

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF BURLINGAME
AND LWP CLAIMS SOLUTIONS, INC**

THIS AGREEMENT is by and between LWP Claims Solutions, Inc ("Consultant") and the City of Burlingame, a public body of the State of California ("City"). Consultant and City agree:

1. **Services.** City wishes to obtain the services of Consultant to provide third party administrative services for the City's self-insured workers' compensation program. Consultant shall provide the Services set forth in Exhibit A, attached hereto and incorporated herein.

2. **Compensation.** Notwithstanding the expenditure by Consultant of time and materials in excess of said Maximum compensation amount, Consultant agrees to perform all of the Scope of Services herein required of Consultant for pricing as presented in the attached Exhibit C, including all materials and other reimbursable amounts ("Maximum Compensation"). Consultant shall submit invoices on a monthly basis. All bills submitted by Consultant shall contain sufficient information to determine whether the amount deemed due and payable is accurate. Bills shall include a brief description of services performed, the date services were performed, the number of hours spent and by whom, a brief description of any costs incurred and the Consultant's signature.

3. **Term.** This Agreement commences on full execution hereof, for a period of five years. Upon mutual agreement at that time, the contract may be extended by the City Manager for a period of up to three years. Consultant agrees to diligently prosecute the services to be provided under this Agreement to completion and in accordance with any schedules specified herein. In the performance of this Agreement, time is of the essence. Time extensions for delays beyond the Consultant's control, other than delays caused by the City, shall be requested in writing to the City's Contract Administrator prior to the expiration of the specified completion date.

4. **Assignment and Subcontracting.** A substantial inducement to City for entering into this Agreement is the professional reputation and competence of Consultant. Neither this Agreement nor any interest herein may be assigned or subcontracted by Consultant without the prior written approval of City. It is expressly understood and agreed by both parties that Consultant is an independent contractor and not an employee of the City.

5. **Insurance.** Consultant, at its own cost and expense, shall carry, maintain for the duration of the Agreement, and provide proof thereof, acceptable to the City, the insurance coverages specified in Exhibit B, "City Insurance Requirements," attached hereto and incorporated herein by reference. Consultant shall demonstrate proof of required insurance coverage prior to the commencement of services required under this Agreement, by delivery of Certificates of Insurance and original endorsements to City. Except in the case of professional design/errors and omissions insurance, the City shall be named as a primary insured.

6. **Indemnification.** Consultant shall indemnify, defend, and hold City, its directors, officers, employees, agents, and volunteers harmless from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of, pertaining or relating to the negligence, recklessness or willful misconduct of Consultant, its employees, subcontractors, or agents, or on account of the performance or character of the Services, except for any such claim arising out of the sole negligence or willful misconduct of the City, its officers, employees, agents, or volunteers. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in section 2778 of the California Civil Code. Notwithstanding the foregoing, for any design professional services, the duty to defend and indemnify City shall be limited to that allowed pursuant to California Civil Code section 2782.8. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

7. **Termination and Abandonment.** This Agreement may be cancelled at any time by City for its convenience upon written notice to Consultant. In the event of such termination, Consultant shall be entitled to pro-rated compensation for authorized Services performed prior to the effective date of termination provided however that City may condition payment of such compensation upon Consultant's delivery to City of any or all materials described herein. In the event the Consultant ceases performing services under this Agreement or otherwise abandons the project prior to completing all of the Services described in this Agreement, Consultant shall, without delay, deliver to City all materials and records prepared or obtained in the performance of this Agreement. Consultant shall be paid for the reasonable value of the authorized Services performed up to the time of Consultant's cessation or abandonment, less a deduction for any damages or additional expenses which City incurs as a result of such cessation or abandonment.

8. **Ownership of Materials.** All documents, materials, and records of a finished nature, including but not limited to final plans, specifications, video or audio tapes, photographs, computer data, software, reports, maps, electronic files and films, and any final revisions, prepared or obtained in the performance of this Agreement, shall be delivered to and become the property of City. All documents and materials of a preliminary nature, including but not limited to notes, sketches, preliminary plans, computations and other data, and any other material referenced in this Section, prepared or obtained in the performance of this Agreement, shall be made available, upon request, to City at no additional charge and without restriction or limitation on their use. Upon City's request, Consultant shall execute appropriate documents to assign to the City the copyright or trademark to work created pursuant to this Agreement. Consultant shall return all City property in Consultant's control or possession immediately upon termination.

