

**THIRD AMENDMENT TO AGREEMENT**

This third AMENDMENT TO AGREEMENT is entered into this \_\_\_\_ day of June, 2017 by and between the Town of Los Gatos, State of California, herein called "Town", and Innovative Claim Solutions, Inc., herein called "Consultant."

RECITALS

- A. Town and Consultant entered into an Agreement on June 30, 2010 to provide workers' compensation administration consulting services, a copy of which is attached hereto and incorporated by reference as Attachment 1.
- B. The Town and Consultant entered into a First Amendment to Agreement on October 8, 2013, a copy of which is attached hereto and incorporated by reference as Attachment 2.
- C. The Town and Consultant entered into a Second Amendment to Agreement on June 30, 2017, a copy of which is attached hereto and incorporated by reference as Attachment 3.
- D. The Town desires to extend the contract through June 30, 2018.

AMENDMENT

- 1. Section 1 of Exhibit C "Compensation Schedule" of the Agreement is hereby amended to reflect that the Town pays Consultant a monthly fee of \$4,291.66 monthly (equivalent to an annual fee of \$51,500) for the period July 1, 2017 through June 30, 2018.
- 2. All other terms and conditions of the Agreement effective July 1, 2010 remain in full force and effect.

IN WITNESS WHEREOF, the Town and Consultant have executed this Agreement as of the date indicated on this agreement.

TOWN OF LOS GATOS:

CONSULTANT:

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

\_\_\_\_\_  
Gary Archibald, CIO, President      Date  
Innovative Claim Solutions, Inc.

APPROVED AS TO FORM:

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

ATTEST:

\_\_\_\_\_  
Shelley Neis, Clerk Administrator      Date

## **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 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:
  1. 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 Worker's 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 the 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:**

Because Consultant has already performed all implementation processes when originally award the contract, Consultant will provide the following services, or provide assistance to the Town if updating of prior information is required:

1. Continued storage of all closed files, even those assumed from the prior administrators.
2. 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.
3. Implementation visits to the Town to distribute claim manuals and discuss self-insurance and Innovative Claim Solutions, Inc. service program with key personnel, should any major changes in procedures be required.
4. Design and implement all accounting and trust fund procedures, should any changes be required.
5. Produce and design all necessary reports.

## EXHIBIT B

### INCORPORATED TERMS

During the Term of this Agreement, Consultant shall provide services in accordance with the procedures and performance standards included below:

#### GENERAL:

1. **Availability:** Consultant shall at all times, have one or more of the examiners assigned to the Town's account, or in their absence, the supervisor or Vice President of Workers' Compensation available by telephone for emergencies through a 24-hour emergency telephone number. Consultant shall ensure at least one or more of the examiners assigned to the Town's account is on-site and available to the Town every business day throughout the term of the contract period.
2. **Review of Examiner:** The Town shall have the right and opportunity to approve or reject any proposed examiner provided by Consultant. The Town shall also have the opportunity to review service provided by examiner and require a new examiner if service is unacceptable to Town.
3. **Caseload:** Caseload of Town's designated examiner will not exceed 175 open indemnity claims excluding future medical cases.
4. **Return Calls:** Return calls to claimants and Town will be made within four (4) business hours of receipt when possible and no later than the next business day.
5. **Training:** Consultant shall provide training, workshops, or guest lecturers presented in a classroom setting or as informal "brown bag" sessions on topics related to Safety, Workers' Compensation and Medical Management, including information appropriate to employees, supervisors, and Town Administration in their respective roles. Training shall be provided at least annually, when requested, and may be on-site at Town facilities, with advance notice, or at a location determined by the Consultant.

#### CLAIMS PROCESSING:

1. Claims will be created and entered into the computer system within two (2) working days of Consultant's receipt.
2. Lost-time claims, with the exception of future medicals, will be reviewed on diary at least every 30 days or more frequently where needed.
3. Medical-Only claims whose medical payments exceed \$3,000 will be placed on supervisory diary of not more than 90 days.
4. Benefit payments (TTD, TPD, PPD, PTB, LP, DB, VR, etc.) will be paid promptly as required by state statute following verification of compensability.

