

**PROFESSIONAL SERVICES AGREEMENT**  
**BETWEEN THE CITY OF RIALTO AND**  
**(GEORGE HILLS)**

THIS SERVICES AGREEMENT (herein "Agreement") is made and entered into this 18<sup>TH</sup> day of November, 2021, by and between the City of Rialto, a municipal corporation and California general law city ("City"), and George Hills, ("Consultant"). City and Consultant are sometimes individually referred to as "Party" or collectively as "Parties".

**RECITALS**

A. City has sought, by Request for Proposals No. 21-064, the performance of professional services related to General Liability Claims Administration, as defined and described particularly in Article 1 of this Agreement.

B. Following the submission of a proposal for the performance of the services defined and described particularly in Article 1 of this Agreement, Consultant was selected by the City to perform those services.

C. Pursuant to Chapter 2.48 of the Rialto Municipal Code, City has authority to enter into and execute this Agreement.

D. The Parties desire to formalize the selection of Consultant for the performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1. SERVICES OF CONSULTANT**

**1.1 Scope of Services.**

In compliance with all terms and conditions of this Agreement, Consultant shall provide those professional services associated with General Liability Claims Administration, and as specified in the "Scope of Services" attached hereto as **Exhibit "A"** and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement for City to enter into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, it meets all local, state, and federal requirements in performing the services, and it is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently, and to the best of its ability, experience, and talent, perform all services described herein.

Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

## **1.2 Consultant's Proposal.**

The Agreement between the Parties shall consist of the following: (1) this Agreement; (2) the Scope of Services; (3) the City's Request for Proposals No. 21-064; and, (4) the Consultant's signed, original proposal submitted to the City ("Consultant's Proposal"), (collectively referred to as the "Contract Documents"). The Contract Documents and Accepted Proposal shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the Scope of Services, Consultant's Proposal, and/or this Agreement, the terms of this Agreement shall govern.

## **1.3 Compliance with Law.**

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with, all ordinances, resolutions, statutes, rules, and regulations of the City and any federal, state, or local governmental entity having jurisdiction in effect at the time service is rendered.

## **1.4 Licenses, Permits, Fees, and Assessments.**

Consultant shall obtain, at its sole cost and expense, such licenses, permits, and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement, and shall indemnify, defend, and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties, or interest levied, assessed, or imposed against City hereunder.

## **1.5 Familiarity with Work.**

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement. If the services involve work upon any third-party site, Consultant hereby waives and releases the City from any Damages sustained by Consultant or Consultant's employees, agents, or contractors, while performing services upon any third party site.

## **1.6 Care of Work.**

Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies, and/or other components thereof, to prevent losses or

damages, and shall be responsible for all such damages to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

### **1.7 Prevailing Wages.**

Consultant is aware of the requirements of California Labor Code Section 1720, *et seq.* and 1770, *et seq.*, as well as California Code of Regulations, Title 8, Section 1600, *et seq.*, ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. It is the understanding of City and Consultant that the Prevailing Wage Laws do not apply to this Agreement because the Agreement does not involve any services subject to prevailing wage rates pursuant to the California Labor Code or regulations promulgated thereunder. However, Consultant shall defend, indemnify, and hold City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

### **1.8 Further Responsibilities of Parties.**

Both Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both Parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless specified in this Agreement, neither Party shall be responsible for the service of the other.

### **1.9 Additional Services.**

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to, or deducting from said work. No such extra work or change may be undertaken unless a written order is first given by the Contract Officer to the Consultant, describing in detail the extra work or change and the reason(s) therefor and incorporating therein any adjustment in (i) the Contract Sum for the actual cost of the extra work or change, and/or (ii) the time to perform this Agreement, which said adjustments shall be reflected in an amendment to the Agreement subject to the written approval of the Parties. Any amendment to this Agreement shall be reviewed and approved by the City Manager. In accordance with Rialto Municipal Code section 2.48.180, increases in compensation of this Agreement may be approved by the City Manager provided: (a) the initial Contract Sum was less than One Hundred Thousand Dollars (\$100,000) and the amended Contract Sum when considering any or all amendments will not exceed One Hundred Thousand Dollars (\$100,000); or (b) the agreement was approved by the City Council and the increases in compensation taken either separately or cumulatively do not exceed One Hundred Thousand Dollars (\$100,000). Any greater increases, taken either separately or cumulatively must be approved by the City Council. Payment for additional services rendered by Consultant under this Agreement requires the submission of the actual costs of Consultant's performance of the extra work with the invoice(s) for the extra work claim(s), as provided in Section 2.4. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to

the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors.

No claim for an adjustment in the contract amount or time for performance shall be valid unless the procedures established in this Section are followed.

## **ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT**

### **2.1 Contract Sum.**

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Cost Proposal" attached hereto as **Exhibit "B"** and incorporated herein by this reference. For the Initial Phase of Services (Pre-Construction), upon commencement of this Agreement the total compensation, including reimbursement for actual expenses, shall not exceed **Forty Five Thousand Dollars (\$45,000.00)** (the "Contract Sum"). The Contract Sum may also be increased for additional services pursuant to Section 1.9.

### **2.2 Method of Compensation.**

The method of compensation may include: (i) a lump sum payment upon completion; (ii) payment in accordance with specified tasks or the percentage of completion of the services; (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that time estimates are provided for the performance of sub tasks, but not exceeding the Contract Sum; or (iv) such other methods as may be specified in the Schedule of Compensation.

### **2.3 Reimbursable Expenses.**

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses of an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

### **2.4 Invoices.**

Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories. Consultant shall not invoice City for any duplicate services performed by more than one person.

City may independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3, City will use its best efforts to cause Consultant to be paid within thirty (30) days of receipt of Consultant's correct and undisputed invoice; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission.

