

## **AGREEMENT FOR CONSULTANT SERVICES**

THIS AGREEMENT is made and entered into on this 1<sup>st</sup> day of January, 2020 by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and LWP Claims Solutions, Inc., ("Consultant"), whose address is 35 Miller Avenue #214, Mill Valley, CA 94941. This Agreement is made with reference to the following facts.

### **I. RECITALS**

- 1.1 The Town desires to engage Consultant to provide workers' compensation third-party claims administration services for the Town's self-insured workers' compensation program.
- 1.2 The Consultant represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- 1.3 Consultant warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Consultant acknowledges Town has relied upon these warranties to retain Consultant.

### **II. AGREEMENTS**

- 2.1 Scope of Services. Consultant shall provide services as described in that certain Scope of Services sent to the Town on August 19, 2019, which is hereby incorporated by reference and attached as Exhibit A.
- 2.2 Term and Time of Performance. This contract will remain in effect from January 1, 2020 to December 31, 2022.
- 2.3 Compliance with Laws. The Consultant shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Consultant represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.
- 2.4 Sole Responsibility. Consultant shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.
- 2.5 Information/Report Handling. All documents furnished to Consultant by the Town and all reports and supportive data prepared by the Consultant under this Agreement are the Town's property and shall be delivered to the Town upon the completion of Consultant's services or at the Town's written request. All reports, information, data, and exhibits prepared or assembled by Consultant in connection with the performance of its services

**ATTACHMENT 1**

pursuant to this Agreement are confidential until released by the Town to the public, and the Consultant shall not make any of these documents or information available to any individual or organization not employed by the Consultant or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Consultant pursuant to this Agreement are for the purpose of evaluating a defined project, and Town's use of the information contained in the reports prepared by the Consultant in connection with other projects shall be solely at Town's risk, unless Consultant expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Consultant which is and has been confirmed in writing by Consultant to be a trade secret of Consultant.

- 2.6 Compensation. Compensation for Consultant's professional services **shall not exceed \$171,357**, inclusive of all costs. The service fee schedule is incorporated in this agreement as Exhibit B. Payment shall be based upon Town approval of each task.
- 2.7 Billing. Billing shall be monthly by invoice within thirty (30) days of the rendering of the service and shall be accompanied by a detailed explanation of the work performed by whom at what rate and on what date. Also, plans, specifications, documents or other pertinent materials shall be submitted for Town review, even if only in partial or draft form.

Payment shall be net thirty (30) days. All invoices and statements to the Town shall be addressed as follows:

Invoices:  
Town of Los Gatos  
Attn: Human Resources  
110 E. Main Street  
Los Gatos, CA 95030

- 2.8 Availability of Records. Consultant shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. Consultant shall make these records available to authorized personnel of the Town at the Consultant's offices during business hours upon written request of the Town.
- 2.9 Project Manager. The Project Manager for the Consultant for the work under this Agreement shall be:

Amber Davis, Claims Manager  
P.O. Box 349016  
Sacramento, CA 95834  
Phone: (916) 609-3654 Email: a\_davis@lwpclaims.com

- 2.10 Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to the Consultant. No portion of these services shall be assigned or subcontracted without the written consent of the Town.
- 2.11 Independent Contractor. It is understood that the Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and not an agent or employee of the Town. As an independent contractor he/she shall not obtain any rights to retirement benefits or other benefits which accrue to Town employee(s). With prior written consent, the Consultant may perform some obligations under this Agreement by subcontracting, but may not delegate ultimate responsibility for performance or assign or transfer interests under this Agreement. Consultant agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Consultant shall be compensated for its costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, unless such litigation is brought by Consultant or is based on allegations of Consultant's negligent performance or wrongdoing.
- 2.12 Conflict of Interest. Consultant understands that its professional responsibilities are solely to the Town. The Consultant has and shall not obtain any holding or interest within the Town of Los Gatos. Consultant has no business holdings or agreements with any individual member of the Staff or management of the Town or its representatives nor shall it enter into any such holdings or agreements. In addition, Consultant warrants that it does not presently and shall not acquire any direct or indirect interest adverse to those of the Town in the subject of this Agreement, and it shall immediately disassociate itself from such an interest, should it discover it has done so and shall, at the Town's sole discretion, divest itself of such interest. Consultant shall not knowingly and shall take reasonable steps to ensure that it does not employ a person having such an interest in this performance of this Agreement. If after employment of a person, Consultant discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Consultant shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.
- 2.13 Equal Employment Opportunity. Consultant warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Consultant nor its subcontractors do and neither shall discriminate against persons employed or seeking employment with them on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment & Housing Act.