9. **Compliance with Laws.** In the performance of this Agreement, Consultant shall abide by and conform to any and all applicable laws of the United States and the State of California, and all ordinances, regulations, and policies of the City. Consultant warrants that all work done under this Agreement will be in compliance with all applicable safety rules, laws, statutes, and practices, including but not limited to Cal/OSHA regulations. If a license or registration of any kind is required of Consultant, its employees, agents, or subcontractors by law, Consultant warrants that such license has been obtained, is valid and in good standing, and

Consultant shall keep it in effect at all times during the term of this Agreement, and that any applicable bond shall be posted in accordance with all applicable laws and regulations.

10. **Conflict of Interest.** Consultant warrants and covenants that Consultant presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this Agreement a violation of any applicable state, local, or federal law. In the event that any conflict of interest should nevertheless hereinafter arise, Consultant shall promptly notify City of the existence of such conflict of interest so that the City may determine whether to terminate this Agreement. Consultant further warrants its compliance with the Political Reform Act (Government Code § 81000 et seq.) respecting this Agreement.

11. **Whole Agreement and Amendments.** This Agreement constitutes the entire understanding and Agreement of the parties and integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or any previous written or oral Agreements between the parties with respect to all or any part of the subject matter hereof. The parties intend not to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, covenant, obligation, or undertaking established herein. This Agreement may be amended only by a written document, executed by both Consultant and the City Manager, and approved as to form by the City Attorney. Such document shall expressly state that it is intended by the parties to amend certain terms and conditions of this Agreement. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. Multiple copies of this Agreement may be executed but the parties agree that the Agreement on file in the office of the City Clerk is the version of the Agreement that shall take precedence should any differences exist among counterparts of the document. This Agreement and all matters relating to it shall be governed by the laws of the State of California.

12. **Capacity of Parties.** Each signatory and party hereto warrants and represents to the other party that it has all legal authority and capacity and direction from its principal to enter into this Agreement and that all necessary actions have been taken so as to enable it to enter into this Agreement.

13. **Severability.** Should any part of this Agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

14. **Notice.** Any notice required or desired to be given under this Agreement shall be in writing and shall be personally served or, in lieu of personal service, may be given by (i) depositing such notice in the United States mail, registered or certified, return receipt requested, postage prepaid, addressed to a party at its address set forth in Exhibit A; (ii) transmitting such notice by means of Federal Express or similar overnight commercial courier ("Courier"), postage

paid and addressed to the other at its street address set forth below; (iii) transmitting the same by facsimile, in which case notice shall be deemed delivered upon confirmation of receipt by the sending facsimile machine's acknowledgment of such with date and time printout; or (iv) by personal delivery. Any notice given by Courier shall be deemed given on the date shown on the receipt for acceptance or rejection of the notice. Either party may, by written notice, change the address to which notices addressed to it shall thereafter be sent.

15. **Miscellaneous.** Except to the extent that it provides a part of the definition of the term used herein, the captions used in this Agreement are for convenience only and shall not be considered in the construction of interpretation of any provision hereof, nor taken as a correct or complete segregation of the several units of materials and labor.

Capitalized terms refer to the definition provide with its first usage in the Agreement.

When the context of this Agreement requires, the neuter gender includes the masculine, the feminine, a partnership or corporation, trust or joint venture, and the singular includes the plural.

The terms "shall", "will", "must" and "agree" are mandatory. The term "may" is permissive.

The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

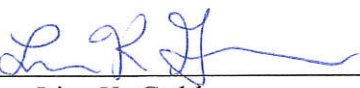
When a party is required to do something by this Agreement, it shall do so at its sole cost and expense without right to reimbursement from the other party unless specific provision is made otherwise.

Where any party is obligated not to perform any act, such party is also obligated to restrain any others within its control from performing such act, including its agents, invitees, contractors, subcontractors and employees.

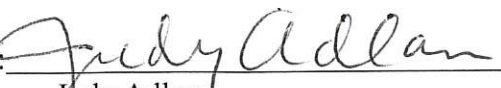
IN WITNESS WHEREOF, Consultant and City execute this Agreement.