## **2.5 No Waiver.**

Review and payment by City to Consultant of any invoice for work performed by Consultant pursuant to this Agreement shall not be deemed a waiver of any defects in work performed by Consultant or of any rights or remedies provided herein or any applicable law.

## **ARTICLE 3. PERFORMANCE SCHEDULE**

### **3.1 Time of Essence.**

Time is of the essence in the performance of this Agreement.

### **3.2 Schedule of Performance.**

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as **Exhibit "C"** and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer.

### **3.3 Force Majeure.**

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall, within ten (10) days of the commencement of such delay, notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer shall extend the time for performance in accordance with the procedures set forth in Section 1.9. The Contract Officer's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Consultant be entitled to recover damages against

the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

### **3.4 Term.**

Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect through completion of the services related to Request for Proposals No. 21-064, (the "Project"), and as identified in the Schedule of Performance, **Exhibit "C"**. At the mutual agreement of the Parties, following the initial term this Agreement may be extended.

## **ARTICLE 4. COORDINATION OF WORK**

### **4.1 Representatives and Personnel of Consultant.**

The following principals of Consultant ("Principals") are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

John E. Chaquica  
(Name)

Chief Executive Officer  
(Title)

Chris Shaffer  
(Name)

Vice President  
(Title)

It is expressly understood that the experience, knowledge, capability, and reputation of the foregoing Principals were a substantial inducement for City to enter into this Agreement. Therefore, the Principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires to reassign any staff or subcontractor of Consultant, Consultant shall, immediately upon a Reassign Notice from City of such desire of City, reassign such persons or persons.

### **4.2 Status of Consultant.**

Consultant shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Consultant shall not at any time or in

any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care, or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

#### **4.3 Contract Officer.**

The Contract Officer shall be the City Manager or other such person designated by the City Manager. It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

#### **4.4 Independent Contractor.**

Neither the City nor any of its employees shall have any control over the manner, mode, or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives, or agents, or in fixing their number, compensation, or hours of service. Consultant shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

#### **4.5 Prohibition Against Subcontracting or Assignment.**

The experience, knowledge, capability, and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

### **ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS**

## **5.1 Insurance Coverages.**

The Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees, and agents of City:

(a) Comprehensive General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury, and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, then the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure, and provide legal defense for both the Consultant and the City against any loss, claim, or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Consultant in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than \$1,000,000. Said policy shall include coverage for owned, non-owned, leased, and hired cars.

(d) Professional Liability. Professional liability insurance appropriate to the Consultant's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of, or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Consultant's services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements.

(f) Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

## **5.2 General Insurance Requirements.**

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees, and agents as additional insureds,



and any insurance maintained by City or its officers, employees, or agents shall apply in excess of, and not contribute with, Consultant's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees, and agents and their respective insurers. The insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any Party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Consultant shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Consultant has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Consultant performs; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Consultant agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages to any persons or property resulting from the Consultant's activities or the activities of any person or persons for which the Consultant is otherwise responsible nor shall it limit the Consultant's indemnification liabilities as provided in Section 5.3.

In the event the Consultant subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Consultant and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Consultant is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

### **5.3 Indemnification.**

To the full extent permitted by law, Consultant agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against

any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations, or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable ("indemnitors"), arising from Consultant's reckless or willful misconduct, or arising from Consultant's or indemnitors' negligent performance of or failure to perform any term, provision, covenant, or condition of this Agreement, and in connection therewith:

(a) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents, or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents, or employees, any and all costs and expenses incurred by the City, its officers, agents, or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Consultant shall incorporate similar, indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness, or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.

#### **5.4 Sufficiency of Insurer or Surety.**

Insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City ("Risk Manager") due to unique circumstances. If this

Agreement continues for more than 3 years duration, or in the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the Risk Manager Consultant.

## **ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

### **6.1 Records.**

Consultant shall keep, and require subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest.

### **6.2 Reports.**

Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

### **6.3 Ownership of Documents.**

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Consultant, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such

completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, reuse or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have the right to use the concepts embodied therein. All subcontractors shall provide for assignment to City any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

#### **6.4 Confidentiality and Release of Information.**

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Consultant's conduct.

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents, or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

### **ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION**

#### **7.1 California Law.**

This Agreement shall be interpreted, construed, and governed both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Bernardino, State

of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, Eastern Division.

## **7.2 Disputes; Default.**

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall proceed with payment on the invoices only when the default is cured. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

## **7.3 Retention of Funds.**

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

## **7.4 Waiver.**

Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

## **7.5 Rights and Remedies are Cumulative.**

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

#### **7.6 Legal Action.**

In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct, or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

#### **7.7 Termination Prior to Expiration of Term.**

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating Party need not provide the non-terminating Party with the opportunity to cure pursuant to Section 7.2.

#### **7.8 Termination for Default of Consultant.**

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

### **ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

#### **8.1 Non-liability of City Officers and Employees.**

No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

## **8.2 Conflict of Interest.**

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

Additionally, pursuant to Rialto Municipal Code section 2.48.145, Consultant represents that it has disclosed whether it or its officers or employees is related to any officer or employee of the City by blood or marriage within the third degree which would subject such officer or employee to the prohibition of California Government Sections 87100 et. seq., Fair Political Practices Commission Regulation Section 18702, or Government Code Section 1090. To this end, by approving this Agreement, Consultant attests under penalty of perjury, personally and on behalf of Consultant, as well its officers, representatives, that it/they have no relationship, as described above, or financial interests, as such term is defined in California Government Section 87100 et. seq., Fair Political Practices Commission Regulation Section 18702, or Government Code Section 1090, with any City of Rialto elected or appointed official or employee, except as specifically disclosed to the City in writing.

## **8.3 Covenant Against Discrimination.**

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, gender identity, marital status, national origin, ancestry, or other protected class in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, sexual orientation, gender, gender identity, marital status, national origin, ancestry, or other protected class.

