



VEHICLE DAMAGE RECOVERY SERVICES AGREEMENT

THIS VEHICLE DAMAGE RECOVERY SERVICES AGREEMENT (this "Agreement" or "Contract") is dated as of the ____ day of _____, 2023, by and between **Alternative Claims Management, LLC**, a Texas limited liability company, whose principal business address is 8610 N New Braunfels Ave. #210, San Antonio, TX 78217, hereinafter called the "CONSULTANT", and City of Norman, Oklahoma, a municipality, whose address is 201 W. Gray, Norman, Oklahoma 73069, hereinafter called the "MUNICIPALITY." MUNICIPALITY and CONSULTANT, in consideration of the mutual covenants hereinafter set forth, agree as follows:

WITNESSETH:

Section 1. Services.

MUNICIPALITY does hereby retain CONSULTANT to furnish services as described in the Scope of Services contained in the solicitation package, in which Scope of Services is incorporated herein by reference. CONSULTANT is also bound by all requirements contained in the solicitation package and all addenda thereto, which are hereby incorporated into this contract.

Section 2. Term./ Termination

This Agreement will take effect on _____, 2023, and will continue from year to year unless otherwise terminated by either party or modified by mutual agreement. This Agreement may be terminated by either party for any reason, or for no reason, upon sixty (60) days written notice to the other party. See Section 18 for the Notice requirement.

Section 3. Authorization for Services.

Authorization for provision of services by CONSULTANT under this Agreement may be in the form of written Task Assignments, defined as a vehicle accident submission with supporting documents, issued and executed by MUNICIPALITY. Each Task Assignment will describe the work and services required. The Task Assignments will be issued pursuant to and incorporate the terms of this Agreement. MUNICIPALITY makes no covenant or promise as to the number of available Task Assignments or that CONSULTANT will perform any work for MUNICIPALITY during the life of this Agreement. The services to be performed by CONSULTANT pursuant to this Agreement are non-exclusive, and MUNICIPALITY does not guarantee or otherwise represent that the MUNICIPALITY will provide the CONSULTANT with any work or any certain amount of work under this Agreement. MUNICIPALITY reserves the right to contract with other or multiple parties for the work or services contemplated by this Agreement when it is determined by MUNICIPALITY to be in the best interest of MUNICIPALITY. MUNICIPALITY shall have the sole right to reduce, or eliminate, in whole or in part, the



services or work assigned by any Task Assignment(s) issued under this Agreement at any time and for any reason, upon written notice to CONSULTANT specifying the nature and extent of the reduction.

Section 4. Compensation.

MUNICIPALITY agrees to compensate CONSULTANT for the services provided under this Agreement in accordance with the Compensation Proposal accepted by MUNICIPALITY as **Attachment "A."** No monthly or per file fees may be charged. In no event will MUNICIPALITY be required to pay for any services that have not been properly performed or completed, nor shall MUNICIPALITY be required to pay any additional expenses, costs, or fees other than those specified in **Attachment "A,"** it being understood that the amounts collected by CONSULTANT on behalf of MUNICIPALITY are the sole source of compensation to be paid pursuant to this Agreement and that **Attachment "A"** sets forth the entirety of the compensation that may be due to CONSULTANT. MUNICIPALITY is not required to pay CONSULTANT for any matter in which CONSULTANT fails to recover funds on MUNICIPALITY's behalf. This Agreement does not constitute an assignment of claims or benefits by MUNICIPALITY.

Section 5. Payment Procedures.

Upon collection of funds from claims made on MUNICIPALITY's behalf, CONSULTANT shall promptly pay the amount(s) due to MUNICIPALITY via ACH (Attachment B). CONSULTANT shall maintain adequate records to justify all fees, charges, expenses, and costs incurred or charged in performing the services under this Agreement for at least three (3) years after termination of this Agreement or in accordance with the applicable retention established by the appropriate State Agency governing records retention, whichever period is longer. MUNICIPALITY or its duly authorized representatives shall have access to such books, records, and documents as required in this paragraph for the purpose of inspection, audit, excerpts, and transcription during normal business hours upon five (5) business days' written notice.

Section 6. CONSULTANT's Representations/Obligations.

Neither MUNICIPALITY's review, approval, acceptance of, nor payment for any of the services required will be construed to operate as a waiver of any rights under this Agreement, or of any cause of action arising out of the performance of this Agreement. CONSULTANT shall be and will always remain liable to MUNICIPALITY, in accordance with applicable law, for any and all damages to MUNICIPALITY caused by CONSULTANT's negligent or wrongful provision of any of the services furnished under this Agreement.

Section 7. Insurance.