CITY OF BURLINGAME
501 Primrose Road
Burlingame, CA 94010

LWP Claims Solutions, Inc
35 Miller Avenue, Suite 214
Mill Valley, CA 94941

By: 

Lisa K. Goldman
City Manager

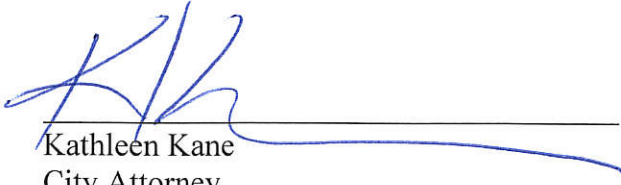
By: 

Judy Adlam
President, CEO

Date: 2/27/18

Attest: 
Meaghan Hassel-Shearer
City Clerk

Approved as to form:


Kathleen Kane
City Attorney

Date: 2/28/2018

Federal Employer ID Number: _____

License Number: _____

Expiration Date: _____

Attachments:

Exhibit A Scope of Services
Exhibit B City Insurance Provisions
Exhibit C Pricing

Exhibit A

Scope of Services

LWP Claims Solutions, Inc will provide third party claims administration services for the City of Burlingame's self-insured workers' compensation claims. The Scope of Services includes:

Claims Administration Requirements and Expectations

- TPA must perform all services required to supervise and administer a self-insured workers' compensation program for the City of Burlingame, and to act as the City of Burlingame's representative in matters relating to the City of Burlingame's obligations under the workers' compensation laws of the state of California.
- Provide a toll free telephone number for the City of Burlingame and claimants.
- Process all claims, including but not limited to investigation, reserving and payment, filing reports, negotiating and settling of claims for amount pre-approved by the City of Burlingame.
- Contact the City of Burlingame, claimant and medical provider within 24 hours of receipt of all claims.
- Upon knowledge of a serious injury, illness, exposure or catastrophic claim, and/or if employee is hospitalized, notification will be made immediately via telephone to the City of Burlingame.
- First aid claims are to be flagged with notice to the City of Burlingame and shall be identified as first aid on all loss run data reports. Bill payments for first aid claims shall be determined by the City of Burlingame.
- Response to any questions or inquiries by the City of Burlingame or claimants should be responded to within one business day.
- Initial investigation will be completed within 14 days from day of receipt of the claim and if needed, further investigation completed within 30 days or as soon as all the facts of the case can be reasonably gathered.
- Initial plan of action must be clearly documented in the claim file within 14 days from receipt of the claim and updated every 30-60 days.
- Initial estimate of reserves established within 14 days of receipt of claim. Adjusters must document the basis for each reserve calculation.
- Significant reserve increases on any one claim must be communicated and discussed with the City of Burlingame.
- Adjuster's notes should include but not limited to; comments regarding exposure, disposition plan for claim closure, financial transactions, supervisor's notes, and any other relevant claim information.
- Written status reports will be provided to the City of Burlingame during scheduled claim reviews or upon request.
- A comprehensive status report will be provided to the City of Burlingame the time any claim exceeds a total incurred value of \$50,000.
- TPA must keep the City of Burlingame informed and involved in all accepted cases prior to sending acceptance letters to employees.
- Transitional/modified duty must be documented in the claim file and should include the medical diagnosis, work restrictions and estimated duration of disability.

- Documented follow-up to the treating physician(s) is required no later than every 30 days prior to MMI status. Ongoing disability will be documented through ongoing medical reports.
- Adjuster will notify the City of Burlingame of any legal or administrative actions that affect their claims including: appeals, pre-notification of depositions, pre-trial or workers' compensation board hearings.
- The City of Burlingame will have final approval for all outside case management services utilized, including but not limited to defense attorneys, nurse case managers, vocational experts and investigative firms.
- On all settlements, including 0% PD and future medical, a settlement authorization request must first be submitted to the City of Burlingame for their approval.
- Notify the excess carrier of potential claims as provided by the carrier's Service Agreement terms.
- Monitor and collect all recoveries due the City of Burlingame.
- Review medical provider bills for appropriateness of fees charged utilizing the California Official Medical Fee Schedule.
- The City of Burlingame maintains a workers' compensation claims trust checking account. The TPA shall be responsible for payments of benefits from this account.

Litigation Management

- The City of Burlingame reserves the right to select counsel.
- All defense counsel referrals need prior approval by the City of Burlingame.
- Review each legal bill for accuracy.
- Procedures in place to audit the effectiveness of legal counsel on the outcome of claims.

Nurse Case Management

- Pre-authorization by the City of Burlingame is required on all nurse case management assignments.
- Nurse case manager's (NCM's) action plans and notes will be documented in the claim file, and as appropriate NCM's will participate in claim reviews or when consultation with the NCM is requested by the City of Burlingame.