### **III. INSURANCE AND INDEMNIFICATION**

- 3.1 Minimum Scope of Insurance:

- i. Consultant agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an amount not less than: one million dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.
- ii. Consultant agrees to have and maintain for the duration of the contract, an Automobile Liability insurance policy ensuring him/her and his/her staff to an amount not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
- iii. Consultant shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Consultant agrees that all certificates and endorsements are to be received and approved by the Town before work commences.
- iv. Consultant agrees to have and maintain, for the duration of the contract, professional liability insurance in amounts not less than \$1,000,000 which is sufficient to insure Consultant for professional errors or omissions in the performance of the particular scope of work under this agreement.

General Liability:

- i. The Town, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of Consultant, premises owned or used by the Consultant. This requirement does not apply to the professional liability insurance required for professional errors and omissions.
- ii. The Consultant's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees and volunteers. Any insurance or self-insurances maintained by the Town, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees or volunteers.
- iv. The Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- 3.2 All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. Current certification of such insurance shall be kept on file at all times during the term of this agreement with the Town Clerk.
- 3.3 Workers' Compensation. In addition to these policies, Consultant shall have and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the Town before beginning services under this Agreement. Further, Consultant shall ensure that all subcontractors employed by Consultant provide the required Workers' Compensation insurance for their respective employees.
- 3.4 Indemnification. The Consultant shall save, keep, hold harmless and indemnify and defend the Town its officers, agent, employees and volunteers from all damages, liabilities, penalties, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of performing work which may be occasioned by a willful or negligent act or omissions of the Consultant, or any of the Consultant's officers, employees, or agents or any subconsultant.

#### IV. GENERAL TERMS

- 4.1 Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.
- 4.2 Governing Law. This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.
- 4.3 Termination of Agreement. The Town and the Consultant shall have the right to terminate this agreement with or without cause by giving not less than sixty days (60) written notice of termination. In the event of termination, the Consultant shall deliver to the Town all plans, files, documents, reports, performed to date by the Consultant. In the event of such termination, Town shall pay Consultant an amount that bears the same ratio to the maximum contract price as the work delivered to the Town bears to completed services contemplated under this Agreement, unless such termination is made for cause, in which event, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.
- 4.4 Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Consultant.

- 4.5 Disputes. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.
- 4.6 Notices. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:

Town of Los Gatos  
Attn: Human Resources Director  
110 E. Main Street  
Los Gatos, CA 95030

LWP Claims Solutions, Inc.  
Attn: Judy Adlam, President & CEO  
35 Miller Ave #214  
Mill Valley, CA 94941

or personally delivered to Consultant to such address or such other address as Consultant designates in writing to Town.

Unless otherwise specified, consultant contact with Town shall be limited to the Human Resources Director, Human Resources Analyst, Human Resources Technician, Town Attorney, Town Manager or their designee.

- 4.7 Order of Precedence. In the event of any conflict, contradiction, or ambiguity between the terms and conditions of this Agreement in respect of the Products or Services and any attachments to this Agreement, then the terms and conditions of this Agreement shall prevail over attachments or other writings.
- 4.8 Entire Agreement. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and Consultant. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

IN WITNESS WHEREOF, the Town and Consultant have executed this Agreement.

