

## **INCURRED DEDUCTIBLE AGREEMENT Consolidated Insurance Program**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into, effective as of the date set forth on the City's signature page ("Effective Date"), by and between the CITY AND COUNTY OF DENVER (the "City"), a municipal corporation of the State of Colorado, and Zurich American Insurance Company, ("ZAIC") with a principal address at 1299 Zurich Way, Schaumburg, IL 60196, United States (together with the City, the "Parties").

### **TERMS AND CONDITIONS**

#### **A. Purpose of the Agreement**

This Agreement defines the scope and structure of the Incurred Deductible Program ("Program") that ZAIC will administer on behalf of the City. This Agreement specifies the duties and obligations of each Party with respect to the Program. The Program applies to the insurance policies listed in the Specifications attached as Exhibit A ("Policies"), which is incorporated as part of this Agreement (the "Specifications").

#### **B. Scope of the Agreement**

This Agreement includes the Terms and Conditions found in the body of the Agreement and the Specifications. The Agreement term is continuous and may be amended to add new projects proposed by the City upon mutual agreement of the Parties. If new projects are added, a written addendum to the Specifications will be negotiated and signed by the Parties.

#### **C. Term**

The Agreement will commence on August 1, 2018 and will terminate pursuant to the terms of this Agreement.

#### **D. Program Description**

Under the Program, ZAIC will process, manage and pay claims presented in accordance with the provisions of the Policies. ZAIC requires a Deposit Premium and a Loss Reimbursement Fund in the amounts stated in the Specifications to fund City's obligations within the Deductible Amount(s). ZAIC will bill City for adjustments of the Loss Reimbursement Fund as more fully set forth in the Specifications. The City agrees to and shall remit to ZAIC all such amounts when due, as stated in this Agreement.

#### **E. Program Structure**

The Program has two independent components: (1) the insurance coverage provided under the Policies; and (2) the risk financing arrangement provided under the Program. As set out below in "Termination", if the City commits a Default, ZAIC may, at its option, terminate the financing arrangements under the Program

#### **F. Definitions**

1. **Allocated Loss Adjustment Expense ("ALAE")** shall be as defined in the Policies.

2. **ALAE Reserve** is ZAIC's evaluation of unpaid ALAE under the Policies.
3. **Aggregate Deductible** is the greatest amount City is obligated to reimburse ZAIC under the Deductible Policies which shall apply as stated in the Specifications at each Loss Reimbursement Fund Adjustment for the Program term stated in the Specifications.
4. **Deductible Amount(s)** is the amount the City is obligated to reimburse ZAIC for each occurrence, accident or claim under the Policies as stated in the Specifications.
5. **Deductible Premium** is the amount paid by City to ZAIC for the Program as set forth in the Policies and, for ease of reference, this/these amount(s) are restated in the Specifications.
6. **Default** occurs when:
  - a. The City fails to pay any amount, including but not limited to the initial Loss Reimbursement Fund amount and subsequent adjustments, when it is due under any Agreement or any policy issued by ZAIC to City; or
  - b. The City files a petition in bankruptcy, a declaration of insolvency or an action or proceeding for dissolution is filed by or against City; a receiver or trustee is appointed for City; City execute a workout agreement; City make an assignment for the benefit of creditors; or any other proceeding or arrangement of a similar nature is instituted by or against City.
7. **Incurred ALAE ("IALAE")** is the Paid ALAE plus the ALAE Reserve under the Policies.
8. **Incurred Loss ("IL")** is a Paid Loss plus a Loss Reserve under the Policies.
9. **Loss Based Assessment ("LBA")** is a state charge levied against losses.
10. **Loss Development Factor ("LDF")** is a multiplier set forth in the Specifications to evaluate (a) claims and related ALAE that have occurred but have not as yet been reported to City or to ZAIC; and, (b) anticipated changes in Incurred Loss and Incurred ALAE for claims that have been previously reported to ZAIC. How and when the LDF is applied shall be as stated in the Specifications.
11. **Loss Reimbursement Fund** is a non-interest-bearing account where City's funds are held by ZAIC to provide for the payment of City's obligations within the Deductible Amount(s) under the Policies. The required initial amount of the Loss Reimbursement Fund and how adjustments are calculated are set forth in the Specifications.
12. **Loss Reserve** is ZAIC's evaluation of the unpaid portion of a claim that has been previously reported to ZAIC under the Policies and does not include ALAE Reserve.
13. **Other Special Charges** are (a) additional taxes, premium surcharges and premium and loss assessments incurred or paid by ZAIC in connection with the Policy(ies); (b) administrative, statutory or ZAIC's-ordered fines or penalties incurred or paid by ZAIC in connection with the Policy(ies) not the result of ZAIC's negligence; (c) any expenses ZAIC incur to collect from City amounts past due and to enforce any of the provisions of this Agreement, except as provided for in Section O of the Terms and Conditions of this Agreement; and (d) any other charge, loss or expense paid or incurred by ZAIC in connection with the Policy(ies) that does not constitute a loss payment under the Policies, ALAE, Loss Based Assessments, Premium Tax, Premium Surcharges or payments to a TPA.
14. **Paid ALAE** is a payment made by ZAIC for ALAE under the Policies.
15. **Paid Loss** is a payment made by ZAIC for a claim under the Policies. Paid Loss does not include ALAE.

