

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2013

COUNCIL BILL NO. CB13-0209
COMMITTEE OF REFERENCE:
BUSINESS, WORKFORCE, & SUSTAINABILITY

A BILL

For an ordinance approving a proposed First Amendment to Agreement OCIP Insurance Brokerage Services between the City and County of Denver and Arthur J. Gallagher Risk Management Services, Inc. to serve as Owner Controlled Insurance Program Broker and Administration Services for the South Terminal Redevelopment Project at Denver International Airport.

BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. The proposed First Amendment to Agreement between the City and County of Denver and Arthur J. Gallagher Risk Management Services, Inc., in the words and figures contained and set forth in that form of Agreement available in the office and on the web page of City Council, and to be filed in the office of the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver, under City Clerk's Filing No. 2011-0366-A, is hereby approved.

COMMITTEE APPROVAL DATE: April 4, 2013

MAYOR-COUNCIL DATE: April 9, 2013

PASSED BY THE COUNCIL: _____, 2013

_____ - PRESIDENT

APPROVED: _____ - MAYOR _____, 2013

ATTEST: _____ - CLERK AND RECORDER,
EX-OFFICIO CLERK OF THE
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2013; _____, 2013

PREPARED BY: Kevin Cain, Assistant City Attorney *K. Cain* DATE: April 11, 2013

Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed ordinance. The proposed ordinance is submitted to the City Council for approval pursuant to § 3.2.6 of the Charter.

Douglas J. Friednash, City Attorney for the City and County of Denver

BY: _____, Assistant City Attorney DATE: April 11, 2013

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**FIRST AMENDMENT TO AGREEMENT
OCIP INSURANCE BROKERAGE SERVICES**

THIS FIRST AMENDMENT TO AGREEMENT FOR OCIP INSURANCE BROKERAGE SERVICES (Contract Number 201100685-1) ("Agreement"), made and entered into as of the date set forth on the City Signature Page affixed hereto (the "Effective Date") by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado ("City"), Party of the First Part, and **ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES, INC.**, an Illinois corporation registered to do business in the State of Colorado ("Consultant"), Party of the Second Part (collectively, the "Parties");

WITNESSETH:

WHEREAS, the City and Consultant entered into an Agreement dated June 21, 2011 (the "Existing Agreement") for professional insurance brokerage, consulting, risk management and administrative services to support Denver International Airport ("DIA" or the "Airport") in obtaining a comprehensive and specialized Owner-Controlled Insurance Program(s) ("OCIP(s)" or "Program") for the design and construction of selected Airport projects, and other work as requested and authorized by the Airport; and

WHEREAS, the City intends to continue utilization of the OCIP as well as implementing a Rolling Owner-Controlled Insurance Program ("ROCIP") using the same professional insurance brokerage, consulting, risk management and administrative services as the OCIP; and

WHEREAS, the Parties desire to amend the Existing Agreement to extend the term thereof; increase the Maximum Contract Liability; and incorporate updated exhibits.

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the parties hereto agree as follows:

1. Paragraph 4.A, "Compensation and Payment: Fee" of the Existing Agreement is hereby amended by deleting the said subparagraph in its entirety and substituting in its place the following:

"4. COMPENSATION AND PAYMENT:

A. Fee: The City hereby agrees to pay the Consultant, and the Consultant agrees to accept as its sole compensation for its services rendered under this Agreement an amount based on the rates and charges set forth in **Exhibit B**, for services related to the OCIP, and **Exhibit BB** for services related to the ROCIP, not to exceed the Maximum Contract Amount, as authorized by the City in writing under this Agreement. Estimated premium costs for the OCIP Coverages contemplated by this Agreement are set forth at

Exhibit B-1. Estimated premium costs for the ROCIP Coverages contemplated by this Agreement are set forth at **Exhibit BB-1.**

Consultant will use its best efforts to negotiate placements for the Primary OCIP AND/OR ROCIP Coverages and excess liability coverages (collectively, the "OCIP and/or ROCIP Coverages") on a net of (without) commission basis to Consultant; however, City acknowledges that this is not always possible or advisable to do. Therefore, in instances where an insurer cannot, or refuses to, quote coverage net of commission, the Fee Compensation shall be adjusted, where permitted by applicable law, by the amount of Commission Compensation paid by any such insurer to Consultant. Consultant shall remit any commissions to the City. If Consultant is required by law to return any commissions that were credited against the Fee Compensation, for any reason, including, but not limited to, mid-term cancellation(s), City agrees to promptly reimburse Consultant for such amount. Consultant shall provide written notice of all commissions received related in any manner to this Agreement.

City recognizes that it may be necessary or advantageous to the City for Consultant to place primary OCIP and/or ROCIP or excess liability insurance through intermediaries such as London Brokers, possibly including proprietors, affiliates, subsidiaries, parent, or joint venture partners of Consultant. Where coverage is placed through an intermediary, and where the insurer will not quote coverage net of commission to Consultant, City will allow Consultant to accept commission income. In such circumstances, Consultant will negotiate in good faith the most favorable allocation of commissions, between Consultant and the intermediary so that Consultant receives the largest portion of the total commission that it can negotiate. Consultant will immediately remit any commissions obtained by Consultant in such manner to the City.