- a. Without limiting any of the other obligations or liabilities of CONSULTANT, CONSULTANT shall, at CONSULTANT's sole expense, procure, maintain, and keep in force amounts and types of insurance conforming to the minimum requirements set forth in the Contract Documents. Except as otherwise specified in the Contract Documents, the insurance must become effective prior to the commencement of work by CONSULTANT and must be maintained in force until Final Completion and Acceptance of the Work or such other time as required by the Contract Documents.
- b. CONSULTANT will not commence work under this Contract until it has obtained all insurance required under this paragraph and such insurance has been approved by MUNICIPALITY.
- c. All insurance policies shall be issued by companies authorized to do business under the laws of the issuing state.
- d. CONSULTANT shall maintain, during the life of this Contract, the following coverages to protect CONSULTANT from claims for damages for bodily injury, including wrongful death, as well as from claims of property damages, which may arise from any operations under this Contract, whether such operations be by CONSULTANT or by anyone directly employed by or contracting with CONSULTANT.
- e. The Commercial General Liability policy required herein must be issued on an occurrence basis and include coverage for CONSULTANT's operations, independent contractors, subcontractors, and "broad form" property damage coverages protecting itself, its employees, agents, contractors, or subsidiaries, and their employees or agents for claims for damages caused by bodily injury, property damage, personal or advertising injury, and product's liability/completed operations, including what is commonly known as groups A, B, and C. Public liability coverage must include either blanket contractual insurance, or a designated contract contractual liability coverage endorsement, indicating expressly CONSULTANT's obligation to indemnify, defend, and hold harmless MUNICIPALITY as provided in this Agreement.
- f. All insurance policies written on a Claims-Made Form must maintain a retroactive date prior to the effective date of the Agreement. CONSULTANT must purchase a Supplemental Extended Reporting Period ("SERP") with a minimum reporting period of not less than 3 years in contemplation of an event in which the policy is canceled, not renewed, switched to occurrence form, or any other event that requires the purchase of a SERP to cover a gap in insurance coverage for claims that may arise



related to CONSULTANT's acts or omissions in the performance of its obligations under this Agreement. Additionally, CONSULTANT shall require the carrier to immediately inform CONSULTANT and MUNICIPALITY of any contractual obligations that may alter CONSULTANT's professional liability coverage under this Agreement.

- g. CONSULTANT shall maintain, during the life of this Contract, adequate Workman's Compensation Insurance and Employer's Liability Insurance in at least such amounts as are required by law for all of its employees performing work for MUNICIPALITY pursuant to this Contract. All insurance, other than the Professional Liability and Workmen's Compensation policies to be maintained by CONSULTANT shall be endorsed to include MUNICIPALITY as an "Additional Insured." **All insurance policies provided pursuant to this Agreement must include endorsements (i) making the policies primary and non-contributory with any valid and collectible insurance available to MUNICIPALITY and (ii) waiving subrogation in favor of MUNICIPALITY.**
- h. The following are the minimum required insurance limits and may not be construed or otherwise interpreted to limit or restrict CONSULTANT's indemnification obligations pursuant to this Agreement:

Policy	Type	Limit
Professional Liability (Errors and Omissions)	Each Claim	\$2,000,000
	Aggregate	\$2,000,000
Workers' Compensation (Employers' Liability)	Each Claim	\$1,000,000
	Aggregate	\$1,000,000
Commercial General Liability	Each Occurrence	\$1,000,000
	Aggregate	\$1,000,000
Automobile Liability (Endorsed for any Auto)	Liability	\$2,000,000
	Bodily Injury and Property Damage	\$2,000,000
	PIP	\$10,000

Section 8. Contract Documents

The Contract Documents, which comprise the entire agreement between MUNICIPALITY and CONSULTANT, are made a part hereof and consist of the following:

- a) This Agreement
- b) Compensation Proposal
- c) Public Records Disclosure Form
- d) E-Verification Certification
- e) Conflict of Interest Statement



- f) Insurance Confirmation
- g) Americans With Disabilities Act
- h) Notice of Representation
- i) Authorization to Obtain Loss Runs and Claim Documents
- j) ACH Deposit Form

Section 9. Scrutinized Companies

By entering into this Agreement, CONSULTANT certifies that neither it, nor any of its wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, which exist for the purpose of making a profit, have been placed on the Scrutinized Companies that Boycott Israel List found on any State or National list or are otherwise engaged in a boycott of Israel. Furthermore, if the Agreement amount equals or exceeds one million dollars (U.S.), CONSULTANT certifies that neither it, nor any of its wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, which exist for the purpose of making a profit, are on the Scrutinized Companies with Activities in the Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to any State or National list, or are otherwise engaged in business operations in Cuba or Syria as defined in said statute. CONSULTANT understands and agrees that MUNICIPALITY may immediately terminate this Agreement upon written notice if CONSULTANT (or any of those related entities of CONSULTANT as defined above by law) is found to have certified falsely with regard to this section or if any of the following occur with respect to CONSULTANT or related entity: (i) it has been placed on the Scrutinized Companies that Boycott Israel List or is otherwise engaged in a boycott of Israel; or (ii) for any contract for goods or services of one million dollars or more, it has been placed on the Scrutinized Companies with Activities in the Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or it is found to have been engaged in business operations in Cuba or Syria.

Section 10. Miscellaneous.

- a. Personnel. CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with MUNICIPALITY. All of the services required herein under shall be performed by CONSULTANT or under its supervision, and all personnel engaged in performing the services must be fully qualified and, if required, authorized, licensed, or otherwise permitted under the state and local law to perform such services. Any changes or substitutions in



CONSULTANT's key personnel as may be listed herein must be made known to MUNICIPALITY's representative prior to execution, and written approval granted by MUNICIPALITY before said change or substitution can become effective.