## **8.4 Unauthorized Aliens.**

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorney's fees, incurred by City.

## **ARTICLE 9. MISCELLANEOUS PROVISIONS**

### **9.1 Facilities and Equipment.**

Except as otherwise provided, Consultant shall, at its own cost and expense, provide all facilities and equipment necessary to perform the services required by this Agreement. City shall make available to Consultant only physical facilities such as desks, filing cabinets, and conference space ("City Facilities"), as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of City. The location, quality, and time of furnishing of City Facilities shall be in the sole discretion of City. In no event shall City be required to furnish any facilities that may involve incurring any direct expense, including but not limited to computer, long distance telephone, network data, internet, or other communication charges, vehicles, and reproduction facilities.

### **9.2 Payment of Taxes.**

Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any federal and state taxes.

### **9.3 Notices.**

All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered, sent by pre-paid First Class U.S. Mail, registered or certified mail, postage prepaid, return receipt requested, or delivered or sent by facsimile with attached evidence of completed transmission, and shall be deemed received upon the earlier of (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; (ii) three (3) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by facsimile. Any notice, request, demand, direction, or other communication sent by facsimile must be confirmed within forty-eight (48) hours by letter mailed or delivered. Other forms of electronic transmission such as e-mails, text messages, instant messages are not acceptable manners of notice required hereunder. Notices or other communications shall be addressed as follows:

If to City:                      City of Rialto  
    150 S. Palm Ave.  
    Rialto, CA 92376  
    Attn: City Manager  
    Tel: (909) 820-2525  
    Fax: (909) 820-2527



With copy to: Burke, Williams & Sorensen, LLP  
1770 Iowa Avenue, Suite 240  
Riverside, CA 92507  
Attn: Eric S. Vail, City Attorney  
Tel: (951) 788-0100  
Fax: (951) 788-5785

If to Consultant: George Hills  
P.O. Box 278  
Rancho Cordova, CA 95741  
John E. Chaquica, Chief Executive Officer  
Tel: (916) 884-3635

Either Party may change its address by notifying the other Party of the change of address in writing.

#### **9.4 Interpretation.**

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

#### **9.5 Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

#### **9.6 Integration; Amendment.**

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the Parties. It is understood that there are no oral agreements between the Parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the Parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City. The Parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

#### **9.7 Severability.**

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties hereunder unless the invalid

provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

**9.8 Corporate Authority.**

The persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the parties hereto have executed and entered into this Agreement on the date first written above.

**CITY:**

**CITY OF RIALTO, a municipal corporation**

By: \_\_\_\_\_  
Marcus Fuller, City Manager

**CONSULTANT:**

**(George Hills)**

By: John Chaquica  
Signature

**ATTEST:**

By: \_\_\_\_\_  
Barbara A. McGee, City Clerk

John E. Chaquica  
Name

Chief Executive Officer  
Title

**APPROVED AS TO FORM:**

Burke, Williams & Sorensen, LLP

By: Chris Shaffer  
Signature

By: \_\_\_\_\_  
Eric S. Vail, City Attorney

Chris Shaffer  
Name

Vice President  
Title

**\*\*Two signatures are required if a corporation\*\***

## **EXHIBIT "A"**

### **SCOPE OF SERVICES**

**I. Consultant will perform the following Services:**

- A. Claims Administration
- B. Litigation Management
- C. Reporting of Claims
- D. Customer Complaints
- E. Settlements
- F. Subrogation
- G. Other duties

**II. As part of the Services, Consultant's timeline of new Claims are as follows:**

- A. Within 24 Hours
  - Claims data entered in CXP
  - Acknowledgment of new assignment sent to the City
  - Claimant is called, emailed, or both to acknowledge and inform who the adjuster is
- B. Within 2 Days
  - Two-point contact made with claimant (or attorney) and the City
- C. Within 5 Days
  - Reserves set
- D. Within 7 Days
  - Initial claims review
- E. Within 30 Days
  - Liability determination
  - Excess carriers notified
- F. Monthly
  - Monitor closing ratios
  - Statistical report (all claims activity) provided to the City
  - Payment register provided to the City
  - Plan of action updated
  - Watch list claims meeting

- Case reviews (90 days if waiting for activity by others, 180 days is waiting on expiration of a statute of limitations)
- I. **All work product is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City.**
- II. **Consultant will utilize the following personnel to accomplish the Services:**
- A. John Chaquica - CEO/Owner
  - B. Chris Shaffer – VP of Claims Administration
  - C. Tom Baber - Assistant VP of Claims Administration
  - D. Jessica Pickering – Supervisor
  - E. Yolie Gravidoni – Sr. Claims Adjuster
  - F. Paul Le – Claims Processor

More specifically, the Scope of Services in accordance with RFP 21-064 shall include the following:

**A. Claims Administration**

1. Coordinate with City to complete a comprehensive and factual investigation within thirty (30) days of the City's knowledge of claim or critical incident. Investigation to include statements from claimants and witnesses, appropriate official reports, and photos (answer questions who, what, where, when and why).
2. Coordinate and direct field investigation, when necessary.
3. Make a recommendation to the City once the investigation is complete. All notices pertaining to claim insufficiency, returning late claims, claim rejections, etc., shall be timely and in accordance with the relevant Governmental Code provisions
4. Identify liability and potential defenses, including use of governmental immunities, comparative negligence, joint tortfeasors and joint several liability.
5. Begin to develop information on damages including, but not limited to:
  - Property damage;
  - Nature and extent of injuries;
  - Medical costs;
  - Lost wages;
  - Dependency; and/or
  - Other damages.

6. Obtain and review contracts that may be in effect relating to the claim and determine whether there is potential for transferring risk via any of the following methods:

- Hold-harmless indemnity agreements;
- Additional insured requirements; and/or
- Certificate of Insurance, Additional Insured Endorsements.

