pursuant to this Agreement shall be deemed to be an incidental beneficiary only.

15. NO AUTHORITY TO BIND DUSPA TO CONTRACTS: The Consultant has no authority to bind DUSPA on any contractual matters. Final approval of all contractual matters that obligate DUSPA must be by DUSPA.

16. AGREEMENT AS COMPLETE INTEGRATION AND AMENDMENTS: This Agreement is the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion or other modification shall have any force or effect, unless embodied in this Agreement in writing. Except as otherwise provided herein, no subsequent novation, renewal, addition, deletion or other amendment shall have any force or effect unless embodied in a written amendment to this Agreement properly executed by the parties. No oral representation by any officer or employee of DUSPA at variance with the terms and conditions of this Agreement shall have any force or effect nor bind DUSPA. This Agreement and any amendments to it shall inure to the benefit of and be binding upon the parties and their successors and permitted assigns.

17. SEVERABILITY: The parties agree that if any provision of this Agreement or any portion thereof, except for the provisions of this Agreement requiring appropriation of funds and limiting the total amount payable by DUSPA, is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity of the remaining portions or provisions shall not be affected if the intent of the parties can be fulfilled.

18. CONFLICT OF INTEREST: No director, official or employee of DUSPA shall have any personal or beneficial interest in the services described in this Agreement. The Consultant agrees not to hire or contract for services any director, employee or officer of DUSPA. The Consultant agrees that it will not engage in any transaction, activity or conduct that would result in a conflict of interest under this Agreement. The Consultant represents that it has disclosed current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Consultant by placing the Consultant's own interests or the interests of any party with whom the Consultant has a contractual arrangement, in conflict with those of DUSPA. The Manager, in his or her sole discretion, shall determine the existence of a conflict of interest. If a conflict is found to exist, the Manager shall give the Consultant written notice describing the conflict. The Consultant shall have thirty (30) days from the date of the notice to eliminate or cure the conflict of interest in a manner acceptable to the Manager. If the conflict is not cured, the Manager may terminate this Agreement.

19. NOTICES: Notices required by this Agreement shall be deemed delivered if sent by the parties in the United States mail, postage prepaid, to the parties at the following addresses:

If to DUSPA: Elbra Wedgeworth, President
Denver Union Station Project Authority
c/o Hogan & Hartson
1200 17th Street, Suite 1500
Denver, Colorado 80202

With copies to: Cole Finegan and Dawn Bookhardt
c/o Hogan & Hartson
1200 17th Street, Suite 1500
Denver, Colorado 80202

If to Consultant: ALEX BROWN CONSULTING
4285 South Forest Court
Englewood, Colorado 80013

The addresses may be changed by the parties by written notice.

20. GOVERNING LAW; VENUE: This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver.

21. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of services under this Agreement, the Consultant agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status or physical or mental disability. The Consultant agrees to insert the foregoing provision in all subcontracts hereunder.

22. LEGAL AUTHORITY: The Consultant represents and warrants that it possesses the legal authority to enter into this Agreement. Each person signing and executing this Agreement on behalf of the Consultant represents and warrants that such person has been fully authorized by the Consultant to execute this Agreement on behalf of the Consultant and to validly and legally bind the Consultant to all the terms of this Agreement. DUSPA shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate this Agreement if there is a

dispute as to the legal authority of either the Consultant or the person signing this Agreement to enter into this Agreement.

23. **NO CONSTRUCTION AGAINST DRAFTING PARTY:** Each of the parties acknowledge that they have had the opportunity to review this Agreement and that this Agreement shall not be construed against any party merely because this Agreement was prepared by a particular party.

24. **ORDER OF PRECEDENCE:** In the event of any conflicts between the language of this Agreement and the exhibits, the language of this Agreement shall control.

25. **SURVIVAL OF CERTAIN PROVISIONS:** The parties agree that all terms and conditions of this Agreement, together with any exhibits and attachments, which by reasonable implication contemplate continued performance or compliance beyond the termination of this Agreement, by expiration of the term or otherwise, shall survive termination and shall continue to be enforceable. Without limiting the generality of this provision, the Consultant's obligations to provide insurance and to indemnify DUSPA shall survive for a period equal to all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters or actions begun within that period.