16. **Policies** shall mean those Policies stated in Section A of the Specifications, including all endorsements, extensions, renewals and/or rewrites thereto.
17. **Premium Surcharges** are surcharges and assessments by federal, state, city, municipal or other governmental agencies or required by regulation or statute, that are levied on the basis of premiums and include new premium surcharges and assessments that are levied after the Effective Date and premium surcharges and assessments for which the rate or computation base changes after the Effective Date.
18. **Premium Tax**, which includes state taxes and assessments, is a rate that may be charged against the full state Standard Premium or the Deductible Premium.
19. **Recoveries** are that portion of any payment made under the Policies that ZAIC recovers from anyone liable for the loss or from any workers compensation funds. The amount ZAIC recovers will be applied as follows: (a) first, to any payments made by ZAIC in excess of the Deductible Amounts; and, (b) then the remainder, if any, will be applied to reduce the Deductible Amounts reimbursable by City.
20. **Standard Premium** for Workers' Compensation and Employers' Liability (WC/EL) is calculated in accordance with the National Council on Compensation Insurance and/or specific state rules using ZAIC's manual rates times the exposure times the experience modification times schedule rating modification and/or deviations, if applicable. With respect to insurance coverages other than WC/EL, standard premium includes the premium ZAIC would charge for the Program term subject to the terms of the rating plan.
21. **Unallocated Loss Adjustment Expense ("ULAE")** includes expenses that are not directly allocated to a specific claim. The ULAE will be charged to City by applying a **Loss Conversion Factor ("LCF")** that is a factor applied to the Incurred Loss, plus the Incurred ALAE, as stated in the Specifications.

## G. Payments Due

The payments under this Program and the dates these amounts become due are stated in the Specifications. Each party to the Agreement agrees to remit all payments so that they are received on or before the due date. The City shall have a minimum of twenty (20) days from the date it receives a billing to mail or otherwise submit payment. City as the First Named Insured and each additional named stated in the Policies shall be jointly and severally responsible for the obligations under this Agreement.

In the event all or part of a payment due under the Program is in dispute:

1. The undisputed portion of the payment will be remitted in accordance with the terms of this Agreement.
2. A written notice stating the amount and explaining the reason for the dispute will be sent to the address stated in the Specifications on or before the payment due date.

Both Parties agree to attempt to resolve any dispute within sixty (60) days after the date of the notice.

## H. Audit

An audit for the Policies stated in the Specifications will be conducted in accordance with the provisions of the Policies. The adjustable elements of the Program will be adjusted based on the audited exposures as stated in the Specifications.

## I. Invalidity and Severability

It is agreed that if any provision of this Agreement is found to be invalid or unenforceable by a governmental authority or court of law, all the other provisions of this Agreement shall remain valid and enforceable as if the Agreement did not contain the invalid or unenforceable provision. The invalid or unenforceable provision shall be amended to the minimum extent necessary to cure the invalid or unenforceable element and to preserve the original intent.

#### **J. Non-Waiver of Rights**

Failure by either party to enforce any provision of this Agreement shall not be interpreted as a waiver of such provision or any other provision or any existing or future rights or privileges under this Agreement. The terms and conditions of this Agreement may be strictly enforced at any time despite any past or subsequent failure to do so by either Party.

#### **K. Changes in this Agreement**

This Agreement (including any increase to the Maximum Contract Amount, as defined in Section E. of the Specifications) shall not be waived, changed or assigned except by an amendment, executed in the same manner as this Agreement and signed by duly authorized representatives of each Party to this Agreement.

#### **L. Offset**

The Parties under this Agreement each reserve the right to offset any undisputed balance due from one Party to the other under this or any other Agreement entered into between ZAIC, except as prohibited by law.

