

**AGREEMENT FOR WORKERS' COMPENSATION CLAIMS ADMINISTRATION
CONSULTANT SERVICES**

THIS AGREEMENT is entered into this 30th day of June, 2010, by and between the Town of Los Gatos, State of California, herein called the "Town", and Innovative Claim Solutions, Inc., engaged in providing workers' compensation administration consulting services herein called the "Consultant".

RECITALS

- A. The Town endeavors to ensure the proper administration of its self-insured workers' compensation program.
- B. The Town desires to engage a workers' compensation administration consultant to provide high-quality claims administration services for the Town's workers' compensation program, because of Consultant's experience and qualifications to perform the desired work.
- C. The Consultant represents and affirms that it is qualified and willing to perform the desired work pursuant to this Agreement.

AGREEMENTS

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

- 1. **Scope of Services.** The Consultant shall provide the services as set forth in the "Scope of Services", referred to as Exhibit A and incorporated herein by reference.
- 2. **Incorporated Terms.** The Consultant shall provide services in accordance with the terms as set forth in the "Incorporated Terms", referred to as Exhibit B and incorporated herein by reference.

Any violation of the terms and conditions of this contract shall be identified in writing by the Town. After a thirty day resolution period, commencing on the date of mailing of written notice, continued violations by Consultant shall result in a 10% monthly reduction in fees until the condition is resolved to the satisfaction of the Town. Such right shall not limit the Town's right to terminate this contract if the Town determines that it is in the best interest to do so, in the Town's sole discretion and with or without cause.

- 3. **Time of Performance.** The services of the Consultant shall commence **July 1, 2010**, for a three year contract period, ending **June 30, 2013**. The services of the Consultant are to commence upon the execution of this Agreement and issuance of a Town purchase order. The purchase order shall issue upon receipt by the Town of evidence of insurance and a Town business license as required by this Agreement.

4. **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 represents and warrants to Town that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals 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.
5. **Sole Responsibility.** Consultant shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.
6. **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 made available for retrieval by 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 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.
7. **Compensation.** Compensation for Consultant's professional services shall not exceed the amounts set forth in the "Compensation Schedule", referred to as Exhibit C and incorporated herein by reference. Payment shall be **net thirty (30) days**.

Billing shall be accompanied by a detailed explanation of the work performed by whom at what rate and on what date. Also, documents or other pertinent materials shall be submitted for Town review, even if only in partial or draft form.

All invoices and statements to the Town shall reference the Town's purchase order number and be addressed as follows:

Invoices:

Town of Los Gatos
Attn: Accounts Payable
P.O. Box 655
Los Gatos, CA 95030

Statements:

Town of Los Gatos
Attn: Finance Department
P.O. Box 655
Los Gatos, CA 95030

8. **Availability of Records.** Consultant shall maintain the records supporting this billing for not less than three (3) 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.
9. **Project Manager.** The Project Manager for the Consultant for the work under this Agreement shall be:

Gary Archibald, CIO, President
11030 White Rock Road, Suite 210
Rancho Cordova, CA 95670
Phone: (916) 852-8588 Fax: (916)852-8505

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

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.
11. **Notices.** Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:

To Town: Rumi Portillo
Director of Human Resources
110 E. Main Street
P. O. Box 949
Los Gatos, CA 95031

To Consultant: Gary Archibald, CIO, President
11030 White Rock Road, Suite 210
Rancho Cordova, CA 95670

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

12. **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.

13. **Conflict of Interest.** Consultant understands that its professional responsibility is 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.

14. **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.

16. **Indemnification.** Each party shall defend, indemnify and hold harmless the other party, and its directors, officers, employees, consultants, affiliates and agents from and against any and all claims, demands, suits, causes of action, awards, penalties, judgments and liabilities, including, without limitation, attorneys' fees and costs arising from any actual or alleged negligent, intentional or wrongful acts or omissions committed by the party or its employees, consultants, agents or other individuals working for the party arising out of or related to performance under this Agreement, save and except claims, demands, suits, causes of action, awards, penalties, judgments and liabilities arising through the negligence or intentional wrongful misconduct or omission of the other party, whereupon the relative liabilities shall be attributed and assessed by legal process. Notwithstanding, Consultant shall have no liability or obligation to the Town in the event the act or omission giving rise to a claim was directed in writing by the Town contrary to the written recommendation of Consultant. The duty to indemnify and hold harmless shall survive the termination of this Agreement and shall include the duty to pay all reasonable costs, attorneys' fees, expenses and liabilities incurred in the investigation or defense of any claim or suit.

