

FIFTH AMENDATORY AGREEMENT

THIS FIFTH AMENDATORY AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, (the “City”), and **MARSH USA, INC.**, a Delaware corporation with its principal place of business in Colorado of 1225 17th Street, Denver, Colorado 80202 (the “Consultant” or “Broker”), collectively “the parties.”

WITNESSETH

WHEREAS, the City and the Consultant entered into an Agreement dated July 27, 2010, an Amendatory Agreement dated November 9, 2010, a Second Amendatory Agreement dated March 23, 2011, a Third Amendatory Agreement dated May 25, 2012 and a Fourth Amendatory Agreement dated April 4, 2013 (together the “Agreements”); and

WHEREAS, the City and the Consultant desire to amend the Agreement to extend the term and add additional funding;

NOW THEREFORE, in consideration of the premises, and the mutual covenants and obligations herein contained, the parties agree as follows:

1. All references to “...Exhibit C ...” in the Existing Agreement shall be amended to read: “...Exhibit C, C-1, C-2, C-3 and C-4 as applicable...” An updated Exhibit C-1 and Compensation and Payment marked as Exhibit C-4 are attached to this Fifth Amendatory Agreement and incorporated herein.

2. Paragraph 3 of the Agreement, entitled “**TERM**,” is hereby amended to read as follows:

“3. **TERM**: The Agreement will commence on August 1, 2010 and will expire on March 31, 2015 (the “Term”). Subject to the Manager’s prior written authorization, the Consultant shall complete any work in progress as of the expiration of the Term, and the Agreement will extend until the work is completed or earlier terminated by the Manager. At the end of the Term (or if the Agreement is terminated as set forth below), Consultant will assist the City in arranging a smooth transition process and will complete any transactional tasks started before the end of the term. However, Consultant’s obligation and the obligation of its affiliates to provide new services will cease when the term expires or the Agreement is terminated.

The City anticipates conducting a new procurement process for brokerage services in 2014. In the event that the City completes a new RFP process

prior to the end of the term of this Agreement the City may, in its sole discretion, terminate this agreement for the City's convenience. In the event that the City terminates this agreement following a new RFP process for broker services Broker will be entitled to no compensation or other payment as a result of termination."

3. The following subparagraphs of Paragraph 4 of the Agreement, entitled "**COMPENSATION AND PAYMENT**," are hereby amended to read as follows:

"**a. Fee:** The City shall pay and the Consultant shall accept as the sole compensation for services rendered and costs incurred under the Agreement \$564,000. Amounts billed may not exceed the budget set forth in **Exhibits C, C-1, C-2, C-3 and C-4** for broker fee."

"**d. Maximum Contract Amount:**

(1) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **FIVE HUNDRED SIXTY-FOUR THOUSAND DOLLARS AND NO CENTS (\$564,000.00)** (the "Maximum Contract Amount"). This amount includes eight months of broker fees. The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Consultant beyond that specifically described in **Exhibits A, A-1, A-2 and A-3**. Any services performed beyond those in **Exhibits A, A-1, A-2 and A-3** are performed at Consultant's risk and without authorization under the Agreement."

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

[SIGNATURE PAGE TO FOLLOW]

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-CE02088-05

Contractor Name: MARSH USA INC

By: 

Name: Amanda Davies
(please print)

Title: Vice President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



EXHIBIT C1
SCHEDULE OF POLICIES
APPLICABLE TO INITIAL TERM AND COMPENSATION

The scope of work includes placement for lines of insurance coverage specified below. Broker acknowledges that additional lines of coverage may be awarded and currently placed lines may be lapsed or awarded to another broker during the term of the Agreement.

Line of Coverage Awarded	Policy Period
Helicopter Liability	Sept. 1, 2013 to Sept. 1, 2014
DIA Pollution	Sept. 1, 2013 to May 1, 2016
Airport Liability- Primary	Sept. 1, 2013 to May 1, 2015
Airport Liability – Excess	Sept. 1, 2013 to May 1, 2015
Property	Sept. 1, 2013 to May 1, 2015
Mortgage Protection	Sept. 1, 13 to Sept. 1, 2014
Forced Placed Property	Sept. 1, 2013 to Sept. 1, 2014
Misc. Consulting – Property and Liability	

**EXHIBIT C-4
COMPENSATION AND PAYMENT**

Broker and Consulting Fees

Broker and Consulting Fees: \$70,000 for a twelve (12) month period, payable in three installments.

Broker and Consulting Fees History; Maximum Contract Amount

Original Agreement (August 1, 2010 – March 31, 2011) - \$150,000
Amendatory Agreement (November 9, 2010 – November 9, 2011) - \$25,000
Second Amendment (March 31, 2011 – March 31, 2012) - \$155,000
Third Amendment (March 31, 2012 – March 31, 2013) - \$80,000
Fourth Amendment (March 31, 2013 – March 31, 2014) - \$84,000
Fifth Amendment (March 31, 2014 – March 31, 2015) - \$70,000

Maximum Contract Amount - \$564,000

Anticipated Agreement Approval Date:	March 31, 2014
First Installment Due Date:	May 1, 2014
Second Installment Due Date:	August 1, 2014
Third Installment Due Date:	November 1, 2014

Schedule of Policies Applicable To Term and Compensation

See Exhibit C1 – Schedule of Policies Applicable to Term and Compensation

Invoicing

Broker will submit invoices for the insurance policy premiums placed during the term of this Agreement or any amendments thereto no more than 30 days after binding coverage and preferably within five business days of binding coverage.

CCD and DIA reserve the right to be invoiced separately.

Additional Services

Broker and Consulting Fee to include items that appear in Exhibit C1 and Exhibit A-1, Scope of Work, with the exception of the Additional Services identified in Exhibit A-1.

Where CCD and/or DIA determines it may have a need for such Additional Services, it is anticipated that CCD and/or DIA may request that Broker submit a proposal for such Additional Services including compensation on a fixed not to exceed (FNTE) project fee basis or on an

estimated hours and standard hourly rates then in effect basis. Any such Additional Services and associated compensation shall be mutually agreed upon in advance and addressed by amendment to this agreement or by separate agreement.

Any placements not in effect at the inception or the anniversary date of this agreement shall be deemed an Additional Service. The fee for such Additional Service(s) will be mutually agreed upon by both CCD and/or DIA and Marsh. The placement will become subject of this agreement's annual fee effective the next anniversary date of this agreement.

In the event the need arises, non-U.S. Marsh affiliates shall be compensated on a commission basis customary in that market. That commission shall be in addition to this agreement as compensation for those Additional Services. Marsh shall disclose to CCD and/or DIA and obtain its prior approval of the placement and related commission to be earned prior to Marsh effecting the placement.

In the event Marsh must access a particular insurance product via a wholesale broker, the wholesale broker may be compensated via commission, with CCD/ and or DIA's prior approval. Marsh will not be a party to nor a beneficiary of that compensation transaction.