The Consultant agrees and acknowledges that it is acting as an insurance broker for City. In addition, Consultant will be operating in a fiduciary capacity regarding confidential information, data, as well as handling/processing premiums and entrusted funds as further described in Exhibits B and B-1. Consultant shall provide a complete Quote Disclosure Report detailing the insurance carriers approached by line of business, the use of any intermediaries, all commissions earned by Consultant or any owned or non-owned intermediaries, and the insurance carriers quote or responses, including declinations. Such disclosures shall be provided on not less than a quarterly basis. Consultant shall provide complete copies of all carrier quotations in the original format.

In addition to the not to exceed Maximum Contract Liability stated herein, Consultant shall be entitled to receive commissions or other fees payable from insurance carriers, or included in premiums paid by City to insurance carriers ("Commission Compensation"), for the placement of coverages other than the Workers' Compensation/Employers' Liability, Commercial General Liability (the "Primary OCIP and/or ROCIP Coverages") and Excess Liability. Such other coverages may include Builders' Risk, Contractors Pollution Liability, Pollution Legal Liability, Professional Liability, or such other coverages as specifically requested in writing by City.

Commission Compensation shall be fully earned by Consultant upon binding of such insurance coverage. The maximum amount of commission for any such placement shall be five percent (5%) of the premium, exclusive of imposed fees and taxes. Consultant shall provide written notice of any commissions earned pursuant to this Paragraph.”

2. Paragraph 5., “Maximum Contract Liability; Funding” of the Existing Agreement is hereby amended by deleting the said subparagraph in its entirety and substituting in its place the following:

“5. MAXIMUM CONTRACT LIABILITY; FUNDING:

A. Any other provision of this Agreement notwithstanding, in no event shall the City be liable for payment for services rendered and expenses incurred by the Consultant under the terms of this Agreement for any amount in excess of the sum of Nineteen Million Three Hundred Thirty Six Thousand Nine Hundred Forty Two Dollars and No Cents (\$19,336,942.00). The Maximum Contract Liability may only be increased by amendment to this Agreement.

B. Payment under this Agreement shall be paid from the City’s Airport System Capital Improvement and Replacement Fund and/or from the City’s Airport System Operation and Maintenance Fund. The City has no obligation to make payments from any other source, nor to issue additional revenue bonds to satisfy such costs. The City is not under any obligation to make any future encumbrances or appropriations for this Agreement, nor is the City under any obligation to amend this Agreement to increase the Maximum Contract Liability above.”

3. Paragraph 6., “Term” of the Existing Agreement is hereby amended by deleting the said subparagraph in its entirety and substituting in its place the following:

“6. TERM:

A. The Term of this Agreement shall commence on the Effective Date of the Existing Agreement, and shall terminate at 11:59 P.M. on December 31, 2018, unless sooner terminated as set forth in this Agreement. The Term may only be increased by written amendment to this Agreement, subject to the following exception: if the Term will expire prior to the completion by the Consultant of all Work previously authorized by the City and commenced by the Consultant, in the City’s sole discretion this Agreement shall remain in full force and effect for an additional period of time sufficient to permit completion of any such Work. The Consultant shall accept such an extension so that the requirements of this Agreement can be fulfilled.

B. If the Parties agree to extend the Term of this Agreement by written amendment as set forth in Paragraph 6.A; and if as a result of the extension of the Term of this Agreement the Parties determine that the Maximum Contract Liability set forth

herein must be amended pursuant to Paragraph 5, above, to provide additional Maximum Contract Liability, such increased compensation shall be proportionally based on the relationship the period of extension of the Term bears to the original Term.”

4. Paragraph 37., “Contract Documents; Order of Precedence” of the Existing Agreement is hereby amended by deleting the said subparagraph in its entirety and substituting in its place the following:

“37. CONTRACT DOCUMENTS; ORDER OF PRECEDENCE

This Agreement consists of Sections 1 through 44 which precede the signature page, and the following attachments which are incorporated herein and made a part hereof by reference (the “Contract Documents”):

Appendix No. 1:	Standard Federal Assurances
Appendix No. 3:	Nondiscrimination in Airport Employment Opportunities
Exhibit A:	Scope of Work
Exhibit B:	Compensation Schedule (OCIP)
Exhibit B-1	Estimated OCIP Premium Costs
Exhibit BB	Compensation Schedule (ROCIP)
Exhibit BB-1	Estimated ROCIP Premium Costs
Exhibit C:	Insurance Minimum Requirements

In the event of an irreconcilable conflict between a provision of Sections 1 through 44 and any of the listed attachments or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

- Appendices No. 1 and 3
- Sections 1 through 44 hereof
- Exhibit A
- Exhibit B
- Exhibit B-1
- Exhibit BB
- Exhibit BB-1
- Exhibit C”

4. The Existing Agreement is amended by the addition of the following Paragraph 44, “Electronic Signatures and Electronic Records”:

“44. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:
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.”