26. **FEDERAL REQUIREMENTS:** By entering into this Agreement, the Consultant hereby certifies to the truthfulness and accuracy of each statement of any certification and disclosure as set forth in Exhibit A hereto and the Consultant understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to the certification and disclosure as set forth in Exhibit A hereto. The Consultant also agrees that those provisions set forth in Exhibit A hereto are hereby incorporated by reference as though fully set forth herein.

27. **COMPLIANCE WITH ALL LAWS:** All of the services performed under this Agreement by the Consultant shall comply with all applicable laws, rules, regulations and codes of the United States, the State of Colorado and with the charter, Code, ordinances, rules and regulations of the City and County of Denver.

28. **ADVERTISING AND PUBLIC DISCLOSURE:** The Consultant shall not include any reference to this Agreement or to services performed pursuant to this Agreement in any of its

advertising or public relations materials without first obtaining the written approval of the Manager, which will not be unreasonably withheld. Any oral presentation or written materials related to services performed under this Agreement shall include only services that have been accepted by DUSPA. The Manager shall be notified in advance of the date and time of any such presentation. Nothing in this provision shall preclude the transmittal of any information to officials of DUSPA, including without limitation directors and the Manager.

29. **DUSPA EXECUTION OF THIS AGREEMENT:** This Agreement shall not be binding on DUSPA until it has been fully executed by all signatories of DUSPA.

30. **COUNTERPARTS OF THIS AGREEMENT:** This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

DENVER UNION STATION
PROJECT AUTHORITY

By: _____

Name: _____

Title: _____

“DUSPA”

ALEX BROWN CONSULTING

By: _____

Name: _____

Title: _____

“Consultant”

EXHIBIT A

CERTIFICATIONS AND FEDERAL REQUIREMENTS

Lobbying

The Consultant certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)].

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

Access to Records and Reports

The following access to records requirements apply to this Agreement:

1. The Consultant agrees to provide the Owner, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Consultant which are directly pertinent to this

contract for the purposes of making audits, examinations, excerpts and transcriptions. Consultant also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Consultant's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Owner is a State and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Consultant agrees to provide the Owner, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Consultant's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

3. Where the Owner enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Consultant agrees to provide the Owner, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Owner which is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Consultant shall make available records related to the contract to the Owner, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Consultant agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Consultant agrees to maintain same until the Owner, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

7. FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes

Consultant shall at all times comply with all applicable federal regulations, policies, procedures and directives as they may be amended or promulgated from time to time during the

term of this contract as they are communicated to Consultant by any of the Partner Agencies or Owner.

No Government Obligation to Third Parties

(1) The Owner and Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Owner, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Consultant agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements and Related Acts

(1) The Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Consultant to the extent the Federal Government deems appropriate.

(2) The Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Consultant, to the extent the Federal Government deems appropriate.

(3) The Consultant agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Government-Wide Debarment and Suspension (Nonprocurement)

This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, the Consultant verifies that none of the Consultant, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Consultant shall comply with 49 CFR 29, Subpart C and agrees to include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing this Agreement, the Consultant certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Owner. If it is later determined that the Consultant knowingly rendered an erroneous certification, in addition to remedies available to Owner, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Consultant agrees to comply with the requirements of 49 CFR 29, Subpart C throughout the period of this Agreement or any contract that may arise therein. The Consultant further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Disadvantaged Business Enterprise (DBE)

1. This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. DUSPA's overall aspirational Project goal for DBE participation is [12%]. A separate contract goal has not been established for this Agreement.

2. The Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as DUSPA deems appropriate. Each subcontract the Consultant signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

[3. ***{If a separate contract goal has been established for a contract, use the following}*** Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:

- a. The names and addresses of DBE firms that will participate in this contract;
- b. A description of the work each DBE will perform;
- c. The dollar amount of the participation of each DBE firm participating;
- d. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;

e. Written confirmation from the DBE that it is participating in the contract as provided in the prime Consultant's commitment; and

f. If the contract goal is not met, evidence of good faith efforts to do so.]

Incorporation of Federal Transit Administration (FTA) Terms

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.