

SIXTH AMENDATORY AGREEMENT

THIS SIXTH AMENDATORY AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, (the "City"), and **PHOENIX LOSS CONTROL INC.**, a Colorado corporation with an address of P.O. BOX 27087, Denver, Colorado 80227 (the "Consultant").

BACKGROUND:

A. The City and the Consultant entered into an Agreement, dated December 18, 2007 and amended the Agreement on September 9, 2008, December 2, 2008; December 22, 2009, June 22, 2010 and November 29, 2010 (the "Agreement") to provide professional subrogation and recovery services.

B. The parties wish to amend the Agreement to increase the term, the maximum amount payable under the Agreement to the Consultant and other contract language as follows; and

THUS, in consideration of the premises and the mutual covenants and obligations herein set forth the parties agree as follows:

1. All references to "...Exhibit A and B,..." in the existing Agreement shall be amended to read: "...Exhibit A, A-1 and B, B-1, as applicable...". The Scope of Work and Pricing marked as Exhibit A-1 and B-1 attached hereto this Sixth Amendatory Agreement are incorporated herein by reference.

2. That section 1 of the Agreement entitled "**SCOPE OF SERVICES**" is amended to read as follows:

"1. SCOPE OF SERVICES: The Consultant, under the general direction of, and in coordination with the City's Director of Risk Management, or other designated supervisory personnel (the "Manager"), shall diligently perform the services described on attached **Exhibit A-1**. The Consultant agrees that during the term of this Agreement it shall fully coordinate its work with any person or firm under contract with the City doing work or providing services which affect the Consultant's services. The Consultant shall faithfully perform the work described in **Exhibit A-1** in accordance with the standards of care, skill, training, diligence and judgment provided by highly competent individuals and entities that perform services of a similar nature."

3. That section 2 of the Agreement titled "**TERM**" is amended to read as follows:

"2. TERM: The term of the Agreement is from December 18, 2007 through December 31, 2012, unless terminated earlier pursuant to the provisions of this Agreement."

4. That section 3 (D)(i) of the Agreement titled **Maximum Contract Liability** is

amended to read as follows:

D. Maximum Contract Liability:

(i) Any other provision of this Agreement notwithstanding, in no event shall the City be liable to pay for services rendered and expenses incurred by the Consultant under the terms of this Agreement for any amount in excess of **Seven Hundred Fifty Two Thousand Five Hundred Dollars and No Cents (\$752,500.00)** (the “Maximum Contract Amount”). The Consultant acknowledges that the City is not obligated to execute an amendment to this Agreement for any services and that any services performed by Consultant beyond that specifically described herein are performed at Consultant’s risk and without authorization under this Agreement.”

5. That section 12(B) entitled “**Proof of Insurance**” is amended to read as follows:

12. INSURANCE:

B. Proof of Insurance: Consultant shall provide a copy of this Agreement to its insurance agent or broker. Consultant certifies that the attached certificate of insurance (preferably an ACORD certificate of insurance) complies with all insurance requirements of this Agreement. The City’s acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Consultant’s breach of this Agreement or of any of the City’s rights or remedies under this Agreement. The City’s Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.”

6. That section 35 of the Agreement entitled “**PROHIBITION OF EMPLOYMENT OF ILLEGAL IMMIGRANTS TO PERFORM WORK UNDER THIS AGREEMENT**” is amended to read as follows:

35. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:

a. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”).

b. The Consultant certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

(2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

c. The Consultant also agrees and represents that:

(1) It shall not knowingly employ or contract with an illegal

alien to perform work under the Agreement.

(2) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Consultant that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

(4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Consultant to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Consultant will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.

(6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. 20-90.3.

d. The Consultant is liable for any violations as provided in the Certification Ordinance. If Consultant violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Consultant shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Consultant from submitting bids or proposals for future contracts with the City.”

7. That a new section numbered 36 is included in the Agreement readings as follows:

36. 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.

8. This Sixth Amendatory Agreement may be executed in two (2) counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument.

9. Except as herein amended, this Sixth Amendatory Agreement affirmed and ratified in each and every particular.

EXHIBIT LIST:

EXHIBIT A-1 - SCOPE OF SERVICES

EXHIBIT B-1 – PRICING

[SIGNATURE PAGE FOLLOWS]

EXHIBIT A-1
SCOPE OF WORK

Review all police reports or any other forms of damage reports for subrogation possibilities regarding property damage, automobile damage.

Record in STARS, all such reports if the party is a third party damager and not the City itself. All cases will be followed up per diary schedule in STARS and appropriate calls, letters, e-mails, fax or other means of communication will be used to ensure each case is followed up timely, completely and to resolution.

For all property and auto cases, work with the appropriate agency to gather all repair costs (initial and supplemental), set up claims with insurance company and/or damager and send out 1st and 2nd demand letters, provide all repair cost and police report backup to insurance company and/or damager, follow up and when appropriate, send the case on to Collections or review with and refer to City Attorney's Office (CAO).

For all cases that involve restitution, Phoenix adjuster will initiate and document all work with District Attorney's Office and/or Courts to obtain restitution award. The City's administrative support will document all transactions into STARS as restitution payments are received by the City.

On all subrogation cases, all transactions, documentation, information, letters and reports will be recorded and attached in STARS.

EXHIBIT B-1

PRICING:

Compensation is as follows:

Direct Recoveries:	25%
CAO Recoveries:	5%
Restitution Recoveries:	15%
Collection Recoveries:	10%

IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals at Denver, Colorado as of the day first above written.

Contract Control Number: CE81018

Vendor Name: PHOENIX LOSS CONTROL INC.

By: William Rush

Name: William Rush
(please print)

Title: President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



Contract Control Number: CE81018

Vendor Name: PHOENIX LOSS CONTROL INC.

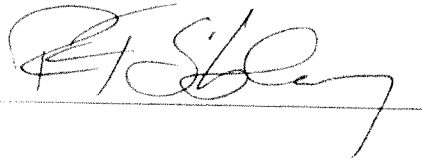
IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By

A handwritten signature in black ink, appearing to be "R. S. [unclear]", written over a horizontal line.

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

DAVID W. BROADWELL, Attorney
for the City and County of Denver

By _____

By _____

By _____

