

ACKNOWLEDGEMENT AND CONSENT TO ERMAC SUBROGATION AGREEMENT

THIS ACKNOWLEDGEMENT AND CONSENT TO THE ERMAC SUBROGATION AGREEMENT is made this _____ day of January, 2021 by and between the CITY OF BEAUMONT and GEORGE HILLS COMPANY, INC., (hereinafter referred to as "the PARTIES).

RECITALS

WHEREAS, on or about July 1, 2020, GEORGE HILLS COMPANY, INC., entered into a written contract with EXCLUSIVE RISK MANAGEMENT AUTHORITY OF CALIFORNIA (ERMAC) to assume the duties and responsibilities of administering claims for a program of self-insurance (CLAIMS ADJUSTING AND ADMINISTRATION SERVICE CONTRACT BETWEEN ERMAC AND GEORGE HILLS COMPANY, INC., ("AGREEMENT")).

WHEREAS, the terms of the AGREEMENT provided that the contract would commence on January 5, 2021 and continue for five years ending June 30, 2025, unless terminated earlier.

WHEREAS, the AGREEMENT provided that GEORGE HILLS COMPANY, INC., would provide Subrogation Services to ERMAC as set forth in Attachment A to the AGREEMENT. The Executed Subrogation Agreement is Attached to this Acknowledgement and Consent for the parties convenience.

WHEREAS, the CITY OF BEAUMONT desires to avail itself of subrogation services as agreed to between ERMAC and GEORGE HILLS COMPANY, INC., and acknowledges and consents to the terms of the Subrogation Agreement.

NOW, THEREFORE, in consideration of the mutual promises of the parties and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the PARTIES hereto agree as follows:

1. The foregoing recitals are true and correct and are incorporated herein by reference.
2. The CITY OF BEAUMONT hereby acknowledges and agrees to the terms of the Subrogation Agreement entered into between ERMAC and GEORGE HILLS COMPANY, INC., and agrees to assume all obligations under the Subrogation Agreement, including payment for subrogation services directly to GEORGE HILLS COMPANY, INC.
3. The AGREEMENT is not otherwise amended.
4. Any notice required to be delivered to GEORGE HILLS COMPANY, INC., pursuant to the AGREEMENT shall be delivered at the following address:
John Chaquica
Chief Executive Officer
George Hills Company, Inc.
P.O. Box 278
Rancho Cordova, CA 95741
5. All other terms and conditions of the AGREEMENT shall remain in full force and effect.

IN WITNESS WHEREOF, the PARTIES have executed this ACKNOWLEDGEMENT AND CONSENT the day and year first written above.

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ATTEST

CITY OF BEAUMONT

GEORGE HILLS COMPANY, INC.

By: _____

BY: _____

Title: _____

TITLE: _____

Date: _____

DATE: _____

ATTACHMENT A SUBROGATION AGREEMENT

This Subrogation Agreement is made and entered into this 1st day of July, 2020, by and between the Exclusive Risk Management Authority of California (ERMAC), hereinafter referred to as "CLIENT", and GEORGE HILLS COMPANY, INC., hereinafter referred to as "GH".