Town shall not be liable to Consultant for personal injury of employees or property damage

sustained by Consultant in the performance of the services specified in this Agreement.

Penalties and Fines Under Workers' Compensation (WC) Laws:

Consultant and the Town acknowledge that there are various penalties and administrative fines that are contained in the State of California Workers' Compensation laws that may be imposed on both employers and claim administrators.

Notwithstanding the indemnification provisions set forth above, the parties expressly agree that:

(i) Consultant shall be responsible for any fines or penalties associated with questionable or controverted claims which Consultant denies without first consulting and obtaining approval by Town for denial of the claim(s). Consultant will not be responsible for any fines or penalties levied by the Division of Workers' Compensation or any other judicial or quasi-judicial organization for improper denial of a claim(s), if over the objections of Consultant, Consultant denied said claim(s) at the direction of the Town.

(ii) The Town shall be responsible for all penalties where Consultant has not been given sufficient notice such that Consultant has had at least five (5) working days in which to investigate the claim and to pay temporary disability or send the required wage continuation notice before the penalties were assessed. Consultant shall be responsible for all penalties in which it has had five (5) or more working days in which to investigate and pay temporary disability or send a wage continuation notice. For the purpose of this section "working day" means all days except Saturdays, Sundays and Town observed holidays.

(iii) Any penalties and fines arising under WC Laws caused by failure of Consultant to perform its obligations under this Agreement shall be paid by Consultant.

(iv) Any penalties and fines arising under the WC Laws caused by failure of the Town to perform its obligations under this Agreement shall be paid by the Town.

Notice of Penalties:

Consultant agrees to use its best efforts to promptly notify the Town of situations that they discover which may result in penalties.

Survival:

The provisions of this Section 16 regarding penalties shall survive any termination of this Agreement for a period of three (3) years.

17. **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.
18. **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 or Municipal Court of the County of Santa Clara.

19. **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 (60) days written notice of termination. In the event of termination, the Consultant shall make available for retrieval by the Town all 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 pursuant to EXHIBIT A attached hereto, 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.

In addition, in the event the Town purchases Workers' Compensation Insurance, or its Certificate of Consent to Self-Insure is rescinded or revoked, this Agreement shall automatically terminate upon the effective date of such event.

Certain Rights After Termination: Upon termination of this Agreement, a final accounting shall be made of all fees and other amounts payable to Innovative Claim Solutions, Inc. pursuant to this Agreement and of any funds belonging to the Town in the possession of Innovative Claim Solutions, Inc., any balance due and owing Innovative Claim Solutions, Inc. or the Town, as the case may be, will be promptly paid based on such accounting. In addition, all original claim files, records and reports in the possession of Innovative Claim Solutions, Inc. and pertaining to employee claims subject to this agreement shall be made available for retrieval by the Town or its designee upon request following termination of this Agreement.

20. **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.
1. **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.

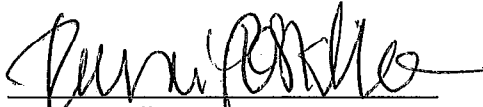
Any disputes arising from or related to this Agreement may be resolved and determined through binding arbitration before the American Arbitration Association, pursuant to the Commercial Arbitration Rules.


21. **Entire Agreement.** This Agreement, including Exhibits A through D, 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 as of the date indicated on page one (1).

Town of Los Gatos

Consultant:

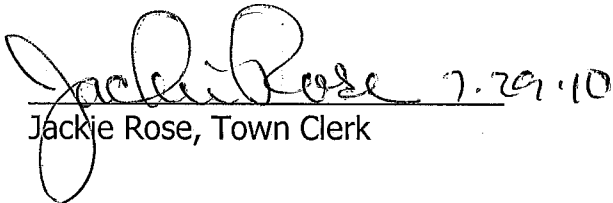

Rumi Portillo, HR Director
Town of Los Gatos


Gary Archibald, CIO, President
Innovative Claims Solutions, Inc.



Greg Larson, Town Manager
Town of Los Gatos

ATTEST:

Clerk of the Town of Los Gatos,
Los Gatos, California


Jackie Rose, Town Clerk

Approved as to Form:


Michael Martello, Interim Town Attorney