- b. Subcontracting. MUNICIPALITY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities and background of any subcontractor in order to make a determination as to the capability of the subcontractor to perform properly under this Agreement. If a subcontractor fails to perform, as required by this Agreement, and it is necessary to replace the subcontractor to complete the work timely or otherwise, CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by MUNICIPALITY.
- c. Arrears. CONSULTANT shall not pledge MUNICIPALITY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. CONSULTANT further warrants and represents that it has no obligation, indebtedness, pending or threatened legal action or government or other regulatory action against any of CONSULTANT's or its subcontractors', agents' and employees' licenses that would impair its ability to fulfill the terms of this Agreement.
- d. Independent Consultant Relationship. CONSULTANT is and shall be, in the performance of all work services and activities under this Contract, an Independent Consultant, and not an employee, agent, or servant of MUNICIPALITY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to CONSULTANT's sole direction, supervision, and control. CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work, and in all respects, CONSULTANT's relationship and the relationship of its employees to MUNICIPALITY is that of an Independent Consultant and not as employees or agents of MUNICIPALITY. CONSULTANT does not have the power or authority to bind MUNICIPALITY in any promise, agreement, or representation other than as specifically provided for in this Agreement.
- e. Nondiscrimination. CONSULTANT warrants and represents that all of its employees are treated equally without regard to race, color, disability, marital status, religion, sex, age, or national origin and in compliance with applicable law.
- f. Contingent Fees. CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other



than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

- g. Access and Audits. CONSULTANT shall maintain all records relating to this Agreement, including adequate records to justify all charges, expenses, and costs incurred in performing the work for at least three (3) years after completion of this Contract, or longer if so required by municipalities state records retention requirements. MUNICIPALITY or its duly authorized representatives shall have access to such books, records, and documents as required in this section for the purpose of inspection, audit, excerpts, and transcription during normal business hours, at no cost to MUNICIPALITY, upon five (5) days written notice.
- h. Authority to Practice. CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and to perform pursuant to this Agreement and that it will at all times conduct its business activities in a reputable manner.
- i. No Waiver of Sovereign Immunity. Nothing contained in this Agreement or incorporated documents may be considered or deemed a waiver of MUNICIPALITY's sovereign immunity protections or any other privilege, immunity, or defense afforded by law to MUNICIPALITY or its officials, officers and employees, including, but not limited to, those set forth in State Statutes.
- j. Ethics and Conflicts. CONSULTANT agrees that it will perform the services pursuant to this Agreement in a cordial and professional manner. CONSULTANT agrees that its agents, employees, contractors, and subcontractors, if any, will not engage in any act or omission that would create a conflict of interest in the performance of CONSULTANT's obligations pursuant to this Agreement or that would violate or cause others (including officials or employees of MUNICIPALITY) to violate any state or local ethics laws. CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. CONSULTANT further represents that no person having any such interest shall be employed for such performance.
- k. **IN NO EVENT SHALL MUNICIPALITY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR DELAY DAMAGES, INCLUDING LOSS OF PROFITS, LOSS OF REVENUE, OR LOSS OF USE, OR COST OF COVER INCURRED BY CONSULTANT, SUB-CONSULTANTS OR ANY THIRD PARTIES ARISING OUT OF THIS AGREEMENT AND/OR CONCERNING THE PERFORMANCE OF WORK BY CONSULTANT, SUBCONSULTANTS, OR BY MUNICIPALITY UNDER THIS AGREEMENT.**



REGARDLESS OF ANYTHING SET FORTH IN THIS AGREEMENT TO THE CONTRARY, MUNICIPALITY'S MAXIMUM MONETARY LIABILITY UNDER THIS AGREEMENT IS LIMITED TO THE FEE COMPENSATION THAT MUNICIPALITY IS REQUIRED TO PAY TO CONSULTANT FOR THE PROPER PERFORMANCE OF SERVICES PURSUANT TO THIS AGREEMENT.

- I. Inconsistencies. If there are any inconsistencies between this Agreement and the Proposal Documents, the terms of this Agreement shall control to the extent of the conflict.

Section 11. Survival.

All covenants, representations, and warranties made in this Agreement by CONSULTANT and by CONSULTANT in its response to the RFP, including, but not limited to, Section 7 Insurance, shall survive the execution and delivery of this Agreement, completion of the Work and Final Payment.

Section 12. Availability of Funds.

Notwithstanding any other provision of this Contract and the Contract Documents to the contrary, the obligations of MUNICIPALITY under this Contract are subject to discretionary annual appropriation and the availability of funds lawfully appropriated for its purpose by the MUNICIPALITY. When funds are not appropriated or otherwise made available to support the continuation of performance in a subsequent fiscal period, this Contract shall be deemed terminated on the last day of the fiscal period for which appropriations were made or earlier as determined by MUNICIPALITY.

Section 13. Compliance with Laws / ADA.

CONSULTANT agrees to comply with all laws, codes, rules, and regulations bearing on the conduct of work, including those of the federal, state and local agencies having jurisdiction, including any MUNICIPALITY codes and regulations, and including any applicable laws and regulations with respect to fair debt collection practices. CONSULTANT shall not unlawfully discriminate against any person in its operations or activities or in its provisions of goods or services pursuant to this Agreement. CONSULTANT further agrees that it shall affirmatively comply with all applicable provisions of and regulations enacted pursuant to the Americans with Disabilities Act in its provision of goods or services for or on behalf of MUNICIPALITY, including Titles II and III of the ADA addressing requirements for provisions of programs, services, and public accommodations. For the purposes of this paragraph, any services or products offered by CONSULTANT to the public via the internet or online must comply with WCAG 2.0 AA or better in order to be deemed ADA compliant. If MUNICIPALITY, Department of Justice, or other governmental entity responsible for ensuring ADA compliance notes any deficiency in the facilities, practices, services, or operations of CONSULTANT furnished



or provided in connection with the Agreement, CONSULTANT shall, at no additional charge or cost to MUNICIPALITY, immediately cure any such deficiencies without delay to the satisfaction of MUNICIPALITY, USDOJ, or such other responsible governmental entity. CONSULTANT further agrees that it shall indemnify, defend, and hold harmless MUNICIPALITY from and against any and all claims, sanctions, or penalties assessed against MUNICIPALITY, including attorneys' fees awarded against MUNICIPALITY, which claims, sanctions, or penalties arise or otherwise result from CONSULTANT's failure to comply with the ADA or, with regard to online or internet services, the WCAG 2.0 AA or better standard.