5. Except as modified or amended by this First Amendment to Agreement, all of the terms, provisions and conditions of the Existing Agreement are and shall remain valid, enforceable and in full force and effect as though fully set forth herein.

6. This First Amendment to Agreement shall not be or become effective or binding on the City until it is approved by the City Council for the City and County of Denver and fully executed by all signatories of the City and County of Denver.

[Signatures on Following Page]

EXHIBIT BB

**DENVER INTERNATIONAL AIRPORT ROCIP
Gallagher Compensation Schedule
January 15, 2013**

1. Consultant will be compensated on a Fee basis. The Fee is a percentage of the program construction values [CV] as defined below. The fee will be .132% [.00132] of CV. With estimated hard costs of \$274,937,212, the Consultant's estimated Fee is as noted below.
2. This fee covers all basic ROCIP coverages selected including General Liability, Excess Liability and Workers Compensation.
3. If other coverages are required, such as Builders Risk, Professional Liability, Pollution Liability or other similar coverages, Consultant will be paid 5% commission rate on those specific policies.
4. The Fee will be billed in annual installments (starting April 1, 2013) over the term of the ROCIP Program, currently through 2017 unless otherwise agreed. The Fee is based on the initial estimated construction values and will be adjusted upwards only depending on the final audited CVs placed in the program. The annual installment schedule is proposed as follows:

Broker Fee	2013	2014	2015	2016	2017	Total
Fee = .132% of CV	\$150,000	\$105,000	\$36,000	\$36,000	\$36,000	\$363,000

5. Consultant will bill the ROCIP program on a monthly basis for OccMed of Colorado, Inc. Drug Screening Charges for contractors participating in the ROCIP Program. These Drug Screening charges are shown separately as noted below are annual estimates only.

OccMed Drug Screening Costs	Total
Billed Monthly	Not to Exceed \$270,000 over a three year period (2013 to 2015)

6. Consultant's service proposal is to include all services performed during the four-year OCIP program term and the ten-year tail period for Completed Operations or the close-out of the OCIP, whichever occurs earlier. It is important to recognize that once the projects are completed, Consultant must continue to provide services necessary to close out the OCIP including monitoring all pending claims.

7. Additional Loss Control Services can be added and the cost will vary depending on the scope of services and the frequency. To the extent additional loss control services are required, other than those set forth in the proposal, an hourly rate of \$125 for additional Loss Control Services rendered.

Proposed Definition of CV for Fee Purposes

Contract Value means the total contract amount between the General Contractor(s) or Construction Manager(s) at Risk and the Sponsor(s). Contract Value shall include all change orders that increase or decrease Contract Value. We will use the estimated Contract Value at the start of the project for purposes of initial fee considerations. Absent express agreement to the contrary, at audit we will replace the estimated Contract Value with the actual Contract Value at project start or at policy inception if the project was underway prior to policy inception. Contract costs for any contractor that at no time was an Insured under this policy shall not be included in Contract Value.

Exhibit BB- 1

Estimated ROCIP Premium Costs

CV				\$ 274,937,212
PAYROLL				\$ 47,891,792
TERM			60 months	
PRIMARY GENERAL LIABILITY (GL) LIMITS			2/4/4	
WORKERS COMPENSATION (WC) LIMIT			Statutory	
DEDUCTIBLE			\$ 250,000	
PRIMARY WC RATE	1.8803	\$100/Payroll		\$ 900,509
PRIMARY GL RATE	0.8414	\$100/Payroll		\$ 402,962
PRIMARY AGGREGATE DEDUCTIBLE RATE	5.638	\$100/Payroll		\$ 2,700,139
PRIMARY MAX COSTS				\$ 4,003,610
EXCESS LIABILITY POLICIES PREMIUM				\$ 2,500,000
BUILDERS RISK PREMIUM				\$ 240,000
CONTRACTORS POLLUTION PREMIUM				\$ 155,000
OWNERS PROTECTIVE PROFESSIONAL INDEMNITY & LIABILITY PREMIUM				\$ 523,000
TOTAL NOT TO EXCEED PREMIUMS				\$ 7,421,610

Contract Control Number: PLANE-201100685-01

Contractor Name: ARTHUR J GALLAGHER RISK MGMT SVCS INC

By: Jeffrey R. Kassal

Name: Jeffrey Kassal
(please print)

Title: Area President
(please print)

ATTEST: [if required]

By: Priscilla McLaughlin

Name: Priscilla McLaughlin
(please print)

Title: Area Sr Vice President
(please print)



Contract Control Number: PLANE-201100685-01

Contractor Name: ARTHUR J GALLAGHER RISK MGMT SVCS 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 _____