5. Transportation reimbursement will be mailed within five (5) days of the receipt of the claim for reimbursement, whenever possible. Advance travel expense payments will be mailed to the injured employee ten (10) days prior to the anticipated date of travel.
6. Prior to approval for payment, medical bills will be reviewed for causal relationship and propriety of charges. Bills will be subject to applicable fee schedule adjustments and paid/denied/objected to within 30 days of Consultant's receipt.
7. Reserves established on lost-time claims will reflect the ultimate probable cost of each claim based on the information developed to date. Reserve worksheets will reflect amounts allocated to temporary disability, permanent disability, and vocational rehabilitation (if applicable), medical care and allocated expense.
8. Medical-only claims will be reviewed every 30 days for possible closure.
9. Consultant shall program salary continuation or 4850 payment tracking for actual check production, voucher production, payment posting or any combination of these items as required by the Town.
10. Indemnity claims will be reviewed by the appropriate supervisor no less frequently than at the following intervals for quality control:
  1. File creation
  2. Denials
  3. Delayed claims
  4. When reserve increases exceed examiner authority
  5. Closures
  6. When a proposed settlement exceeds examiner authority
  7. AOE/COE and sub-rosa investigative referrals
  8. Open indemnity files at 90 days from date of creation, and every 90 days thereafter until claim resolution, and every 180 days on settled claims
  9. 15 days prior to mandatory settlement conference
  10. 15 days prior to scheduled trials
  11. The Town will be advised of the assessment of any penalty for delayed payment and the reason thereof and Consultant's plans for payment of such penalty within five (5) days of assessment.

**FILE DOCUMENTATION:**

1. The basis for initial and subsequent reserve changes and payments will be clearly explained in the claim file.
2. Summary of investigative plan of action and efforts will be documented in the claim file.
3. A decision on compensability will be documented in the file along with the basis for that decision within 14 days of receipt of the Claim Form (DWC 1), whenever possible.
4. Claims on which a delay is necessary must clearly document the reasons for the delay; the information needed to determine compensability and the anticipated date of a final decision.

In no case will the final date be more than 90 days after the Town's date of knowledge.

5. Employer contact is required to verify continued disability and explore the availability of modified or light duty prior to processing of disability payments.
6. Claims involving lost time will be reported to the Index Bureau and this referral will be reflected in the claim file.

## INVESTIGATIONS

1. Lost time claims will be investigated. At a minimum, the Town will be contacted to obtain accident information, witness names, and to verify disability dates and wage information.
2. On questionable indemnity claims, investigative assignments will be made to outside vendor within 5 days of Consultant's notice of claim to obtain statements from witnesses and the injured employee, when necessary.
3. Medical verification of causation and disability will be obtained prior to each payment of disability benefits. An estimate as to length of disability and extent of disability will be obtained.
4. Consultant will contact the injured employee via telephone within 24 hours of notice of injury on all lost time cases to verify injury, prior related medical history, and accident information and to explain benefits. The results of this contact and all contact attempts will be documented in the claim file. Subsequent regular contact with temporarily disabled employees will be maintained.
5. Investigative assignments will address the applicability of apportionment, subrogation potential and the need for surveillance or activity checks.
6. Outside investigative services will be retained on an as-needed basis only, with concurrence from the Town. The need for outside services will be clearly documented in the file.
7. Where medical causation is unclear, a medical evaluation will be requested with a qualified physician following the required QME process. All relevant medical records and investigative information will be provided to the physician for review prior to the date of examination.

## **MEDICAL MANAGEMENT**

1. Initial investigative contacts with the employer, employee, and physician's office will be made within 24 hours of Consultant's notice of the claim on all lost time cases.
2. Medical verification of disability will be obtained in a timely manner and maintained in the claim file to document the need for continuing indemnity benefits.
3. Medical treatment provided will be reviewed for necessity, reasonableness, and relationship to the industrial injury with appropriate referrals for Utilization Review services.
4. Catastrophic injury claims and extensive lost-time claims will be reviewed by a qualified medical management provider, as needed. Claims referred for outside medical management services will reflect the intent and scope of services requested.
5. Independent medical examinations by qualified physicians will be scheduled when needed to address necessity or reasonableness of care, following the appropriate QME procedures requirements. A cover letter will be provided to the physician outlining the specific issues and concerns along with the examiner's questions.
6. Recommendations for back surgery shall be confirmed through a second opinion unless objective signs of neurological involvement and radiculopathy exist, following the labor code requires procedures.
7. Pre-existing medical conditions and medical records will be explored/obtained on all lost-time claims, as needed when an issue of apportionment exists.
8. Treatment recommendations for care such as physical therapy, chiropractic manipulations, etc., will be verified with the physician as to duration, frequency and anticipated results.
9. Medical bills submitted without supporting medical reports shall not be paid until a medical report is obtained. All bills will be adjusted according to the fee schedule and paid or objected to according to the law.
10. Medical-legal costs will be reviewed for appropriateness and necessity. Bills which do not qualify as a valid medical-legal expense will be objected to on a timely basis.