7. Obtain and secure defective products and/or other evidence to establish defense or tender products liability claim.

8. Determine the feasibility of subrogation and take appropriate steps to get approval from the City to subrogate, where such action is appropriate.

9. Report all bodily injury claims to the Index Bureau and follow up on Index Bureau information by sending the Inquiry Form to insurance companies who have reported injuries for the claimant.

10. Prepare and, where needed, obtain approval for issuance of checks, drafts, or other documents in the payment of claims.

11. Obtain all necessary documents from all appropriate parties upon settlement of a claim (releases, court documents, settlement agreements, etc.)

12. Provide monthly reports and conduct periodic (quarterly) file reviews with the City and attend City meetings as necessary.

13. Establish monetary reserves reasonably adequate for the expected value of the claim in coordination with the City Human Resources Manager and Director of Finance.

## **B. Litigation Management**

1. Within 45 days following assignment, ensure defense counsel has submitted a preliminary evaluation of the lawsuit including a litigation plan and budget.

2. Ensure defense counsel submits status reports every 90 days to include new developments only. Routine submission of repetitive, non-substantive status reports is not acceptable.

3. Coordinate with defense counsel to properly follow up on investigation/discovery requests, obtain expert witness, complete field investigation, notify relevant employees and other parties regarding pending litigation, etc.

4. Litigation management and defense are controlled and closely monitored by Human Resources Manager, Finance Director, and the City Attorney.

5. The claims adjusting firm shall refer all litigated claims to the Human Resources Manager, Finance Director and City Attorney's Office, unless otherwise directed by the City.

6. The claims adjusting firm shall maintain an open case file and ensure loss runs accurately report claims that become litigated including legal fees, other legal costs, settlements, and judgements.

7. The claims adjusting firm will assist in defending the City at all Small Claims Court Hearings (whether existing or new) including court appearances as necessary and shall work in conjunction with the Human Resources Manager and/or defense counsel assigned to the case.

### **C. Reporting of Claims Activity**

Provide a monthly statistical data report for each line of coverage which shows all claims having activity, including claimant name, nature/type/cause of injury/loss, date of loss, status, loss/expense paid and reserved amounts, with monthly and year-to-date totals. This content will be established by mutual agreement between the TPA and the City. A guide to any and all abbreviations used in any of the reports shall be provided to the City. Reports shall include all claims meeting Pool's reporting criteria.

In addition to the monthly statistical report, the adjusting firm will provide a monthly payment register showing all payments issued, payee, voucher number, voucher date, and claimant name, if applicable, including account reconciliation.

Upon the request of the City, the adjusting firm shall also provide other special reports required of the City including, but not limited to loss trend reports, claim abstract reports, reports required by actuaries, check register reports, excess insurance carriers, etc., provided that such reports do not require data elements that have not previously been collected by the TPA. If new programming is required in order to provide such reports, the TPA shall pay at its own expense for new or special programming costs.

### **D. Customer Complaints**

The TPA shall document and respond to all complaints and inquiries received from claimants, defense counsel, and/or City staff and bring about resolution of such within two (2) business days. City staff shall be notified upon receipt of such complaints. TPA shall provide City with quarterly reports of all complaints received, resolution, and documentation of follow-up with claimants.

### **E. Settlements**

The TPA shall make claims recommendations and obtain the City's authorization on all settlements prior to taking action to settle. The TPA shall forward settlement proposals to the City in a form acceptable to the Human Resources Manager. All requests for settlement authority shall be clear and concise and include a written claim analysis, estimate of liability, and examiners recommendations. If the settlement exceeds the City's self-insured retention, the written settlement proposal shall also be directed to the excess carrier or designated representative to provide authority in addition to the City's authority.

### **F. Subrogation**

The TPA will pursue all subrogation submitted by the City involving responsible third parties and work closely with City staff to resolve subrogation issues. The TPA is not authorized to file litigation without first receiving consent from the City. The City must approve all settlements. The City will provide specific language to incorporate in any subrogation settlement. The TPA is responsible for protecting any and all statutes of limitation and must notify City staff in writing no later than sixty (60) days prior to expiration of statute. The City retains the right to handle any subrogation issue it deems appropriate. The City requires copies of all subrogation correspondence.

#### **E. Other**

1. Manage the client's loss fund account for payment of claims and related expenses and provide a monthly statement of account.
2. Perform all reasonable and necessary administrative and clerical work in conjunction with each claim including the preparation of checks or vouchers, release agreements and any other documents needed to close a claim.
3. No open claims files or historical data shall be destroyed or transferred from the local office without prior notification and approval by the City.
4. The City reserves the right to take custody of the claim files and/or make copies of any information deemed appropriate.
5. The City reserves the right to monitor and audit claim files initiated on behalf of the City.
6. The City shall be notified prior to any destruction of files to determine if the City wishes to retain the claim file.
7. The TPA shall provide online access to the TPA's claims management system, at no additional charge, to the City and/or designated representatives. Such data shall be in a format accessible from the TPA's servers and will permit the City to print copies of the data on its printers. The City shall have the ability to input notes in the notes area of each claim. The TPA shall provide training for use of the computer system at no additional charge.

**Consultant's Scope of Work follows this page.**



**EXHIBIT “B”****“COST PROPOSAL”****I. Consultant shall perform at the following fees:****1. Claims Administrative Services:****COST PROPOSAL****BEST AND FINAL  
OFFER TO THE CITY**

Costs for handling pending and new claims and for performing Litigation Management.

Contract Year	Flat Fee
Year 1	\$45,000
Year 2	\$51,925
Year 3	\$53,485

**2. General and Administrative**

- a. **OneTime (first year only) On-Boarding Fee:** \$0 Waived (Normally \$3,500).