Section 14. Additional Services.

Should MUNICIPALITY require additional services of CONSULTANT beyond the original Scope of Services of the Contract Documents, MUNICIPALITY and CONSULTANT shall thereafter negotiate in good faith to agree upon a change order with a firm fixed price satisfactory to both parties. If an agreement is reached, then such agreement shall be specified in a written purchase order executed by both parties. MUNICIPALITY retains the option to instruct CONSULTANT via written Task Assignment to find local counsel to file suit against a liable party for any claim element. The final recovered amount from any such litigation, in addition to any Compensation to be provided pursuant to **Attachment "A,"** will be the final recovered amount less the legal fees and costs incurred by litigation counsel. Prior to any such suit, MUNICIPALITY and CONSULTANT will agree in writing via Task Assignment as to what the legal fee arrangement will be. In no event will CONSULTANT or its agents, contractors, or employees be authorized to file or prosecute any litigation on MUNICIPALITY's behalf without MUNICIPALITY's express written authorization via Task Assignment, which MUNICIPALITY has the right to refuse in its sole discretion. MUNICIPALITY retains the sole authority to make all final settlement and client-level decisions concerning any potential or actual litigation brought on MUNICIPALITY's behalf.

Section 15. Indemnification / Sovereign Immunity.

CONSULTANT shall indemnify, defend, and hold harmless MUNICIPALITY, its elected and appointed officials, officers, agents, and employees from and against all claims, suits, actions, penalties, sanctions, costs, losses, liabilities, damages and/or cause of action, including, but not limited to, attorneys' fees and litigation costs at trial and appellate levels, arising from or related to the errors, omissions, negligent acts, recklessness, wrongful or illegal acts, or gross negligence of CONSULTANT, inclusive of its subcontractors, agents, servants, or employees, in the performance of CONSULTANT's duties pursuant to this Agreement. Such indemnity, defense, and hold harmless obligation requires CONSULTANT to provide a defense for and reimburse MUNICIPALITY for all costs, attorney's fees (utilizing attorneys selected by or agreeable to MUNICIPALITY),



experts' fees, expenses, and liabilities incurred by MUNICIPALITY in or by reason of the defense of any such claim, suit, action, or other indemnified claim, and the investigation thereof. MUNICIPALITY expressly retains all rights, benefits, and immunities of sovereign immunity in accordance with State Statutes. Nothing in this Agreement may inure to the benefit of any third party for the purpose of allowing any claim against MUNICIPALITY, which claim would otherwise be barred under the doctrine of sovereign immunity or by operation of law. Regardless of anything set forth in this Agreement to the contrary, MUNICIPALITY's maximum monetary liability under this Agreement is limited to the fee compensation that MUNICIPALITY is required to pay to CONSULTANT for the proper performance of services pursuant to this Agreement. In no event may CONSULTANT place or make any lien or claim of lien upon MUNICIPALITY's real or personal property. For purposes of compliance with State law, CONSULTANT acknowledges that this Section 15 Indemnification / Sovereign Immunity shall be deemed a part of the specifications and the procurement documents for the Work. This Section 15 Indemnification / Sovereign Immunity survives termination and expiration of this Agreement, completion of the Work and Final Payment, and is intended by CONSULTANT and MUNICIPALITY to be enforceable to the fullest extent permissible under State law.

Section 16. Public Records Laws.

By entering into this Agreement, CONSULTANT acknowledges and agrees that any records maintained, generated, received, or kept in connection with, or related to the performance of services or provision of goods pursuant to this Agreement, including any record, document, computerized information and program, e-mail, audio or videotape, photograph, or other writing of CONSULTANT and its independent contractors, agents, and associates related, directly or indirectly, to this Agreement, are public records subject to the public records disclosure requirements of State Statutes. ~~Based upon current State Statutes,~~ Any CONSULTANT entering into a contract or agreement for goods or services with MUNICIPALITY is required to:

- A. Keep and maintain public records required by MUNICIPALITY to perform the services and work or provide goods pursuant to this Agreement.
- B. Upon request from MUNICIPALITY, provide MUNICIPALITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in State or local Statutes or Ordinances or as otherwise provided by law.



- C. Ensure that public records that are statutorily exempt from disclosure or are confidential are not disclosed except as authorized by law for the duration of the term of the Agreement and following completion or termination of the Agreement if CONSULTANT does not transfer the records to MUNICIPALITY.
- D. Upon completion or termination of the Agreement, transfer, at no cost to MUNICIPALITY, all public records in the possession of CONSULTANT or keep and maintain public records required by MUNICIPALITY to perform the service. If CONSULTANT transfers all public records to MUNICIPALITY upon completion or termination of the Agreement, CONSULTANT shall destroy any duplicate public records that are exempt from disclosure or are confidential and exempt from public records disclosure requirements. If CONSULTANT keeps and maintains public records upon completion or termination of the Agreement, CONSULTANT shall meet all applicable requirements for retaining and maintaining public records. All records stored electronically must be provided to MUNICIPALITY upon request in a format that is compatible with the information technology systems of MUNICIPALITY.
- E. Because MUNICIPALITY's documents are of utmost importance to the conduct of MUNICIPALITY business and due to the legal obligations imposed upon MUNICIPALITY and CONSULTANT by Public Records Law, CONSULTANT agrees that it shall, under no circumstances, withhold possession of any public records, including originals, copies or electronic images thereof when such are requested by MUNICIPALITY, regardless of any contractual or other dispute that may arise between CONSULTANT and MUNICIPALITY.