Claim Staffing expectations and Claim Handling Philosophies

- Assigning an account manager to the City.
- A dedicated claims team must be provided.
- Maintain contact with claimants.
- Identify and manage fraudulent claims.
- Determine length of disability.
- Obtain pre-authorization for all assignments of investigation and sub-rosa.
- Timely pay benefits.
- Establish and maintain reserves for open claims.
- Work to return injured workers to work.
- Assign medical case management as required.
- Monitor and work to prevent duplicate and other overpayments.

- Assign UR as required.

Risk Management Information System (RMIS)

- Internet based claim system with access 24 hours a day, 7 days a week to view claim adjuster and supervisor notes, view the progression of claims, generate loss runs or other pre-scheduled or adhoc loss management/claim reports.
- Ability to export claim data into various Microsoft products, i.e. Word, excel, power point.
- Provide RMIS technical support for questions, problems or development of customized reporting.
- Provide scheduled loss reports to be sent electronically to the City of Burlingame. Customized reports will be provided as required.
- Quality control program to ensure data integrity and claimant confidentiality. Any RMIS problems will be resolved within 24 hours or less.
- Image system to scan all documents received pertaining to the case.
- Fully compliant with MMSEA Section 111 reporting requirements.

Exhibit B

City Insurance Provisions

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors.

Minimum Scope of Insurance *Coverage shall be at least as broad as:*

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 12 04 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be at least **\$2,000,000**.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to the Contractor's profession, with limit no less than **\$1,000,000** per occurrence or claim, **\$2,000,000** aggregate.

If the contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the contractor.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City, its officers, officials, employees, and volunteers are to be covered as insureds on the auto policy with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the contractor and on the general liability policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the **Contractor's insurance coverage shall be primary** insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that **coverage shall not be canceled, except after thirty (30) days' prior written notice** (10 days for non-payment) has been given to the City.

Waiver of Subrogation

Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Claims Made Policies (note – should be applicable only to professional liability, see below)

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of work.

Verification of Coverage

Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Exhibit C
Pricing

Claims Administration	Rates
Life of Contract – flat fee.	Year 1 – \$90,640 Year 2 – \$93,360 Year 3 – \$93,360 Year 4 – \$96,160 Year 5 – \$96,160 Year 6 (Optional) - \$99,045 Year 7 (Optional) - \$99,045 Year 8 (Optional) - \$102,016
Administrative fee	None
RMIS fee	No charge, unlimited users
Subrogation recovery fee	No charge
Self-Insurance Plan Annual Report fee	No charge
Claim Reporting (telephonic, fax, online)	No charge
Medical Bill Review, Negotiation & Reporting	Rates (Through 12/31/2019)
Bill Review/official medical fee schedule	\$8 per bill
PPO Reductions	25% of PPO savings
Hospital inpatient/outpatient bill review	\$200 per bill
Hospital bill not covered by state fee schedule or PPO savings	20% of savings
Pharmacy review fees	\$3 per bill
Legal bill review	No charge
Medical Savings Programs	Fee \$3.00 per bill This flat fee is in lieu of medical bill review and PPO fees and includes EDI reporting.
Negotiation Fees, including lien negotiations for disputed medical treatment.	15% savings achieved through negotiations
Reporting Fees	• EDI Fees - \$1.00 per bill • E-Bill Fees - \$1.00 per bill submitted by a provider through a clearinghouse • Index and OFAC reporting – Direct pass through of ISO charge, ISO adjusts every January 1 (\$10.05 in 2018)
	2018 rates will be offered through 12/31/2019. Fees as of 1/1/2020 are subject to change with prior notice
Managed Care & Investigation	Rates (Through 12/31/2019)
Utilization Review	Tier 1- Nurse Level Review - \$110 Flat Fee Nurse Level Review - Includes 3 medical requests in a single review.

	Tier 2 - Peer Review- \$235 Flat Fee (in addition to Tier 1 review fee) This includes up to 3 medical requests per single medical referral. Pharmacy Review –includes unlimited medical requests per single medical referral. • Tier 1 - Nurse Level Review \$ 110 flat fee without physician peer review • Tier 2 - Physician Peer Review - \$385 flat fee (in addition to Tier 1 review fee)
Nurse Case Management	• Telephonic Case Management, \$102.00 per hour • Field Case Management, \$108.00 per hour (including travel and wait time) + incidental expenses (including tolls, mileage, telephone and parking)
Investigations	• \$86.00 per hour for all investigations • \$96.00 per hour for SIU related work

2018 rates will be offered through 12/31/2019. Fees as of 1/1/2020 are subject to change with prior notice