#### **M. Reliance on Others**

City understand, acknowledge, and confirm that ZAIC did not offer advice to City concerning the proper financial, accounting, or tax treatment for the Policies and nothing herein should be considered to constitute such advice. City further represents that if accounting advice, tax advice, or other expert professional assistance is required, City will rely on City's own accountant, adviser, counsel, or other similar competent professional with expertise in the required area.

#### **N. Termination**

This Agreement will terminate by mutual written consent. ZAIC also reserves the right to terminate this Agreement if one or more of the Policies are canceled. Despite the termination of the Agreement, City and ZAIC are still liable for all their obligations under this Agreement up to the date of termination. It is understood and agreed by both Parties that if billings are suspended at any point in time because all payments have been made, ZAIC still reserves the right to bill City at a future date for any and all claims subsequently reported, together with related expenses, provided the Aggregate Deductible, if any, has not been exhausted.

In the event of a mid-term termination of the Program, (a) the Agreement will follow the cancellation provisions of the Policies; and (b) the calculation of the applicable Program elements, including but not limited to the Deductible Premium, Excess Premium, Minimum Retrospective Premium, Maximum Retrospective Premium, Combined Aggregate, Terrorism Premium, CAT Premium, Basic Premium and the Combined Aggregate, will be subject to the minimum amounts stated in the Specifications.

In the event of a Default or if one or more of the Policies stated in the Specifications are canceled, ZAIC may, at ZAIC's option, terminate the financing portion of the Program. The amount immediately due and payable to ZAIC will be determined by ZAIC using all of City's obligations under this Agreement calculated using the most recent incurred loss valuation times the applicable LDF determined by ZAIC at ZAIC's sole discretion at the time of termination; in addition to the foregoing if termination is because of City's failure to pay any amount or provide any adjustment to the Loss Reimbursement Fund as required under this Agreement, ZAIC may instead require, at ZAIC's option, payment of the full Standard Premium by converting the Program to a guaranteed cost rating plan using ZAIC's manual rates in effect as of the Policy(ies) effective date.

**O. Examination of Records**

ZAIC agrees that any duly authorized representative of the City, including the City Auditor or his representative, shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of ZAIC, involving transactions related to this Agreement.

**P. Subject to Appropriation**

The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years, and the Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

**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 \_\_\_\_\_



Contract Control Number: FINAN-201844067-00

Contractor Name: ZURICH AMERICAN INSURANCE COMPANY

By: *Brian M. Smith*

Name: BRIAN M. SMITH  
(please print)

Title: MANAGING ACCOUNT EXECUTIVE  
(please print)

ATTEST: [if required]

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

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

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



**Exhibit A**

**SPECIFICATIONS TO INCURRED DEDUCTIBLE AGREEMENT  
Applicable to Tier 1: Colorado Western Center Project (NWC)  
Phase 1 and Phase 2**

**A. Applicable Policy(ies):**

<u>Policy(ies)</u>	<u>Company</u>	<u>Policy Number</u>	<u>Expiration Date</u>
<b>Workers Compensation and Employers' Liability</b>	<b>Zurich American Insurance Company</b>	<b>WC4285281-00, 01, 02,03, 04</b>	<b>August 1, 2023</b>
<b>General Liability</b>	<b>Zurich American Insurance Company</b>	<b>GLO4635576-00</b>	<b>August 1, 2023</b>

**B. Deductible Amount(s)**

The following are the Deductible Amount(s) applying to all losses, claims, suits, actions or other proceedings with respect to the coverages provided under the Policy(ies):

1. The first \$ 250,000 arising out of each accident involving one or more employees for any one coverage or combination of coverage provided under the Workers' Compensation and Employers' Liability policy ("WC & EL").
2. The first \$ 250,000 arising out of occupational disease payable to each affected employee for any one coverage or combination of coverage provided under the WC and EL policy.
3. The first \$ 250,000 for each occurrence, claim, offense, accident, act, error or omission or any other such similar event as defined or used in the policy for all of the coverages provided under the Commercial General Liability Policy(ies).
4. The first \$375,000 for any combination of coverage under one or more of the Policies subject to these Specifications arising out of any one accident or occurrence.
5. With respect to 1 through 4 above, the amount of ALAE that City is obligated to pay ZAIC will be determined as follows:

ALAE is included within the Deductible Amount(s) under the Policy(ies) and is reimbursed to ZAIC by City up to the Deductible Amount(s). ZAIC pays the ALAE excess of the Deductible Amount.



**C. Deductible Premium**

City is obligated to pay ZAIC Deductible Premium. The Deductible Premium deposit(s) and installment(s), as applicable, are payable to ZAIC as stated in each Deductible Policy. The Deductible Premium stated below is an estimated amount which is subject to adjustment. Adjusted Deductible Premium due is payable to ZAIC at the time ZAIC issues the premium audit bill. In no event will the amount of the Deductible Premium be less than the Minimum Premium stated below.