This represents a one-time startup fee to include, but not limited to, the planning and coordination of the onboarding process and documentation, detailing specific claims handling instructions, communication protocols, personalize design of CMIS structure, new client setup – bank account, vendors, W-9, etc., and claims triage/assignment.

- b. **Annual Administration Fee:** \$0; Waived the first year only, with each thereafter at \$5,000 annually.
- c. **Mileage – Adjuster:** Mileage is paid at the IRS rate.

- d. **MMSEA**: There is a one-time setup fee of \$150 and a \$250 annual reporting fee, which are paid directly to ExamWorks, for the performance of CMS reporting.
- e. **Adjuster Travel Expenses**: GH will separately charge for any travel expenses in connection with attendance at mediations, settlement conferences, trials, etc. This will be subject to prior approval and that actual expenses will be submitted with receipts on a monthly basis.
- f. **CXP Access Fee**: Access to the CMIS is Included in the annual administration fee, it includes the setup and management of up to five (5) user accounts through CXP.
- g. **iMetrics Report Fee**: There will be no charge for our iMetrics business intelligence reports with executive in-person debriefs.
- h. **Custom Reports**: Additional charges for custom reporting shall be defined as, requiring a third-party programmer for three hours or more and is client specific.
- i. **Conversion Fee**: GH will pay the Conversion Fee subject to the terms stated below. The Conversion Fee covers costs associated with electronic data conversion, transition, reconciliation of financials, all reports created and vetted, and CLIENT sign-off on CMIS set up.

GH extends to new clients the following: GH believes in the establishment of a long-term partnership, and as such shall pay 100% of all costs relating to the data conversion, which is estimated at \$20,000. This is based solely on GH being retained under this Contract for five years (whether it is this Contract or an extension of/amendment to this Contract). If, for any reason the GH is not retained for five years, the CLIENT will be subject to a fee of 20 percent of the full Conversion Fee for each year not retained.

The Conversion Fee does not include, the shipping, storing, scanning, copying, or otherwise handling open or closed paper claims files. Please see subsection M, "Paper Files" below.

Upon early termination of this Contract, any remaining fee will be added to the penultimate invoice and if not paid, will result

- j. **Catastrophic Fees**: GH recognizes that there are events that are unanticipated and catastrophic. When such events occur, it requires additional hours for the handling of such claims. As such, to preserve the quality and efficiency of service for which we have been known, GH proposes that should any one catastrophic event occur resulting in five or more claimants, or two or more claimants with their own defense counsel, CLIENT shall be billed at the current hourly rate for all services.
- k. **3% Escalator**: GH pricing option for the contract is a 3% annual increase.

- I. **General File**: A general administrative file shall be established and maintained to track effort related to services necessary to fulfill our contractual obligations and not otherwise associated with a claim.
- m. **Paper Files**: GH is prepared to take the lead to arrange for all services relating to conversion storage, copying, scanning, shipping, and disposal. GH will provide you a quote for any services related to storage, retrieval, copying, scanning, shipping, and disposal of paper files.

**II . The City will compensate Consultant for the Services performed upon submission of a valid invoice. Each invoice is to include:**

- A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
- B. Line items for all materials and equipment properly charged to the Services.
- C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.

**EXHIBIT "C"**

**"SCHEDULE OF PERFORMANCE"**

- I. Consultant shall perform all Services timely in accordance with the schedule to be developed by Consultant and subject to the written approval of the Contract Officer and the City Attorney's office.**
  
- II. Consultant shall deliver the following tangible work products to the City in a timely manner.**

## B. Background and Project Summary

Based on the scope of work for this contract, the following describes our understanding of the City's contract including the objectives to be accomplished.

### Claims Administration, Litigation Management, and Reporting of Claims Activities

George Hills' general project approach as a third-party administrator is based on our commitment to the preservation of our Clients' assets, and to helping our Clients reduce their number of claims and claims paid amounts by identifying cost drivers, performance gaps, and opportunities for cost reduction. To this end, our project approach always centers on transparent and frequent communication with the multiple internal and external stakeholders of an engagement/project. Early contact with all involved parties in third party claims administrative services helps maintain lines of communication and rapport—not only with the insured, but also with the claimant—hence, cost-saving opportunities to resolve claims early on are more easily accomplished.

#### A. Claims Administration

George Hills has a strong working knowledge of and will handle all claims in accordance with PRISM's Memorandum of Understanding, in the City's RFP attachment Appendix "A".

**Claims adjusting will include, but not be limited to, the following:**

1. George Hills will coordinate with the City a comprehensive, factual investigation within thirty (30) days of the City's knowledge of the claim or critical incident to obtain statements from claimants and witnesses, appropriate official reports, and photos (answer questions who, what, where, when and why).
2. George Hills will coordinate and direct field investigation, when necessary, keeping the City informed on the scope and results of the investigations.
3. George Hills will make a recommendation to the City once the investigation is complete. All notices pertaining to claim insufficiency, returning late claims, claim rejections, etc., shall be timely and in accordance with the relevant Governmental Code provisions.
4. George Hills will identify liability and potential defenses, including use of governmental immunities, comparative negligence, joint tortfeasors and joint several liability.
5. George Hills will begin to develop information on damages including, but not limited to:
  - Property damage;
  - Nature and extent of injuries;
  - Medical costs;
  - Lost wages;
  - Dependency; and/or
  - Other damages.
6. George Hills will obtain and review contracts that may be in effect relating to the claim and determine whether there is potential for transferring risk. George Hills will obtain and review contracts that may be in effect relating to the claim, and determine whether there is potential for transferring risk via any of the following methods:
  - Hold-harmless indemnity agreements;
  - Additional insured requirements; and/or
  - Certificate of Insurance, Additional Insured Endorsements.
7. George Hills will obtain and secure defective products and/or other evidence to establish defense or tender products liability claim.
8. George Hills will determine the feasibility of subrogation and take appropriate steps to get approval from the City for subrogate, where such action is appropriate.

