

**FIRST AMENDMENT TO THE CONTRACT FOR  
BROKER AGENT SERVICES**

THIS AMENDMENT is entered into this 9th day of Sept, 2011 by THE CITY OF GAINESVILLE, FLORIDA, a municipal corporation ("CITY"), and Marsh USA Inc., ("CONTRACTOR").

WHEREAS, the CITY and CONTRACTOR have previously entered into an agreement for Broker/Agent Services for Property, Casualty and Workers' Compensation Insurance and Risk Management Services dated October 15, 2008 (the "Agreement") and

WHEREAS, the CITY and CONTRACTOR desire to amend the Agreement;

NOW, THEREFORE, the parties agree as follows:

- 1. Contractor will continue to provide the services described in the Agreement for the period October 1, 2011 through September 30, 2013 . Contractor will be compensated for providing the services as follows: (i) \$189,000 for the period October 1, 2011 through September 30, 2012; and (ii) \$198,450 for the period October 1, 2012 through September 30, 2013. The CITY shall pay such fees in accordance with the terms of the Agreement.
- 2. This amendment, when executed, together with the original Agreement, constitutes the entire contract between the parties.

WITNESS:

*Osalia A Coes*  
Title: *Vice President*

MARSH USA INC:

*[Signature]*  
Title: *SVP*

WITNESS:

*Helen Harris*  
Title: *Administrative Asst.*

CITY OF GAINESVILLE, FLORIDA:

*[Signature]*  
Russ Blackburn, City Manager

APPROVED AS TO FORM AND LEGALITY  
By: *[Signature]*  
City Attorney

**CITY OF GAINESVILLE****AGREEMENT FOR PROFESSIONAL SERVICES  
for BROKER AGENT SERVICES**

This AGREEMENT ("Agreement") made and entered into this 15<sup>th</sup> day of October, 2008 between the CITY OF GAINESVILLE, ("CITY"), and Marsh USA Inc. (CONSULTANT).

WHEREAS, CITY is desirous of utilizing Marsh USA Inc to provide Broker/Agent services for Property, casualty and Workers' Compensation Insurance and Risk Management Services ; and

WHEREAS, CONSULTANT. is willing and capable of performing such services.

NOW, THEREFORE, CITY and CONSULTANT agree as follows:

**I. SCOPE OF SERVICES**

CONSULTANT shall provide Broker/Agent services for Property, casualty and Workers' Compensation Insurance and Risk Management Services; as provided for in the following documents, which are referenced hereto and made a part hereof as if fully contained herein.

In the event of conflict, the Order of precedence shall be as follows:

Agreement  
Addendum #1 dated June 30, 2008  
RMDX-80087 (Request for Proposal) dated June 6, 2008  
Marsh USA Inc. proposal dated July 3, 2008 (the "Proposal")

**II. TERM**

The term of this AGREEMENT shall be effective October 1, 2008 and shall expire September 30, 2011. At the end of the contract period and upon satisfactory performance, the City, may at its option, negotiate and extend the contract for one (1) additional two (2) year period. Either party may terminate this Agreement upon 90 days' prior written notice. The obligation of CONSULTANT and its affiliates (including its UK affiliates) to provide services to the City will cease upon the effective date of termination.

**III. COMPENSATION/PAYMENT**

CONSULTANT shall be compensated in accordance with rates, terms and conditions as described in Section 3 of the Proposal and the sample client service agreement included in the Proposal.

Invoices received from the CONSULTANT pursuant to this Agreement will be reviewed and approved by the initiating department, which shall confirm that services have been rendered in conformity with the Agreement and then will be processed for payment. Invoices will normally be paid within thirty (30) days following approval.

Additional expenses must be pre-approved by CITY before they will be approved for reimbursement. CITY may request CONSULTANT to provide copies of paid receipts, invoices, or other documentation acceptable to CITY for any approved additional expenses

Payment. Payment will be due to the Contractor thirty (30) days after receipt of the invoice, provided that Contractor shall not submit more than one invoice per thirty-day period. Payment may be withheld by the City due to failure by the Contractor to comply with these Specifications or because unacceptable equipment or materials were delivered as determined by the City's inspection or failure by the Contractor to comply with the "Prompt Payment: Late Payments by Contractors to Subcontractors and Material Suppliers; penalty:" clause. The City shall notify the Contractor of any unsatisfactory performance as soon as practicable so that it can be corrected without delaying payment if possible.

