

ORIGINAL
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RESOLUTION NO.: R-2012-056

Authorizing the City Manager to execute a contract between the City of Columbia and Companion Third Party Administrators, LLC for administration of the City's self-insured Tort Program

BE IT RESOLVED by the Mayor and City Council this 26th day of June, 2012, that the City Manager is authorized to execute the attached Contract for Third Party Administration for Tort Liability with Companion Third Party Administrative Services, LLC, for a term of two (2) years, with an option to renew for an additional two (2) year period, for a fee of One Hundred Forty-five and No/100 (\$145.00) Dollars per claim, with a minimum annual fee of Ninety Thousand and No/100 (\$90,000.00) Dollars.

Requested by:

Dana M. Thye
Senior Assistant City Attorney



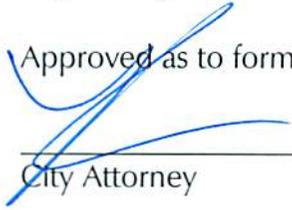
Mayor

Approved by:



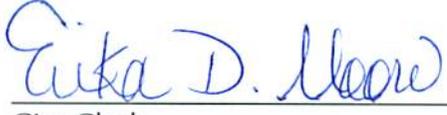
City Manager

Approved as to form:



City Attorney

ATTEST:



City Clerk

Introduced: 6/26/2012
Final Reading: 6/26/2012

**Companion Third Party Administrators, LLC
Service Agreement for Administration of a
South Carolina Tort Liability Self-Insurance Program**

Article I: Parties to the Agreement:

This Service Agreement ("Agreement") is made effective this 1st day of July, 2012, between Companion Third Party Administrators, LLC (hereinafter referred to as "Companion") and City of Columbia (South Carolina) (hereinafter referred to as the "City").

Article II: Recitals:

Whereas the City self-insures its own exposure for Tort Liability and desires to have Companion provide third party claims management services in connection with this self-insured program.

Whereas the City warrants it is a self-funded entity under the South Carolina Tort Claims Act.

Whereas Companion will provide such services on the terms and conditions hereinafter stated and does hereby warrant that it can provide all the services set out in this Agreement.

Whereas Companion is duly authorized by all applicable state and federal regulatory authority, or will contract with appropriately licensed representatives in those states where Companion is not licensed or approved to provide such services hereinafter stated.

Article III: Terms of Agreement:

Initial Term of Agreement: The initial term of this Agreement will be for two (2) years and this Agreement shall commence on July 1, 2012 at 12:00 AM Eastern Standard Time and terminate on June 30, 2014 at 11:59 PM Eastern Standard Time, unless this Agreement is extended or renewed before June 30, 2014 by written consent of both parties. The City shall, in its sole discretion, have the option to negotiate a renewal of this contract for an additional two-year term.

Cancellation Provision: This Agreement may be canceled by either party for any reason, at anytime, provided that a written notice of such cancellation is received by the other party not later than ninety (90) days prior to the cancellation of this Agreement.

Discontinuance of Operations: Should the City discontinue its business operation for any reason, all fees due to Companion shall be paid immediately on a pro-rated basis. Companion shall have no further obligation to continue to provide the services

called for in this Agreement, and this Agreement shall be considered terminated as of the date the City ceases operations or files for bankruptcy.

Actions upon Termination: Upon termination or cancellation of this contract:

Companion will process qualified claims or losses remaining open at the termination of this Agreement.

City shall be entitled to the files Companion has maintained for qualified claims or losses (but not including any computer hardware, firmware, software, or other information proprietary to Companion).

Companion, or its agents, employees or attorneys shall continue to be entitled to inspect such files and make copies or extracts therefrom.

City is entitled to obtain copies of any and all non-claims related files (general administrative, marketing, risk management, etc.) pertaining to the City and maintained by Companion.

Companion agrees to safeguard all the City files and to make every reasonable effort to transfer such files as completely and expeditiously as practicable.

All files (claims and non-claims) shall be transferred to the City in the manner, means and format agreed upon by the parties.

Article IV: General Conditions of Agreement:

Full and complete understanding of Agreement: This Agreement represents the full and final understanding of the parties with respect to the subject matter described herein and supersedes any and all prior agreements or understandings, written or oral, express or implied. The parties agree to undertake this Agreement in good faith.

Headings: Headings herein are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

Amendment of Agreement: This Agreement may only be amended, modified or changed by a written statement signed by both parties to this Agreement.

Sole benefit: This Agreement is for the sole benefit of the parties hereto, and in no event shall this Agreement be construed to be for the benefit of any third party, nor shall either party be liable for any loss, liability, damages or expenses to any person not a party to this Agreement.

Partnership/Joint Venture – Not intended or created: Nothing in this Agreement is intended, nor shall it be deemed to constitute a partnership or joint venture between the parties.

Performance: Companion shall be fully responsible for exercising reasonable care at all times in the performance of its obligations hereunder.

Errors and Omissions Liability Insurance: Companion agrees that throughout the duration of this Agreement, it will maintain a policy of insurance which would indemnify City for any liability for damages up to Two Million Dollars (\$2,000,000.00) Dollars that may arise out of Companion's, errors or omissions in executing its obligations under this Agreement.