- I. GH does not handle subrogation claims with a value of less than \$1000. For those claims in excess of \$1000, CLIENT may, at CLIENT's own expense:
 - a. Authorize GH to act as a representative of CLIENT for the investigation, adjustment, processing, supervision and evaluation of an ultimate recovery of potential money from damage claims against parties for whom it is alleged to be legally responsible.
 - b. Authorize GH to engage the services of a litigation attorney to consult, review, and determine the best legal strategy available at the time to obtain the best possible result for CLIENT. Upon determination by the attorney that a civil action is in the best interest of CLIENT, GH will notify CLIENT and obtain authorization to pursue recovery in accordance with the recommendations of the litigation attorney.
 - c. While GH is handling a subrogation claim for CLIENT pursuant to the terms of this Contract, the institution of a civil action is determined by CLIENT to be the best course of action, CLIENT may elect to do so at CLIENT's own expense as follows:
 - i. Recall the claim to CLIENT's control so that CLIENT may pursue recovery in a manner to be determined by the CLIENT's attorney to be in the best interest of the CLIENT.
 - ii. In the event CLIENT recalls the claim as indicated above, CLIENT shall be responsible for payment to GH for any and all time and expense incurred by GH's subrogation claim adjuster and/or other subrogation division staff up to the time wherein the claim has been recalled by CLIENT.
- II. CLIENT will pay a Subrogation Fee in the amount of 25% for each and every recovery obtained. The minimum amount to be paid to GH will be \$250 per claim upon recovery. However, GH has the authority to reject any claim for any reason, relieving CLIENT of any fiscal responsibility for rejected claims only.
 - a. Generally, no recovery shall be agreed to involving payment plans if the recovery is less than \$5,000 and/or greater than a one-year term. Exceptions can be made on a case-by-case basis. If a payment plan is agreed to by the CLIENT in violation of these standards, Subrogation fee shall be 45%. In the event a payment plan is authorized and entered into by the CLIENT, the subrogation fee will be based upon the total amount of the lien and will be invoiced to the CLIENT upon the entry of the payment agreement. GH will make every attempt to enforce the provisions of the payment agreement with the claimant, but in no way guarantees the fulfillment of the terms of the payment agreement. In the event the terms of the payment agreement are not fulfilled and warrant pursuit through the small claims process, authority to pursue through small claims will be requested.
 - b. Authority for GH to appear in small claims court for recovery of funds. Authority for the pursuit of recovery through small claims will be requested from CLIENT prior

to the filing of documents with the court to initiate the small claims action. Each appearance will be an additional fee of \$150. All costs for the handling of small claims court actions, i.e. service of process of documents on the responsible parties, mileage, parking, and toll shall be an additional cost and will be the responsibility of the CLIENT. Additional allocated costs shall be billed separately upon the cost being incurred, such as, but not limited to: skip tracing, service of process, and third-party sub contracted investigation.

- c. GH reserves the right to cease working on any claim for which information has not been made available to GH within 120 days after GH has submitted the information and/or documentation request to CLIENT, at such time the claim will be closed.
- d. Due to the nature of these services, in that compensation is contingent upon recovery, if the contract is terminated prior to recovery or other closure of any claim, the CLIENT shall pay GH for all expenses and time spent, to date, on any claim(s) currently open and recovery in process. Payment shall be based on the current hourly rate of GH. GH will submit the final invoice within five business days of termination.

III. General Terms and Conditions

- a. **Successors and Assigns.**
All of the rights, benefits, duties, liabilities, and obligations of the parties shall inure to the benefit of, and be binding upon, their respective successors and assigns.
- b. **Construction.**
The title and headings of the Sections in this Agreement are intended solely for reference and do not modify, explain, or construe any provision of this Agreement. All references to sections, recitals, and the preamble shall, unless otherwise stated, refer to the Sections, Recitals, and Preamble of this Agreement. In construing this Agreement, the singular form shall include the plural and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared the Agreement.
- c. **Integration.**
This Agreement, and all related documents referred to in this Agreement, constitute the entire Agreement between the parties. There are no oral agreements which are not expressly set forth in this Agreement and the related documents being executed in connection with this Agreement. This Agreement may not be modified, amended, or otherwise changed except by a writing executed by the party to be charged.
- d. **Third-Party Rights.**
Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties and their respective successors and assigns, any rights or remedies.
- e. **Severability.**
If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected.
- f. **Waivers.**
No waiver or breach of any provision shall be deemed a waiver of any other provision, and no waiver shall be valid unless it is in writing and executed by the

waiving party. No extension of time for performance of any obligation or act shall be deemed an extension of time for any other obligation or act.

g. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. The execution of this Agreement shall be deemed to have occurred, and this Agreement shall be enforceable and effective, only upon the complete execution of this Agreement by Seller and Purchaser.

h. Authority of Parties.

All persons executing this Agreement on behalf of a party warrant that they have the authority to execute this Agreement on behalf of that party.

i. Governing Law.

This Agreement shall be governed by and construed in accordance with California law.

6/23/2020

Date

DocuSigned by:
John Chaquica
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BY: _____
John E. Chaquica, CEO
GEORGE HILLS COMPANY, INC.

6/23/2020

Date

DocuSigned by:
Don White
EB364E4A85BE4C5...
BY: _____
Don White, Chairman/President
ERMAC