Town of Los Gatos by:

Consultant, by:

\_\_\_\_\_  
Laurel Prevetti, Town Manager

\_\_\_\_\_  
Judy Adlam, President & CEO  
LWP Claims Solutions, Inc.

Recommended by:

\_\_\_\_\_  
Lisa Velasco, Human Resources Director

Approved as to Form:

\_\_\_\_\_  
Robert Schultz, Town Attorney

Attest:

\_\_\_\_\_  
Shelley Neis, CMC, Town Clerk

## **EXHIBIT A - SCOPE OF SERVICES**

During the Term of this Agreement, Consultant shall provide the following services to ensure compliance with workers' compensation statutes and regulations as established by the Department of Industrial Relations:

### **A. WORKERS' COMPENSATION CLAIMS MANAGEMENT AND ADMINISTRATION:**

1. To review on behalf of the Town all reports of injury as defined by California Labor Code Sections 3208 and 3208.1 that are reported by the Town to Consultant.
2. To determine on behalf of the Town for each reported employee Injury those benefits, if any, that should be paid or rendered under the California Workers' Compensation laws (the "WC Laws").
3. To establish and maintain a claim file on each reported claim, which file shall be available to the Town for inspection. The maintenance of such files shall exhibit handling practices which meet or exceed minimum industry standards for California workers' compensation claims.
4. To maintain current cost-benefit figures and an estimate of the total costs of all reasonable and foreseeable benefits and related expenses on each case.
5. To prepare and file on behalf of the Town all legally required forms and reports with the Administrative Director or Self-Insurance Plans, or any other report required by the State.
6. To pay on the behalf of the Town, from a segregated bank workers' compensation account funded and maintained by the Town, those sums that should reasonably be paid for claims and claims-related expenses under the California Workers' Compensation Laws for each reported claim.
7. When required and appropriate, to refer cases where an employee of the Town files an application with the California Workers' Compensation Appeals Board or any other activity involving litigation to attorneys selected and approved by the Town and not to any other attorneys without the prior written consent of the Town.
8. To render assistance as is reasonably necessary in the preparation of litigated cases.



9. To pay on behalf of the Town out of the bank workers' compensation trust account funded by the Town all "Allocated Loss Expense" which is defined to include all fees of attorneys, witnesses, court reporters, process servers, independent investigators, any court or Workers' Compensation Appeals Board, for depositions, surveillance or the necessary engagement of personnel in the handling of any claim subject to this Agreement.
10. To provide computerized loss analysis and financial claim detail reports within ten days following the end of the month. At no additional charge, Consultant will provide the following reports:
  - a. Annual graphic reports reflecting the highest cost department and loss-types. Annual recaps, litigated claims and other mutually accepted categories.
11. To provide and make appropriate claims reports to excess carriers and collect excess recoveries, including the return of excess recoveries to Town, subject to the Town providing Consultant with a list of excess carriers for all preceding years, and identifying the policy numbers and the parties to whom reports are to be directed.
12. To attend Workers' Compensation Appeals Board hearings, rehabilitation hearings, meetings with defense counsel, and meetings with Town staff, departments, and employee groups as necessary and as requested to do so.
13. To provide monthly summaries of all Town of Los Gatos workers' compensation bank trust account activities undertaken by Consultant.
14. To advise the Town on any material problems or need for improvement in the claims reporting, administration or other aspects of the workers' compensation program.
15. To employ, as necessary, outside vendors subject to obtaining the Town's prior written approval of all vendors eligible to provide services, directly or indirectly, on behalf of, or for the Town pursuant to this Agreement.

**B. PROGRAM IMPLEMENTATION SERVICES:**

Consultant will provide the following services:

16. Storage of all closed files, even those assumed from the prior administrators.
17. Develop and print up to fifty copies of a claim reporting procedure manual (including the most recent workers' compensation reform information) for distribution to all departments and key employees, should any major changes in

procedures be required.

18. Implementation visits to the Town to distribute claim manuals and discuss self-insurance and TPA service program with key personnel, should any major changes in procedures be required.
19. Design and implement all accounting and trust fund procedures, should any changes be required.
20. Produce and design all necessary reports.