Assignment and Subcontract: This Agreement is not assignable by Companion. Additionally, Companion will not subcontract for any services provided for under this Agreement without prior consent of the City.

Successors in Interest: This Agreement shall be binding upon and inure to the benefit of the successors in interest and permitted assigns of the parties hereto.

Severability: The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if the invalid or unenforceable provision had been stricken or revised to the minimum extent necessary to make it valid and fully enforceable under applicable law.

Waiver: The failure of any party to enforce any provisions of this Agreement shall not constitute a waiver by such party of any provision. A past waiver of a provision by either party shall not constitute a course of conduct of a waiver in the future with respect to that same provision.

Confidential Information: "Confidential Information" shall include all information relating to claim information and loss history relating to the City's employees or claimants. Companion may only utilize the confidential information for the purpose of performing its obligations under this Agreement. Notwithstanding the preceding, Companion may use the City's Confidential Information for Companion's internal purposes (such analysis, aggregation and summary purposes) provided that such data is de-identified and the confidentiality of such Confidential Information is maintain by Companion.

Limitations of Parties Liability: By entering into this Agreement, it is hereby expressly agreed by the parties to this Agreement that:

Companion does not assume any liabilities to any person or entity, except those expressly set forth in this Agreement.

Companion does not assume any obligations or liabilities to any person or entity that is not a party to this Agreement, including without limitations, the City's employees.

Nothing in this Agreement is intended to, nor shall be construed to, nor shall give rise to, any rights or causes of action in any person or entity not a party to this

Agreement against either of the parties to this Agreement.

Timing of Services: Companion may exercise its own judgment, within the parameters set forth herein, as to the time and manner in which it performs the services required hereunder.

Practice of Law: It is understood that Companion will not perform and the City will not request performance of any services which may constitute the practice of law.

Applicable Law: The terms and conditions of this Agreement shall be governed by the laws of the State of South Carolina, both as to interpretation and performance. Companion agrees to subject itself to the jurisdiction and venue of the Circuit Courts of Richland County, South Carolina as to all matters and disputes arising or to arise under this Agreement and the interpretation and performance thereof.

Notices: Any notice required to be given under this Agreement shall be sent by certified or registered mail postage prepaid to:

In the case of Companion:

Mr. Robert C. Rhodes, Vice-President & Chief Operating Officer
Companion Third Party Administrators, LLC
P.O. Box 100165
Columbia, South Carolina 29202-3165

In the case of the City:

Kenneth E. Gaines, City Attorney (or his successor)
City of Columbia
P.O. Box 667
Columbia, South Carolina 29202

and

Chip Timmons, Risk Manager (or his successor)
City of Columbia
P.O. Box 147
Columbia, South Carolina 29217

Article V: Duties and Obligations of Companion:

In consideration of the service fees outlined in Article VIII of this Agreement, Companion agrees to provide the following services:

To provide all appropriate claims forms believed by Companion to be beneficial for the efficient operation of the City's self-insured program. All forms shall be approved

by the City's legal counsel prior to use by Companion.

To review all qualified claim, incident, or loss reports against the City. Unless otherwise directed, to determine liability of the City under state or federal law.

To conduct an investigation of each reported qualified claim or loss (as defined above in subparagraph 2) to the extent deemed necessary by Companion in the performance of its obligations hereunder.

With the consent of the City, to arrange for independent investigators, medical or other experts to the extent deemed necessary by Companion in connection with processing any qualified claim or loss, with the cost to be borne by the City.

To perform reasonable and/or necessary administrative and clerical work in connection with qualified claims or losses, including the preparation of checks or drafts drawn on the account or accounts established pursuant to Article VI below.

Provide all required reporting of settlements, judgments or awards, where medical expenses are paid to a Medicare-eligible claimant to the Centers for Medicare and Medicaid Services (CMS) in compliance with the Medicare Secondary-Payer Mandatory-Reporting Requirements.

To maintain a file for each qualified claim or loss, which shall be available for review by the City at any reasonable time.

To notify Excess of Loss and/or Aggregate Stop Loss insurers of the City of all qualified claims or losses according to the terms of the Excess or Aggregate agreements and provide reports in accordance with Article VII, Paragraph 2 below.

To employ its best efforts to pursue all qualified claims, determining if the facts support a claim by the City for subrogation and aggressively pursue the maximum amount possible for all qualified claims against third parties.

To assist the City's legal counsel or experts, when and as requested, in preparing the defense of litigated cases and negotiating settlements.

To coordinate with such other firms as the City may direct to assist in servicing Tort Liability claims or accounts. It is understood at this time that no such firms are now under contract with the City and the City agrees not to employ other firms to meet any services specifically addressed in this Agreement to be provided by Companion.

To maintain a current estimate of cost of all anticipated losses (hereinafter referred to as loss reserves) on each qualified claim or loss.

To use computer programs to furnish to the City selected loss and informational reports either monthly, quarterly, or annually which are described under Article VII

below.

To present a Claims Administration Report to the City periodically as requested by the City.