Requests to inspect or copy public records related to this Agreement must be made directly to MUNICIPALITY. If CONSULTANT receives any such request, CONSULTANT shall instruct the requestor to contact MUNICIPALITY. If MUNICIPALITY does not possess the records requested, MUNICIPALITY shall immediately notify CONSULTANT of the request, and CONSULTANT must provide the records to MUNICIPALITY or otherwise allow the records to be inspected or copied within a reasonable time. CONSULTANT acknowledges that failure to provide public records to MUNICIPALITY within a reasonable time may subject CONSULTANT or MUNICIPALITY to penalties under the state statutes. CONSULTANT further agrees not to release any records that are statutorily confidential or otherwise exempt from disclosure without first receiving prior written authorization from MUNICIPALITY. CONSULTANT shall further indemnify, defend, and hold MUNICIPALITY harmless from and against any and all claims, damage awards, and causes



of action, including any third-party claims or awards for attorneys' fees and costs, arising from CONSULTANT's failure to comply with the public records disclosure requirements, or by CONSULTANT's failure to keep confidential those records that are statutorily exempt or confidential pursuant to law. CONSULTANT authorizes MUNICIPALITY to seek declaratory, injunctive, or other appropriate relief against CONSULTANT from a District Court in Cleveland, County, Oklahoma, ~~on an expedited basis~~ to enforce the requirements of this section. Furthermore, this Section shall survive termination and expiration of this Agreement, completion of the Work and Final Payment.

Section 17. Successors and Assigns.

No assignments by a party hereto of any rights under or interests in this Agreement will be binding on another party hereto without the written consent of the party sought to be bound, and any such assignment shall be void and of no effect; and specifically but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. MUNICIPALITY and CONSULTANT each binds themselves and their respective successors, assigns and legal representatives in respect to all covenants, agreements, and obligations contained in the Agreement.

Section 18. Notices.

Whenever either party desires to give notice unto the other including, but not limited to, claims under this Agreement or Termination, it must be given by written notice, electronic communication, hand delivered, signed and dated for receipt or sent by certified United States mail with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice, to:

FOR CONSULTANT:

Attn: Michael Lewandowski
Chief Administration Officer/President
Alternative Claims Management, LLC
8610 N New Braunfels Ave., #210, San Antonio, TX 78217

FOR MUNICIPALITY:

Attn: Darrel Pyle, City Manager
City of Norman, Oklahoma
201 W. Gray, Norman, OK 73069
darrel.pyle@normanok.gov

Section 19. Conflict of Interest.

- a. CONSULTANT agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with MUNICIPALITY or which would violate or cause others to violate any provisions of the state statutes relating to ethics in government.



- b. CONSULTANT hereby certifies that no officer, agent, or employee of MUNICIPALITY has any material interest over 5% either directly or indirectly, in the business of CONSULTANT to be conducted here and that no such person shall have any such interest at any time during the term of this Agreement.
- c. CONSULTANT hereby agrees that monies received from MUNICIPALITY pursuant to this Agreement will not be used for the purpose of lobbying the Legislature or any other State or Federal Agency.

Section 20. Material Breaches of Agreement.

- a. The parties recognize that breaches of the Agreement may occur and that remedies for those breaches may be pursued under the Agreement.
- b. The parties further recognize that the safety of the public is of paramount concern. Therefore, the parties agree that any breach of the Agreement related to the life, safety or health of the public will be considered a material breach of the Contract Documents.
- c. Upon a material breach of the Contract Documents related to life, safety, or health, as determined by MUNICIPALITY, MUNICIPALITY shall issue a stop work order suspending the work and services or any specific portion of the work or services of CONSULTANT until the conditions are corrected. If the life, safety, or health conditions giving rise to the stop work order are not corrected within a reasonable time, as determined by MUNICIPALITY, then the material breach will entitle MUNICIPALITY to terminate this Agreement. The recognition of breaches of the provisions of the Contract Documents related to life, safety, and health as material breaches will not be construed as a limitation on other remedies for breaches or material breaches of the Agreement.

Section 21. Attorney Fees.

The parties expressly agree that each party shall be solely responsible for their own attorneys' fees and costs incurred in any negotiation, dispute resolution or litigation related to or arising out of the Work and this Agreement, except as otherwise expressly specified in the Agreement (by way of example: Bonds and Indemnity provisions).

Section 22. Choice of Law; Choice of Forum.

- a. This Agreement and all matters arising out of or relating to this Agreement are governed by, and construed in accordance with, the laws of Oklahoma without giving effect to any conflict of laws or provisions thereof. Any action, litigation or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement and all contemplated transactions shall be instituted exclusively in the state or federal courts located in Oklahoma. Each



Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and waives any objection to such courts based on venue or inconvenience.

- b. As a condition precedent to the filing of any suit or other legal proceeding, the Parties shall endeavor to resolve claims, disputes, or other matters in question by mediation. Mediation may be initiated by any party by serving a written request for same on the other party. The Parties shall, by mutual agreement, select a mediator within fifteen (15) days of the date of the request for mediation. If the Parties cannot agree on the selection of a mediator, then MUNICIPALITY shall select the mediator who, if selected solely by MUNICIPALITY, will be a mediator certified by the Supreme Court of Oklahoma. No suit or other legal proceeding shall be filed until: (i) the mediator declares an impasse, which declaration, in any event, shall be issued by the mediator not later than sixty (60) days after the initial mediation conference; or (ii) sixty (60) days have elapsed since the written mediation request was made in the event the other party refuses to or has not committed to attend mediation. The Parties shall share the mediator's fee equally. The mediation shall be held in Oklahoma unless another location is mutually agreed upon by the Parties. Agreements reached in mediation are enforceable as settlement agreements in any court having jurisdiction thereof.