## Exhibit B - Service Fee Schedule

### Proposed Pricing

#### Claims Administration - Life of Contract Bundled Claims Administration and Managed Care

Year 1	\$51,000
Year 2	\$52,275
Year 3 -Optional Year 3	\$53,582

*Assumes open case load of 30 claims. Should takeover claims (including reopen) be more than 35 an additional annual fee of \$1,000 for each indemnity claim open over 35 will be charged.*

#### Services Included in Claims Administration Fee

Claims Administration	Designated Account Manager
Claim Review Meetings	Litigation Management
Swat Team Claim Intake	Reporting to Reinsurer

#### Additional Services

Annual Administration Fee	\$2,500
Bank Charges (one Account)	Included
Storage Fees	Included
On-Line 5020 Reporting	Included
Loss Reports	Included
On-Line System Access	Included up to 4 users, \$250 per user/year over 4 users
Trust Accounting	Included
Preparation and filing of 1099's	Included
Preparation of SIP reports	Included
FROI/SROI Reporting	Included
Medicare Reporting	Included
Ebill	Included
Transition Services	
Data Intake	\$5,000
Claims Triage	No Charge

**Not to Exceed Claims Administration Fee**

Year 1	\$60,500
Year 2	\$54,775
Year 3 - Optional	\$56,082

*Does not include fees allocated to claims included below.*

**Indexing**

Index and OFAC Reporting (ISO Fee passed through)	\$10.40 per report (2019 fee - reviewed annually)
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**Bill Review****Fee**

Standard Medical Bill Review Fee Schedule Reductions	\$8.50 per bill plus PPO Reduction
Inpatient or outpatient hospital or surgery center	\$500 per bill plus PPO Reduction
PPO Reduction	24% of Reduction below Fee Schedule
Bills not subject to Fee Schedule	24% of Reduction
Medical Bill EDI	\$1 per bill

**Managed Care Programs****Case Management**

Telephonic Case Management	\$102 per hour
Field Case Management	\$108 per hour + incidentals (including mileage, phone, tolls, parking, etc.)

**Utilization Review**

Tier 1 - Nurse Review	\$110 Flat Fee
<i>Includes 3 medical request in a single review, set up, phone calls to physician, email notices to adjuster and letters to all parties including network providers. Fee applies to reviews approved by nurse or escalated to physician.</i>	
Tier 2 - Physician Review	\$235 plus nurse charge
<i>Includes 3 medical request in a single review.</i>	
Pharmacy Review	\$385 plus nurse charge
<i>Includes unlimited medical request in a single review.</i>	

**Medical Provider Network Access (LWP Network)**

PPO fee for savings below fee schedule and negotiations	24%
<i>There is no separate charge for medical provider access to LWP's proprietary network. Percentage of savings below fee schedule is the only charge.</i>	

**Specialized Network Access****(bill review charges do not apply)**

Durable Medical Goods	\$4 per bill network access fee
Expedited Diagnostic Testing	\$4 per bill network access fee
Physical Therapy Network	\$4 per bill network access fee
Pharmacy Benefit Network	\$4 per bill network access fee

*These charges apply only if LWP's programs are utilized.*

Other Services	Fee
<b>Investigation</b>	
Field Investigation	\$88 per hour
SIU related work	\$98 per hour

<b>Other Charges</b>	
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<b>Subrogation</b>	15% of gross recovery
<i>Fee shall not apply to cases where file is referred to subrogation attorney for handling, and shall apply only to cases where recovery is negotiated by LWP staff. Fee shall still apply to cases where counsel is employed ONLY to draft releases, but where LWP did all negotiations.</i>	

<b>Liens</b>	10% of savings achieved
<i>Charge does not apply to liens negotiated by defense counsel. Additional fees that may be incurred for liens negotiated directly by defense counsel will be charged to the file as an expense. Charge does not apply to liens that are negotiated as a result of a dispute over a fee schedule and/or a PPO reduction.</i>	

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