9. George Hills will report all bodily injury claims to the Index Bureau and follow up on Index Bureau information by sending the Inquiry Form to insurance companies who have reported other injuries to the claimant.
10. George Hills will prepare and, where needed, obtain approval for issuance of checks, drafts, or other documents in the payment of claims.
11. George Hills will obtain all necessary documents from all appropriate parties upon settlement of a claim (releases, court documents, settlement agreements, etc.)
12. George Hills will provide monthly reports and conduct periodic (quarterly) file reviews with the City and attend City meetings as necessary.
13. George Hills will establish monetary reserves reasonably adequate for the expected value of the claim in coordination with the City Human Resources Manager and Director of Finance.
14. George Hills will identify any error, omission, or misconduct by any City employee related to the claim and to communicate this to the City Attorney's Office as an Attorney-Client Privileged Communication.
15. George Hills will communicate to the City Attorney's Office, as an Attorney-Client Privileged Communication, any recommended corrections or repairs to property, improvements, etc., and any recommended changes to policies or procedures or other best practices, as risk reduction or avoidance measures.

**B. Litigation Management**

George Hills will assist in the implementation and conform to the procedures pursuant to the Litigation Management Program. The duties of the claims adjusting firm shall include, but not be limited to:

1. Within 45 days following assignment, George Hills will ensure defense counsel has submitted a preliminary evaluation of the lawsuit including a litigation plan and budget.
2. George Hills will ensure defense counsel submits status reports every 90 days to include new developments only. Our team will routine submission of repetitive, non-substantive status reports is not acceptable.
3. George Hills will Coordinate with defense counsel to properly follow up on investigation/discovery requests, obtain expert witness, complete field investigation, notify relevant employees and other parties regarding pending litigation, etc.
4. George Hills understands that litigation management and defense are controlled and closely monitored by Human Resources Manager, Finance Director, and the City Attorney.
5. George Hills will refer all litigated claims to the Human Resources Manager, Finance Director and City Attorney's Office, unless otherwise directed by the City.
6. George Hills will maintain an open case file and ensure loss runs accurately report claims that become litigated including legal fees, other legal costs, settlements, and judgements.
7. George Hills will assist in defending the City at all Small Claims Court Hearings (whether existing or new) including court appearances as necessary and shall work in conjunction with the Human Resources Manager and/or defense counsel assigned to the case.

**C. Reporting of Claims Activity**

George Hills will provide a monthly statistical report for each line of coverage which shows all claims having activity, including claimant name, nature/type/cause of injury/loss, date of loss, status, loss/expense paid and reserved amounts, with monthly and year-to-date totals. A guide to any and all abbreviations used in any of the reports, shall be provided to the City. Reports shall include all claims meeting Pool's reporting criteria.

George Hills will in addition to the monthly statistical report, provide a monthly payment register showing all payments issued, payee, voucher number, voucher date, and claimant name, if applicable, including account reconciliation. George Hills will upon the request of the City, provide special reports on claims, in detail or summary, sorted or queried by any combination of fields.

D. **Customer Complaints**

George Hills will document and respond to all complaints and inquiries received from claimants, defense counsel, and/or City staff and bring about resolution of such within two (2) business days. City staff will all be notified upon receipt of such complaints. George Hills will provide City with quarterly reports of all complaints received, resolution, and documentation of follow-up with claimants.

E. **Settlements**

George Hills will make claims recommendations and obtain the City's authorization on all settlements prior to taking action to settle. We will forward settlement proposals to the City in a form acceptable to the Human Resources Manager. All requests for settlement authority will be clear and concise and include a written claim analysis, estimate of liability, and examiners recommendations. If the settlement exceeds the City's self-insured retention, the written settlement proposal will also be directed to the excess carrier or designated representative to provide authority in addition to the City's authority.

F. **Subrogation**

George Hills will pursue all subrogation submitted by the City involving responsible third parties and work closely with City staff to resolve subrogation issues. We understand that we are not authorized to file litigation without first receiving consent from the City and that the City must approve all settlements. We know that the City will provide specific language to incorporate in any subrogation settlement. We will be responsible for protecting any and all statutes of limitation and must notify City staff in writing no later than sixty (60) days prior to expiration of statute. The City retains the right to handle any subrogation issue it deems appropriate. The City requires copies of all subrogation correspondence.

G. **Other**

1. George Hills will manage the client's loss fund account for payment of claims and related expenses and provide a monthly statement of account.
2. George Hills will perform all reasonable and necessary administrative and clerical work in conjunction with each claim including the preparation of checks or vouchers, release agreements and any other documents needed to close a claim.
3. George Hills understands that no open claims files or historical data shall be destroyed or transferred from the local office without prior notification and approval by the City.
4. George Hills understands that the City reserves the right to take custody of the claim files and/or make copies of any information deemed appropriate.
5. George Hills understands that the City reserves the right to monitor and audit claim files initiated on behalf of the City.
6. George Hills will notify prior to any destruction of files to determine if the City wishes to retain the claim file.
7. George Hills will provide online access to the claims management system, at no additional charge, to the City and/or designated representatives. Such data will be in a format accessible from our servers and will permit the City to print copies of the data on its printers. The City will have the



ability to input notes in the notes area of each claim. We will provide training for use of the computer system at no additional charge.

8. George Hills will provide special investigation services sufficient to address emergency and/or after-hours large property loss and serious bodily injury or death cases.
9. As part of the contract, upon request by the City, George Hills agrees to be evaluated annually by the City using criteria outlined in an agreed upon Performance Evaluation.