Section 23. Truth-in-Negotiation Certificate.

Signature of this Contract by CONSULTANT acts as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Contract are accurate, complete, and current as of the date of the Contract. Such rates and costs shall be adjusted to exclude any significant sums should MUNICIPALITY determine that the rates and costs were increased due to inaccurate, incomplete, or non-current wage rates or due to inaccurate representations of fees paid to outside Consultants. MUNICIPALITY shall exercise its rights under this "Certificate" within one year following final payment.

Section 24. Force Majeure.

Any delay or failure of either party in the performance of its required obligations hereunder will be excused if and to the extent caused by explosion; riot; war; sabotage; strikes (except involving CONSULTANT's labor force or subcontractors or agents); extraordinary breakdown of or damage to MUNICIPALITY's affiliates' generating plants, their equipment, or facilities; court injunction or order; federal and/or state law or regulation; order by any regulatory agency; provided that prompt notice of such delay is given by such party to the other and each of the Parties hereunto shall be diligent in attempting to remove such cause



or causes. If any circumstance of Force Majeure remains in effect for seven (7) days, either party may terminate this Agreement.

Section 25. Unauthorized Aliens; E-Verify.

MUNICIPALITY shall consider the employment by CONSULTANT of unauthorized aliens as a violation of section 274A (e) of the Immigration and Nationalization Act, as amended; and shall consider same to constitute a material breach of this Agreement. Moreover, CONSULTANT by execution of this Agreement commits to verify that all new hires and all employees (existing and new) who shall perform work under this Agreement are authorized to lawfully work in the United States.

Section 26. False Claims.

If CONSULTANT is unable to support any part of its claim, and it is determined that such inability is attributable to misrepresentations of fact or fraud on the part of CONSULTANT, then CONSULTANT shall be liable to MUNICIPALITY for an amount equal to such unsupported part of the claim in addition to all costs to MUNICIPALITY attributable to the cost of reviewing said part of its claim.

Section 27. Headings.

Paragraph, section, and subsection headings are for the convenience of the Parties only and are not to be construed as part of this Agreement or utilized for interpretation purposes for this Agreement.

Section 28. No Joint Venture.

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the Parties and neither party is authorized to, nor shall either party act toward third persons or the public in any manner which would indicate any such relationship with the other party.

Section 29. Non-Waiver.

Either party's express or implied waiver or election not to exercise any term, provision, or condition of this Agreement shall not be considered, construed, or interpreted as a waiver of strict compliance with that or any other term, condition, or provision of this Agreement in the future.

Section 30. Counterparts.

This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be construed as an original agreement, but such counterparts shall together constitute one and the same instrument.

Section 31. Interpretation.



MUNICIPALITY and CONSULTANT each represent that they have both shared and participated in the drafting of this Agreement and that no party shall be favored or disfavored regarding the interpretation of this Agreement in the event of a dispute regarding the meaning, intention, or interpretation of this Agreement or any portion thereof.

Section 32. Integration; Modification; Amendment by Writing Only.

The drafting, execution, and delivery of this Agreement by the Parties has been induced by no representations, statements, warranties, or agreements other than those expressed herein. This Agreement embodies the entire understanding of the Parties, and there are no further or other agreements or understandings, written or oral, in effect between the Parties relating to the subject matter hereof unless expressly referred to herein. Modifications of or amendment to this Agreement shall only be made in writing signed by both Parties.

Section 33. Severability.

If any terms or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, to be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURE PAGE TO FOLLOW]



IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the date when the last of the parties has signed below.

CONSULTANT

ALTERNATIVE CLAIMS MANAGEMENT, LLC

Signature of Authorized Representative

Michael Lewandowski

Print Name

Chief Administration Officer / President

Official Title

Date

MUNICIPALITY

CITY OF NORMAN


APPROVED this _____ day of _____, 2023, by the Norman City Council.

MAYOR

ATTEST:

Brenda Hall, City Clerk

APPROVED as to form and legality this _____ day of _____, 2023.



City Attorney



ATTACHMENT A – COMPENSATION PROPOSAL FORM

ACM does not charge any fixed set-up, monthly, annual, or per file fees. ACM operates on a performance-based compensation model. As compensation, ACM “shares” a percentage of the recovery with Client. The ACM Recovery Share is deducted from proceeds as they are received. Potential recovery items are defined below. ACM Recovery Share is contingent upon the successful recovery of the line items below. Not all claims line items are collectible due to policy limits, policy type, lack of insurance, liability, statutes, missing documents, and other items outside of ACM’s control.