To attend and participate in meetings with City as requested to provide background and instruction to Risk Managers relating to Tort Liability procedures and claims-handling.

Companion agrees to have a Claims Adjuster to attend hearings, or meetings as required by the City.

To immediately notify the City's legal counsel of any claim, loss or report of any occurrence involving serious bodily injury or death or which may potentially exceed Fifty Thousand and 00/100 (\$50,000.00) Dollars for bodily injury and/or property damage.

Article VI: Duties & Obligations of City:

The City agrees to provide the following:

At all times, to provide adequate funds for the payment of qualified claims and losses and of Allocated Loss Adjustment Expenses (ALAE).

For the purposes of this Agreement, ALAE shall mean costs, charges, or expenses of third parties, incurred by Companion, its agents or its employees, which are properly chargeable to a qualified claim or loss. These expenses include, without limitation, investigators, experts and witnesses, and fees for obtaining diagrams, reports, documents and photographs.

It is expressly understood Companion shall not be required to advance its own funds to pay losses or ALAE on behalf of the City.

To deposit such funds in a bank account or accounts established by Companion. The City shall arrange for Companion to write checks on the account or accounts for use in the payment of the City's qualified claims, losses and allocated loss adjustment expenses (ALAE). Such funds shall be provided at the inception of this Agreement in the amount of Fifty Thousand and 00/100 (\$50,000.00) Dollars and replenished promptly from time to time thereafter as needed upon notice by Companion to City.

To provide Companion payment authority and discretion to make settlements of qualified claims and losses, and to spend money for the adjustment of, and administration of claims, within certain restrictions:

Companion shall have full discretion to redeem, compromise, or settle any qualified claim or loss for an amount not to exceed Ten Thousand and 00/100 (\$10,000.00) Dollars for bodily injury, personal injury, and property damage, except for

sewer back-up and water main breakage claims or losses and claims or losses involving allegations of false arrest, malicious prosecution, excessive force or violation of civil or constitutional rights. Sewer back-up and water main breakage claims or losses should be adjusted in compliance with the protocol to be provided to Companion by the City, within the same authority for property damage (\$10,000.00). Companion shall immediately advise of and confer with City's legal counsel of any claims or losses involving allegations of false arrest, malicious prosecution, excessive force or violation of civil or constitutional rights and obtain authority from the City to redeem, compromise or settle such cases for any amount. Companion shall obtain settlement authority from the City to redeem, compromise, or settle any qualified claim or loss which exceeds its authority.

Companion shall have full discretion to make discretionary payments on any qualified claim or loss for expenses required in investigating, administering, defending and adjusting qualified claims and losses for an amount not to exceed Two Hundred and 00/100 (\$200.00) Dollars.

Any of these amounts may be changed at any time by the City upon ten (10) days prior written notice to Companion.

Companion will print and write all checks.

Article VII: Management of Information Reports:

Companion agrees to maintain computer programs for the purposes of monitoring and tracking qualified claims and losses (open and closed) that have been reported to the City.

Companion agrees to provide the City selected loss and informational reports either monthly, quarterly, or annually in a format to be mutually agreed upon by City and Companion.

Companion shall provide such electronic files and database information, on a monthly basis, as the City requires, and keep a current detailed historical database of all City claims in compliance or compatible with the Public Risk Database as is practical.

Article VIII: Service Fees and Incentives:

In consideration of the agreed services to be provided under this Agreement the City agrees to the following Service Fee Schedule for new claims incurred after the effective date of this Agreement.

City agrees to pay Companion a Service Fee of One Hundred Forty-five and 00/100 (\$145.00) Dollars per claim for Companion to administer claims management services for the period of this Agreement. A claim or a qualified claim is defined as all requests for payment occurring on or after July 1, 2012 arising out of a single incident or

occurrence.

City agrees to pay Companion in quarterly installments (based on an average of 1002 annual claims) of Thirty-six Thousand Three Hundred Twenty-two and 50/100 (\$36,322.50) Dollars in advance, beginning July 1, 2012 and every three (3) months thereafter for the first year of this Agreement. On July 1, 2013, if the number of claims for the preceding year is less than 1002, Companion will provide the City with a pro-rata credit in the amount of the per claim fee against the following year's fee. Notwithstanding the preceding, in no event will Companion's fee drop below \$90,000. On July 1, 2013, if the number of claims for the preceding year is greater than 1002, the City will pay the per claim fee for each claim over 1002.

City agrees to pay Companion 10% percent of all recoveries made by subrogation from third parties.

Payment of the above recoveries will be made by the City on a quarterly basis, outlined in Article VIII, Paragraph 1 above, and adjusted annually by statements and report prepared by Companion.

Article IX: Signatures

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed on the day and date first above written.

CITY OF COLUMBIA (S.C.)

**Companion THIRD PARTY
ADMINISTRATORS, LLC**

By: 

By: _____

Steven A. Gantt

Robert C. Rhodes

Title: City Manager

Title: VP & COO

Date: June 28, 2012

Date: June , 2012

APPROVED BY
CITY OF COLUMBIA
LEGAL DEPT.