<u>Policy(ies)</u>	<u>Exposure Base</u>	<u>Rate</u>	<u>Estimated Exposure</u>	<u>Deductible Premium estimate</u>	<u>Minimum Premium</u>
WC & EL	WC Payroll excluding stopgap	\$.952 per \$100	\$78,218,280	\$744,638	\$595,710
GL	WC Payroll excluding stopgap	\$1.528 per \$100	\$78,281,280	\$1,195,175	\$956,140

**D. Terrorism Premium And Catastrophe Premium (including other than Certified Acts of Terrorism as defined by the Terrorism Risk Insurance Program)**

1. City is obligated to pay ZAIC a Terrorism Premium charge for risk of loss resulting from terrorism and Catastrophe Premium (including other than Certified Acts of Terrorism as defined by the Terrorism Risk Insurance Program) and hereinafter referred to as CAT Premium.
2. Terrorism Premium and CAT Premium deposit(s) and installment(s), as applicable, are payable to ZAIC as stated in each Policy.
3. Terrorism Premium will be adjusted by ZAIC at the time ZAIC issues the premium audit bill.
  - a. The WC Terrorism Premium is not included in the WC premium(s) or the WC rate(s) stated elsewhere in these Specifications and is subject to audit.
  - b. The GL Terrorism Premium is not included in the GL Premium or the GL rate stated elsewhere in these Specifications and is subject to audit.
4. CAT Premium applies with respect to WC Policy(ies) only. CAT Premium will be adjusted by ZAIC at the time ZAIC issues the premium audit bill. CAT Premium is not included in the WC premium(s) or the WC rate(s) stated elsewhere in these Specifications and is subject to audit.

**Aggregate Deductible / Maximum Contract Amount**

1. Aggregate Deductible

Estimate At Inception		Adjustable at Audit		
<u>Aggregate Deductible Amount</u>	<u>Estimated Exposure</u>	<u>Rate</u>	<u>Exposure Base</u>	<u>Aggregate Deductible Amount shall never be less than</u>
\$3,650,000	\$78,218,280	\$4.666 per \$100	WC Payroll excluding stopgap	\$3,650,000

2. Under the estimated exposure set forth above, the most the City is obligated to pay ZAIC for the sum of Incurred Losses within the Deductible Amount plus applicable Incurred ALAE times LDF shall not be greater than the Aggregate Deductible. This Aggregate Deductible amount thus represents the maximum contract amount to be paid by the City to ZAIC under this Agreement if the actual exposure, which will be determined by audited payroll, equals the estimated exposure (“Maximum Contract Amount”). In the event the actual exposure is greater than estimated exposure, City will be obligated to pay ZAIC amounts in excess of the Maximum Contract Amount using the formula set forth in this Agreement.,
3. City’s obligation to pay ZAIC for the sum of LCF plus LBAs on the Incurred Losses and applicable Incurred ALAE times LDF is in addition to the Aggregate Deductible Amount. Loss Reimbursement Fund adjustments for these elements will cease once City has paid the Aggregate Deductible amount.

**E. Loss Based Assessments (LBAs)**

City is obligated to pay ZAIC LBAs. At each Loss Reimbursement Fund Adjustment, actual LBA charges will be computed by ZAIC by multiplying WC Incurred Losses within the Deductible Amount(s) by the state LBA rate below. LBA charges within the Loss Reimbursement Fund Adjustments shall continue until ZAIC suspend Loss Reimbursement Fund Adjustments when all losses have been paid or upon completion of a close out as set forth in these Specifications.

State	Rate
AK	.6%
AL	6.0%
DC	9.6%
DE	3.7%
ID	1.6%
KS	3.7%
LA	7.6%
ME	.7%
MI	1.4%
MS	1.8%
WI	2%
US&H	6.7%

\* and extensions, as applicable

**F. Unallocated Loss Adjustment Expense (ULAE)**

At each Loss Reimbursement Fund Adjustment, ZAIC will bill City the following LCF(s):

<u>Policies</u>	<u>LCF</u>
WC/EL	1.075
GL	1.06

**G. Loss Reimbursement Fund**

1. City is obligated to pay ZAIC a Loss Reimbursement Fund and any periodic upward adjustments thereto as calculated pursuant to this section.
2. The Loss Reimbursement Fund amount is: \$1,870,950. This amount represents the minimum amount of Loss Reimbursement Fund held by ZAIC during the first sixty-six (66) months after the inception of the Policy(ies).