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~~Contractor payment by City issued procurement card (currently VISA) is preferred. Otherwise, contractor will be paid electronically as an electronic funds transfer (EFT).~~

#### IV. TERMINATION

If the CONSULTANT fails to observe or perform or is guilty of a violation of the Contract Documents, then the CITY, after serving at least thirty (30) days written notice to the CONSULTANT of its intent to terminate and after such fault shall continue unremedied for a period of thirty (30) days, may terminate the Contract without prejudice to any other rights or remedies it may have under this AGREEMENT.

#### V. INDEPENDENT CONTRACTOR

CONSULTANT shall be considered as an independent contractor and as such shall not be entitled to any right or benefit to which CITY employees are or may be entitled to by reason of employment. CONSULTANT shall be solely responsible for the means, method, techniques, sequences, and procedures utilized by the CONSULTANT in the full performance of this AGREEMENT.

#### VI. INDEMNIFICATION

CONSULTANT agrees to indemnify and hold harmless the CITY, its officers, agents, or employees from suits, actions, damages, liability and expense in conjunction with loss of life, bodily or personal injury or property damage to the extent arising from out of any act of negligence or intentional wrongdoing on the part of the CONSULTANT.

## VII. SOVEREIGN IMMUNITY

Nothing in this AGREEMENT shall be interpreted as a waiver of the CITY'S sovereign immunity as granted under Section 768.28, Florida Statutes.

## VIII. TIMELINESS

The CITY and CONSULTANT further agree time is of the essence in performance of work and that work under this AGREEMENT is required to be performed in an expeditious manner and with care reasonably expected of a consultant performing these duties.

## IX. VALIDITY

If any provision of this AGREEMENT is contrary to, prohibited by, or deemed invalid by applicable law, rules or regulations of any jurisdiction in which it is sought to be enforced, then such provision shall be deemed inapplicable and omitted, and shall not invalidate the remaining provisions of this AGREEMENT.

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## X. RECORDS/AUDIT

Contractor shall maintain records sufficient to document their completion of the scope of services established by this Contract. These records (other than internal Contractor correspondence) shall be subject at all reasonable time and upon prior written notice to review, inspection, copying and audit by persons duly authorized by the City. These records shall be kept for a minimum of three (3) years after completion of the Contract. Records which relate to any litigation, appeals or settlements of claims arising from performance under this AGREEMENT shall be made available until a final disposition has been made of such litigation, appeals, or claims. Notwithstanding the foregoing, files (other than core documents, as defined in Contractor's record retention policy) will not be retained for more than five years after the expiration of a particular policy's term.

## XI. INSURANCE

The Contractor shall furnish the City a Certificate of Insurance in a form reasonably acceptable to the City for the insurance required. Such certificate provided by the Contractor must state that the City will be given thirty days written notice (except the City will accept ten (10) days written notice for non-payment) prior to cancellation or material change in coverage.

Worker's Compensation providing coverage in compliance with Chapter 440, Florida Statutes.

Broad form commercial general liability insurance including contractual coverage of \$1,000,000 each occurrence and \$2,000,000.00 aggregate for bodily injury and property damage.

The City shall be an additional insured on such Commercial General (Public) Liability Insurance for the City's vicarious liability arising from Contractor's provision of services under this Contract, and the Contractor shall provide copies of endorsements naming the City as additional insured for the City's vicarious liability arising from the Contractor's provision of services pursuant to the Agreement.

Professional Liability Insurance (Errors and Omissions) \$1,000,000.00 per claim

Commercial General (Public) Liability \$500,000 combined single limit for bodily injury and property damage.