1. **Physical Damage (PD):** Recovery of losses up to the value of the Client’s final repair invoice (or original body or mechanical shop estimate, not an independent appraisers estimate) less any directly related claim expenses.
2. **Physical Damage (PD) – Photoscopes Only:** On occasion, ACM may accept clear photographs from which an independent, third-party appraiser can prepare an estimate. This reduces Client’s downtime, labor associated with estimate collection, and keeps fleet vehicles in service.
3. **Loss of Use (LOU):** The rental value of a comparable replacement vehicle or equipment for the days the unit is anticipated to be out of service for repair or replacement.
4. **Loss of Revenue (LOR):** The estimated loss of income incurred while the vehicle is out of service based upon the unit’s prior 90-day income as documented by Client.
5. **Inherent Diminution of Value (DV):** The estimated variance in Actual Cash Value (ACV) of the vehicle pre-accident and the Actual Cash Value (ACV) of the repaired vehicle post-accident.
6. **Repair Related Diminution of Value (RRDV):** The difference between the Client’s actual repair invoice versus an estimate written to I-CAR/Manufacturer Design and Repair Specifications (OEM). If actual repair invoice is not available within 30-days from receipt of proceeds, Client’s repair estimate will be used. If Client timely requests, ACM can delay processing to allow additional time for repairs.
7. **Total Loss (TL):** The difference between the vehicle’s Actual Cash Value (ACV) and one of the valuation methods below (default is top to bottom):
 - 7.1. **Depreciated Book Value.** Value set by the amount owed on the vehicle loan as of date of loss.
 - 7.2. **Wholesale Value.** Value set by industry standards.
 - 7.3. **Depreciated Value.** 1.85% of depreciated original purchase price.
 - 7.4. **Mutually Agreed Upon Value.**
8. **Recovered Fees (RF).** Paid by the At-Fault Party’s Carrier (not the Client). These are fees associated with processing or repairing of the vehicle. They can include administrative, sanitation, content removal, and other applicable fees charged to the carrier as part of the recovery.
9. **Other Property Damage (OPD):** In cases where property damages are incurred apart from the vehicle itself but are causally related to the event causing the damages, ACM will include these additional items. This may include, but not be limited to, all types of signs, guard rails, lights, building damage,



goods in transit, and other non-vehicle equipment owned by Client and damaged in the event. It might also include towing and storage fees.

ACM Recovery Share

Client agrees to share recovery proceeds with ACM as outlined below. “New claims” have not been processed before. “Dormant claims” are older (previous/past) and/or may have been processed before. The chart below outlines the recovery share that goes to ACM for each type of claim and recovery.

Item	New	Dormant
1) Physical Damage	0%	15%
2) Physical Damage (Photoscopes Only)	25%	25%
3) Loss of Use	50%	50%
4) Loss of Revenue		
5) Inherent Diminution of Value		
6) Repair Related Diminution of Value		
7) Total Loss (Amount Over Valuation)		
8) Recovered Fees (Charged to Carrier)		
9) Other Property Damage	10%	10%



ATTACHMENT B – ACH AUTHORIZATION FORM

AUTHORIZATION AGREEMENT FOR AUTOMATIC CREDITS (ACH CREDITS)

Federal banking regulations (NACHA) require us to obtain written authorization from any company to whom we intend to credit their bank account on a regular basis, via ACH transfers, and to retain it for our records and to produce it upon request as per the NACHA rules.

Please complete this form in its entirety, sign, and return with Service Agreement or email to accounting@altclaim.com. Thank you for choosing the fastest way to get you paid!

Client, as named below, hereby authorizes Alternative Claims Management, called "ACM," to initiate credit entries into Client bank account at the depository named below, called "Depository."

Client: _____
Address: _____
Bank: _____
City, ST Zip: _____
Routing (ABA) #: _____
Account #: _____

Authority is to remain in full force and effect until ACM has received written notification from Client of its termination in such time and manner as to afford ACM and Depository a reasonable opportunity to act on it.

Client: _____
Name: _____
Signature: _____
Title: _____
Date: _____



ATTACHMENT C - PUBLIC RECORDS DISCLOSURE FORM

PROJECT NAME: Vehicle Damage Recovery Services

Vendor/CONSULTANT acknowledges and agrees to the following:

The Vendor shall allow public access to all documents, papers, letters, or other material subject to the provisions of state statutes and made or received by the Vendor in conjunction with this Agreement. Specifically, if the Vendor is acting on behalf of a public agency the Vendor shall:

1. Keep and maintain public records that ordinarily and necessarily would be required by the Department in order to perform the services being performed by the Vendor.
2. Provide the public with access to public records on the same terms and conditions that the Department would provide the records and at a cost that does not exceed the cost provided in state statutes or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
4. Meet all requirements for retaining public records and transfer, at no cost, to the Department all public records in possession of the Vendor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Department in a format that is compatible with the information technology systems of the Department.

Failure by the Vendor to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the Department. The Vendor shall promptly provide the Department with a copy of any request to inspect or copy public records in possession of the Vendor and shall promptly provide the Department a copy of the Vendor's response to each such request.

AUTHORIZED SIGNATURE

DATE

Michael Lewandowski

PRINT

Chief Administration Officer / President

TITLE

Alternative Claims Management, LLC

COMPANY/FIRM



ATTACHMENT D - E VERIFICATION CERTIFICATION

NAME OF CONSULTANT Alternative Claims Management, LLC
ADDRESS 8610 N New Braunfels Ave. #210, San Antonio, TX 78217

The undersigned does hereby certify that the above-named Consultant:

1. Is registered and is using the E-Verify system; or
2. Does not have any employees and does not intend to hire any new employees during the period of time that the Consultant will be providing services under the contract and consequently is unable to register to use the E-Verify system; or
3. Employs individuals that were hired prior to the commencement of providing labor on the contract and does not intend to hire any new employees during the period of time that the Consultant will be providing labor under the contract, and consequently is unable to use the E-Verify system.

The undersigned acknowledges the use of the E-Verify system for newly hired employees is an ongoing obligation for so long as the Consultant provides labor under the contract and that the workforce eligibility of all newly hired employees will be properly verified using the E-Verify system.

In accordance with state law Consultant acknowledges that whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duties shall be guilty of a misdemeanor in the second degree, punishable as provided in by state law.