## C. Methodology

### 1. Detailed Implementation Plan

The transition from one TPA to another can be daunting, but George Hills' transition process eases the changeover. Once we have been awarded the contract, we will assemble our Onboarding Team which will be led by Chris Shaffer. He is the point of contact for the City, George Hills, and the exiting TPA. We begin this process by meeting with the City and stakeholders to establish the Client Transition Team, review our onboarding process, set activity target dates, and confirm our onboarding meeting schedule. The next step is for George Hills to discuss our TPA Transfer Instructions with the exiting TPA. Finally, our Transition and Implementation Plan is our roadmap to direct us through the steps necessary to complete the transition successfully. The majority of the action items listed in this document will be completed before our contract begins. We encourage weekly meetings to discuss the transition progress. These weekly meetings will include a brief update from each member of our Onboarding team. Our transition process concludes 90 days after our contract begins, and after we meet with the City to discuss the implementation process and solicit feedback.

### 2. Detailed description of efforts your firm or entity will undertake to achieve client satisfaction and to satisfy the requirements of the "Scope of Work" section.

Our approach as a third-party administrator is based on our commitment to protect your assets. Our goal is to reduce the number of claims and claims paid amounts by identifying cost drivers, performance gaps, and opportunities for cost reduction. Our project approach centers on transparency and frequent communication with internal and external stakeholders. At the onset, we seek to determine your expectations, which will refine our methodology.

George Hills' approach to fulfilling the City's needs stems from our company's experience, values, personnel, and our best practices approach to claims handling. At George Hills, customer satisfaction is paramount and one of our core values—one which guides us in all we do. Our commitment to superior customer service is bolstered by our exceptional, highly qualified staff. George Hills' adjusters are the lifeblood of the company, and as such we have developed a *Claims Handling Best Practice* manual to guide our adjusters to success and client satisfaction.

George Hills' Client Services Manager, Todd Mershon's role is to assure client satisfaction, including developing detailed Claims Handling instructions tailored to the City's needs and scheduling regular/ongoing meetings with the service team to address any service needs or concerns.

### 3. Detailed project schedule, identifying all tasks and deliverables to be performed, durations for each task, and overall time of completion, including a complete transition plan. Include your plan to deal with fluctuation in service needs and any associated price adjustments.

The transition from one TPA to another can be daunting, but George Hills' transition process eases the changeover. Once we have been awarded the contract, we will assemble our Onboarding Team which will



be led by Chris Shaffer. He is the point of contact for the City, George Hills, and the exiting TPA. We begin this process by meeting with the City to establish the Client Transition Team, review our onboarding process, set activity target dates, and confirm our onboarding meeting schedule. The next step is for George Hills to discuss our TPA Transfer Instructions with the exiting TPA. Finally, our Transition and Implementation Plan is our roadmap to direct us through the steps necessary to complete the transition successfully. The majority of the action items listed in this document will be completed before our contract begins. We encourage weekly meetings to discuss the transition progress. These weekly meetings will include a brief update from each member of our Onboarding team. Our transition process concludes 90 days after our contract begins, and after we meet with the City to discuss the implementation process and solicit feedback.

### **Timeline of the Claims Handling Process**

The following takes place from receipt of a new claim:

#### **Within 24 Hours**

- Claims data entered into CXP
- Acknowledgment of new assignment sent to the City.
- Claimant is called, emailed, or both to acknowledge and inform who the adjuster is

#### **Within 2 Days**

- Two-point contact made with claimant (or attorney) and the City

#### **Within 5 Days**

- Reserves set

#### **Within 7 Days**

- Initial claims review

#### **Within 30 Days**

- Liability determination
- Excess carriers notified

#### **Monthly**

- Monitor closing ratios
- Statistical report (all claims activity) provided to the City.
- Payment register provided to the City.
- Plan of action updated
- Watch list claims meetings
- Case reviews (90 days if waiting for activity by others, 180 days if waiting on expiration of a statute of limitations)

**Project Transition Schedule:** See an example of our Transition and Implementation Plan below.

Client Name:		Contract Award Date:		Contract Start Date:
George Hills Transition Team		Phone Number		Email
Jamie Feld	Accounting Supervisor	(916) 233-1944		jamie.feld@georgehills.com
Chris Shaffer	VP Claims Administration	(916) 859-4824		chris.shaffer@georgehills.com
Chris Hunt	Claims Supervisor	(909) 763-7373		chris.hunt@georgehills.com
Client Transition Team				
John Doe	Risk Manager	(888) 646-8547		name@city.com
Account Information		Task Owner	Target Date	Completion Date
Informal Notification of Win		John Chaquica		
Contract Award Date (Board)		John Chaquica		
Contract Start Date		Account Manager		
Transition Start Date		Account Manager		
Transition End Date		Account Manager		
Takeover/Historical Claim Count		Account Manager		
Prior TPA - Transition Team: CW		Account Manager		
Client W9				
Obtain Policies, MOC, and Reporting Guidelines				
Broker/Consultant & Excess Carrier Info				
Onboarding Prep, Contract, and Meetings				
Task Name	Task Owner	Target Date	Completion Date	Notes and Comments
Meeting with Client Transition Team	Account Manager			
Create New Client Profile Sheet	Account Manager			
Contract/Pricing Finalization	John Chaquica			
Schedule Weekly Status Meetings (15 min)	Account Manager			
Reminder: Send Client our W9 and COI	Account Manager			
Task Name	Task Owner	Target Date	Completion Date	Notes and Comments
<u>Initial Meeting with Exiting TPA</u>				
Schedule /hold call with exiting TPA				
Provide TPA with transfer instructions				
Obtain Client RRE#				
Confirm # of physical closed files, notify storage vendor and estimate storage/scanning cost				
<u>Finance - Banking</u>				
Client call to discuss banking & route signature card	Jamie Feld			
<u>Accounting/Invoicing (Internal)</u>				
Client ID - B (Finance)	Jamie Feld			
Contract review with Finance	John/Jamie			
Confirm who is responsible for invoicing	Jamie Feld			
<u>Data Conversion and Testing</u>				
Client ID - A (CKP)	IT Team			
Schedule meeting with client to discuss org structure, custom coding fields and report needs	IT Team			
<u>Test Phase I</u>				
Request/receive/load data test files	IT Team			
Policies, claims, organization structure, mapping review/client approval, data clean-up, notepad	IT Team / Chris Shaffer			
<u>Test Phase II</u>				
Payments and reserves	IT Team			
<u>Test Phase III</u>				
Correspondence and Imaging	IT Team			
<u>Final Data Load Phase IV</u>				
Complete final data conversion	IT Team			
<u>System Access, Custom Requirements and Report</u>				
Schedule meeting to review organization structure and custom custom requirements				
Set up sample loss run once data is in to secure any special fields client will need for loss run				
Set up system access for client & setup training				
Confirm client report and frequency				
<u>Claims Operations</u>				
Confirm Lead Adjuster/Litigation Manager/Supprting Adjuster/Claim Processor				
Special handling , claims review frequency, new loss reporting/intake, set-up, excess reporting, client reporting, CKP alerts, special coding				
Provide client GH contact sheet & welcome kit				
Prioritize review of open transfer claims				
Triage open "hot" claims and open transfer claims				
Schedule meet and greet with client and GH team				
<u>Post Implementation Phase</u>				
Project completion meeting with client				
3-month post conversion meeting with client				