XII. CONTACT PERSONS

The parties hereto designate the following persons to be contacted regarding the performance of this agreement:

CITY	CONSULTANT
Mr. Steve Varvel Risk Manager City of Gainesville P.O. Box 490 Gainesville, FL 32602 352-334-5070	Virginia E. Dellago Client Executive/Senior Vice President Marsh USA Inc. 3031 N Rocky Point Drive, West #700 Tampa, FL 33607 813-207-5177

XIII. ADDITIONAL TERMS AND CONDITIONS

**Taxes and Fees.**

Contractor may place insurance for the City that may require the payment of insurance premium taxes (including U.S. federal excise taxes), sales taxes, use taxes, surplus or excess lines and similar taxes and/or fees to federal, state or foreign regulators, boards or associations. The City agrees to pay such taxes and fees. Contractor will remit any taxes and fees that it collects from the City to the appropriate authorities.

**City Responsibilities.**

The City shall be solely responsible for the accuracy and completeness of all information that it furnishes to Contractor and/or insurers, and the City shall sign any required application for insurance. Contractor shall not be responsible to verify the accuracy or completeness of any information that the City provides, and Contractor shall be entitled to rely on that information. Contractor shall have no liability for any errors, deficiencies or omissions in any services provided to the City, including the placement of insurance on the City's behalf, that are based on inaccurate or incomplete information provided to

Contractor. The City understand that the failure to provide all necessary information to an insurer, whether intentional or by error, could result in the impairment or voiding of coverage.

The City will review all policy documents provided to the City by Contractor.

**Other Revenue.**

If Contractor assists the City with obtaining premium financing, Contractor may receive compensation from the finance company that provides the premium financing. Contractor shall provide to the City information relating to Contractor's and its affiliates' arrangements with and interests in the premium finance companies to be considered by the City and the compensation that Contractor and its affiliates would receive from these companies for its placements.

Contractor earns and retains interest income on premium payments held by Contractor on behalf of insurers between the time Contractor receives these payments from the City and the time Contractor remits these payments to the insurers, where permitted by applicable law.

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**Disclaimers; Limitation of Liability.**

Contractor does not speak for any insurer, is not bound to utilize any particular insurer and is not authorized to make binding commitments on behalf of any insurer, except under special circumstances which Contractor shall endeavor to make known to the City. Contractor shall not be responsible for the solvency of any insurer or its ability or willingness to pay claims, return premiums or other financial obligations. Contractor does not guarantee or make any representation or warranty that insurance can be placed on terms acceptable to the City. Contractor will not take any action to replace the City's insurers unless the City instructs Contractor to do so.

Contractor will not be responsible for the adequacy or effectiveness of any insurance programs or policies implemented by another broker, or any acts or omissions occurring prior to Contractor's engagement.

Any loss control services performed by Contractor are advisory in nature. These services do not constitute a safety inspection and do not include every loss potential, hazard, statutory or code violation or violation of good practice. All surveys and reports are based upon conditions observed and information supplied by the City. Contractor does not guarantee or warrant the safety of any site or operation or that the City or any of its sites or operations is in compliance with federal, state or local laws, codes, statutes, ordinances or recommendations. Contractor's liability, if any, relating to or arising out of loss control services performed under this Agreement shall not exceed Contractor's total compensation under this Agreement.

XIV. ENTIRE AGREEMENT

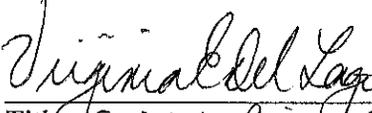
This AGREEMENT constitutes the entire AGREEMENT between the CITY and CONSULTANT. Any modifications, amendments or alterations shall be in writing and executed by both parties prior to becoming effective.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT the day and year first written above.

CITY OF GAINESVILLE

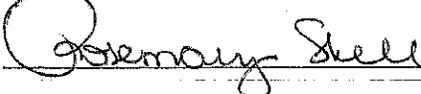
MARSH USA INC.

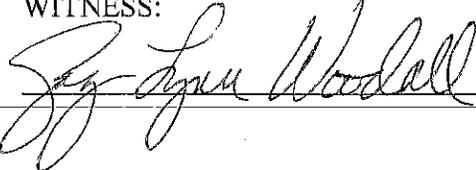
  
Russ Blackburn, City Manager

 SYA  
Title: Senior Vice President, Client Executive

WITNESS:

WITNESS:





APPROVED AS TO FORM AND LEGALITY