AUTHORIZED SIGNATURE

DATE

Michael Lewandowski

Chief Administration Officer / President

PRINT

TITLE

Alternative Claims Management, LLC

COMPANY/FIRM



ATTACHMENT E - CONFLICT OF INTEREST STATEMENT

1. I am the Chief Administration Officer / President of Alternative Claims Management with an office in Winter Park, Florida and principal office in San Antonio, Texas.
2. The above-named entity is submitting an Expression of Interest for the MUNICIPALITY described as: The City of Norman, Oklahoma.
3. The CONSULTANT has made diligent inquiry and provides the information contained in this Affidavit based upon his own personal knowledge.
4. The CONSULTANT states that only one submitting a Proposal for the above project and that the above-named entity has no financial interest in other entities submitting proposals for the same project.
5. Neither the CONSULTANT nor the above-named entity has directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive pricing in connection with the entity's submittal for the above project. This statement restricts the discussion of pricing data until the completion of negotiations and execution of the Agreement for this project.
6. Neither the entity nor its affiliates, nor anyone associated with them, is presently suspended or otherwise ineligible from participation in contract lettings by any local, state, or federal agency.
7. Neither the entity, not its affiliates, not anyone associated with them has any potential conflict of interest due to any other clients, contracts, nor property interests for this project.
8. I certify that no member of the entity's ownership or management, or staff has a vested interest in any aspect of the MUNICIPALITY.
9. I certify that no member of the entity's ownership or management is presently applying for an employee position or actively seeking an elected position with MUNICIPALITY.
10. In the event that a conflict of interest is identified in the provision of services, I, on behalf of the above-named entity, will immediately notify MUNICIPALITY.

AUTHORIZED SIGNATURE

Michael Lewandowski
PRINT

DATE

Chief Administration Officer / President
TITLE



ATTACHMENT F - INSURANCE CONFIRMATION

On behalf of our client, The City of Norman, Oklahoma

And by acknowledging with signature below, we have read and understand the insurance requirements for this Solicitation and Agreement. We can and will provide a Certificate of Insurance (COI) that is compliant with the insurance requirements stated in this Agreement should CONSULTANT be awarded the project.

AUTHORIZED SIGNATURE

DATE

Michael Lewandowski

Chief Administration Officer / President

PRINT

TITLE

Alternative Claims Management, LLC

COMPANY/FIRM

***Insurance Companies may use their own internal form in lieu of this document**



ATTACHMENT G - AMERICANS WITH DISABILITIES ACT AFFIDAVIT

The undersigned CONSULTANT swears that the information herein contained is true and correct and that none of the information supplied was for the purpose of defrauding MUNICIPALITY.

The CONSULTANT will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The CONSULTANT agrees to comply with the rules, regulations, and relevant orders issued pursuant to the Americans with Disabilities Act (ADA), 42 USC s. 12101 *et seq.* It is understood that in no event shall the MUNICIPALITY be held liable for the actions or omissions of the CONSULTANT or any other party or parties to the Agreement for failure to comply with the ADA. The CONSULTANT agrees to indemnify, defend, and hold harmless the MUNICIPALITY, its agents, officers or employees from any and all claims, demands, debts, liabilities or causes of action of every kind or character, whether in law or equity, resulting from the CONSULTANT's acts or omissions in connection with the ADA.

CONSULTANT

ALTERNATIVE CLAIMS MANAGEMENT, LLC

AUTHORIZED SIGNATURE

DATE

Michael Lewandowski
PRINT

Chief Administration Officer / President
TITLE

Alternative Claims Management, LLC
COMPANY/FIRM



ATTACHMENT H – NOTICE OF REPRESENTATION

To Whom It May Concern:

This letter serves as notice that Alternative Claims Management (referred to as “ACM”) has been engaged by the City of Norman, Oklahoma, (referred to as “Client”), located at 201 W. Gray, Norman, Oklahoma, to serve as its agent in processing and recovering any and all legally entitled claim elements and the related proceeds due Client for all claims involving damages and other claim elements such as the vehicle’s downtime while being repaired or replaced and diminution of value that resulted from any loss.

Client, hereby, authorizes and approves ACM to contact current and past liable parties and their insurance carriers on Client’s behalf to gather information related to claims and pursue some or all of the elements stated above and other appropriate legally entitled claim elements.

ACM has the authority to represent, negotiate, and settle Client claims without additional approval or consultation from Client. Client grants ACM a limited Power of Attorney to act on its behalf for the purpose of signing and/or endorsing documents, drafts, titles, and/or settlement checks as relates to damage claims as set forth above. This Notice of Representation is valid for two years from the date shown below.

Sincerely,

CLIENT

Signature

Title

Date



ATTACHMENT I – AUTHORIZATION TO OBTAIN LOSS RUNS AND CLAIM DOCUMENTS

To: Insurance Agent and Claims Staff

From: City of Norman, Oklahoma

Dated: _____

To Whom it May Concern:

The above named current or past insured has retained Alternative Claims Management to handle current, future, and past claims (up to the statute of limitations) for legally entitled claim elements such as Loss of Use, Lost Revenue and Diminution of Value which has not yet been pursued.

Please assist Alternative Claims Management on our behalf to identify the losses which were the fault of another party by providing them our loss runs up to the appropriate statute of limitations; and

Upon request of any specific claim file, a copy of the repair estimate, photos, police report, incident reports submitted by us, written or recorded statements obtained from any involved party or witness, any subrogation demand documentation, releases, and reimbursement check copies. Thanking you in advance for your time and assistance.

Sincerely,

Insured

Printed name and title

Policy Number