The Loss Reimbursement Fund amount stated above is due in 16 installments due on the following dates:

<u>Due Date</u>	<u>Amount Tier 1</u>
10/1/2018	\$116,940
11/1/2018	\$116,934
2/1/2019	\$116,934
5/1/2019	\$116,934
8/1/2019	\$116,934
11/1/2019	\$116,934
2/1/2020	\$116,934
5/1/2020	\$116,934
8/1/2020	\$116,934
11/1/2020	\$116,934
2/1/2021	\$116,934
5/1/2021	\$116,934
8/1/2021	\$116,934
11/1/2021	\$116,934
2/1/2022	\$116,934
5/1/2022	\$116,934

3. Beginning eighteen (18) months after Policy inception, and at a minimum annually thereafter, ZAIC will bill City for any material upward adjustments to the Loss Reimbursement Fund. However, ZAIC reserves the right to bill City for upward adjustments to the Loss Reimbursement Fund at any time ZAIC deems necessary after applying the formula set forth below. City is obligated to pay ZAIC each Loss Reimbursement Fund adjustment billing.
4. Each Loss Reimbursement Fund adjustment billing will be calculated as follows:
  - a. Incurred Losses and applicable Incurred ALAE within the Deductible Amount(s)
  - b. times the applicable LDF,
  - c. times the LCF,

- d. plus WC Incurred Losses within the Deductible Amount(s) times the state LBA,
  - e. less the Loss Reimbursement Fund deposit billings,
  - f. less prior Loss Reimbursement Fund adjustment billings.
5. At each Loss Reimbursement Fund adjustment billing, City will pay the additional amount due ZAIC in the time period set forth in paragraph F of the Terms and Conditions of this Agreement.
  6. Beginning sixty-six (66) months after the inception of the Policy(ies), ZAIC may adjust the Loss Reimbursement Fund downward annually at its sole discretion while taking into account any new projects that may have been added to this Agreement through written amendment(s). In such case, ZAIC will refund City for any such downward adjustments.
  7. Loss Reimbursement Fund adjustment billings shall continue until ZAIC suspends billings when all losses have been paid or, if mutually agreed to by the Parties in writing, upon completion of a close out.
  8. For the Policy(ies) stated in these Specifications, the current LDFs are as stated in the paragraph L of these Specifications of this Agreement.

## **I. Premium Surcharges and Other Special Charges**

### **1. Premium Surcharges**

As of the Specifications Effective Date there are no jurisdictions included in the Policy(ies) for which Premium Surcharges are due.

City is obligated to pay ZAIC for Premium Surcharges which apply in any jurisdiction in which exposure exists or where exposure develops under the Policy(ies). Premium Surcharges are subject to change without prior notice. Premium Surcharges will be billed by ZAIC based upon rates according to applicable regulatory or statutory requirements.

City will be billed and is obligated to pay ZAIC for additional Premium Surcharges which are due at the time ZAIC issues the premium audit billing. The applicable Premium Surcharges may apply to, but are not limited to, the following: Deductible Premium, Standard Premium, Excess Premium, Terrorism Premium, CAT Premium and audited exposures.

### **2. Other Special Charges**

City is obligated to pay ZAIC for Other Special Charges. City will be billed for Other Special Charges at the time ZAIC issues the premium audit billing unless otherwise required by law. ZAIC will provide City with information about the purpose of the charges and, as applicable, the amount of the charge and the application thereof. City will be billed based upon the information provided.

## **J. Notices**

All notices, letters or other communications required under this Agreement shall be in writing and addressed as follows:

If to City: City and County of Denver  
 Risk Manager  
 201 W. Colfax Avenue, Dept 1010  
 Denver, CO 80202

If to ZAIC: Zurich Insurance Company

Attention: Construction Manager,  
 525 Market St.  
 San Francisco CA 94105

**K. Loss Development Factors used in the adjustment of Loss Reimbursement Fund**

The LDFs applicable to the Policy(ies) in these Specifications under the Loss Reimbursement Fund section, which are not subject to change, are as follows:

<b>Months from inception of Policy(ies)</b>			
<u>Loss Valued at Month</u>	<u>WC</u>	<u>GL</u>	
18	17.759	80.809	
30	5.671	21.065	
42	2.665	8.241	
54	1.640	4.237	
66	1.238	2.668	
78	1.088	1.959	
90	1.040	1.603	
102	1.024	1.405	
114	1.017	1.281	
126	1.013	1.197	
138	1.010	1.135	
150	1.000	1.089	