## **RESERVING**

1. Lost-time claims will be reviewed at 30 days, 90 days from date of creation and every 90 days thereafter for the life of the claim for adequacy of reserves and proper development of the action plan on all unresolved claims and every 180 days on resolved claims.
2. Reserve amounts will reflect the ultimate probable cost of the claim, and worksheets detailing reserve changes will be kept in the claim file..

3. Claims with aggregate reserve increases exceeding \$25,000 require supervisory review and approval. Evidence of supervisory review and direction shall be clearly documented in the claim file.

## **COMMUNICATION**

1. Quarterly Claim Reviews will be provided if requested by the Town, and if requested, a detailed review of selected claims and their medical management will be presented by Consultant.
2. Annual Stewardship Reports shall be created and reviewed in detail with the Town.
3. The Town shall be consulted prior to all settlements beyond the prearranged authority levels, if any.

## **MIS**

1. Agreed to monthly, quarterly and annual reports will be produced and forwarded to the Town by the 14<sup>th</sup> of the month.
2. Check production will occur on a daily basis. Signatures will be obtained as required by the Town.
3. On-line access will be made available to the Town. Training on report formatting and production capabilities will also occur, as required.

## **LITIGATION MANAGEMENT**

1. The examiner will retain primary responsibility on all claims referred to defense counsel. Defense counsel will not be used to perform activities that should be the responsibility of the examiner. Referrals will be made to hearing representatives whenever possible and feasible consistent with the Town's guidelines.
2. Legal counsel will be selected on the basis of expertise and performance and as agreed to with the Town.
3. Claims sent to defense counsel will be accompanied by a referral form outlining the status of the case, results of investigations and primary issues.
4. Defense counsel will be required to provide a case summary with recommendations for resolution and an action plan within 15 days of referral.
5. At least two weeks prior to close of discovery on cases proceeding to trial, the file will have been adequately prepared to include necessary depositions, medical examinations and witness identification and contacts.

**EXHIBIT C**

**COMPENSATION SCHEDULE**

Compensation for Consultant's professional services shall not exceed the amounts set forth below:

**I. Claims Administration Services:**

On or before the first day of each month during the Term, the Town will pay Consultant a fixed monthly fee for the claims administration services described in this Agreement. The Town's obligation to pay compensation in future fiscal years shall be contingent upon budget authorization by the Town Council.

FY 2017-18	\$4,291.66 monthly
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**2. Program Implementation:**

MMSEA Reporting	\$500 flat rate due on 7/1 of each year the contract commences.
Custom computer programming	\$150.00 per hour, as needed
Index Bureau reporting	\$9.20 each time a claim is reported, or whatever the current costs may be as determined by ISO.

**3. Expenses:**

In addition to the payment of all medical and indemnity loss expenses incurred by or on behalf of the Town in connection with the handling of any claim under this Agreement, the Town will pay "Allocated Expenses", which are defined as those costs incurred on a claim file unrelated to administration or management services as described in this proposal. Allocated Expenses may include legal fees, court reporters, court costs, professional photographers, expert witness fees, sub-rasa, field investigation and outside services and other similar services not considered administrative in this proposal.

**4. Medical Management:**

Unless otherwise directed, consultant shall utilize the following companies for medical cost containment services:

**Bill Review**

Diamond Bill Review Services to provide all bill review functions, whose charges are as follows and paid through a monthly invoice on a designated claim file:

Medical bills	\$3.00 Header per bill, \$1.00 per line
Inpatient Bills	20% of savings
Outpatient Bills	16% of savings
Out of Network Bills	25% of savings
PPO Network	20% of savings*
Fees for Review Only bills and liens	\$100.00 flat rate

**Utilization Review**

GENEX for all Utilization and Physician/Peer Review services, whose charges are as follows and paid off the claim files:

- \$100.00 per RN determination, including all letters
- \$220.00/hr (billed in 1/4 hr increments) Physician Advisor Review, including letters
- \$310.00/hr (billed in 1/4 hr increments) Specialty Physician Reviews on Appeals, including letters
- \$310.00/hr (billed in 1/4 hr increments) Peer Review, with report

## **EXHIBIT D**

### **INSURANCE**

#### **A 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.

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.

#### **B 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.

The Consultants insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees and volunteers. Any insurance or self-insurance's 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.

C All Coverage's: Each insurance policy required in this item shall be endorsed to state that  
Exhibit D Insurance (continued)

coverage shall not be suspended, voided, canceled, 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.

- D. 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.