**4. Detailed description of specific tasks you will require from City staff. Explain what the respective roles of City staff and your staff would be to complete the tasks specified in the Scope of Work.**

George Hills requests the following tasks from the City:

1. Actively engage the appropriate City staff throughout the transition period to address various topics including data conversion, imprest account set up and funding, settlement authority procedures, identifying key City contacts, etc.
2. Prompt reporting of all new claims
3. Issue tort claim notices and provide copies to the adjuster in a timely manner
4. Cooperation by all departments in conducting investigations including providing records, reports, documents and other information requested in a timely manner
5. Providing timely responses to requests for settlement authority
6. Providing adequate and timely funding of the imprest account

**5. Proposers are encouraged to provide additional innovative and/or creative approaches for providing the service that will maximize efficient, cost-effective operations or increased performance capabilities. In addition, the City will consider proposals that offer alternative service delivery means and methods for the services desired.**

**Value-Added:** George Hills is a values-based company, and our values—which are honesty/accountability; customer satisfaction; loyalty/commitment; financial stewardship; continuous improvement; and resiliency — influence everything we do. In the spirit of continuous improvement, we are always enhancing our structure. George Hills has made significant changes to our structure and processes to be a leader in the industry. We have created the position of Vice President of Claims Administration, Chris Shaffer, who will work closely with you to meet your reporting needs.

Additionally, we have attorney, Robert Chalfant to work on all litigation matters. We have also dramatically increased our detailed supervision of adjusters and their performance throughout the company. George Hills has also expanded our tiering of talent to allow for succession and training. Lastly, we have added an entire team in support of CXP, our CMIS.

**Cost Saving Methods:** Through our efficient and thorough investigation, there is a two-point contact within one business day of receipt of each claim, we ensure the liability investigation is completed early, and many claims are not pursued when they are denied or rejected early on. In these instances:

- Attorneys are less likely to take a case that has already been denied.
- By not establishing your defense position early, a claimant is often more likely to think they will get a settlement.
- Securing witness and claimant statements early on is essential, lest they forget the details or have the opportunity to revise the facts to help their position.
- Indexing claimants pursuing injury claims verify if they have made similar claims in the past and/or have prior injuries that are unrelated to our matter.
- If there is liability, and injuries are claimed, we secure complete medical records to check for pre-existing conditions.

We explore all tender possibilities based on the claimant's allegations because allegations trigger coverage regardless of liability.

## 6. Procedure to assess and recommend early settlement of claims.

Adjusters are trained to perform a risk weighted analysis early on in litigation to establish a target settlement number before incurring extensive defense costs, pursuant to the City's risk protocols. We believe adjusters should complete tasks rather than an attorney wherever possible. We utilize statutory settlement offers such as 998's when appropriate to possibly recover costs if a favorable verdict is received.

## 7. Detailed description of how the vendor would, as part of its regular duties, recommend and assist the City in implementing Best Practices for risk management, defect inspections, and repairs.

### Best Practices Claims Approach

George Hills' *Best Practices General Liability Claims Handling Manual* and *Best Practices General Liability Litigation Manual*—both of which all George Hills claims processors, adjusters, and supervisors must follow in accordance with the specific rules, regulations, and requirements of an individual client—fully support the scope of work, procedures, processes, and requests of the City's. George Hills' stated mission is always "to provide the highest level of quality, customer-focused claims service." We accomplish this by assigning teams of experienced individuals who have managed similar accounts for many years.

George Hills' best practices approach to claims management centers around early communication and transparency of information. Early communication with claimants leads to a faster claim resolution, and our transparency of information gives the City's insight to the claims process from inception to close.

### Best Practice Quality Control

George Hills' processes, procedures, and methodologies center around adjuster accuracy and customer satisfaction. Quality control comes at the technological (automated) level and the human (adjuster/supervisor) level by George Hills' supervisors.

### Communication

Phone calls and e-mails receive a response within 24 hours. All other written communication receives a response within three business days.

### Contacts

- 24-hour emergency contact is made within one hour of assignment or phone call.
- Initial contact will be made with insured/client, claimant and witnesses within one business day of receipt of their information. If no contact is made with the claimant, two subsequent contact attempts via telephone will be made within the first 48 hours after receipt of the claim. If we do not have contact information for the claimant, or have incorrect information, extra attempts will be made to secure correct contact information, such as a Google or online "white pages" search. If the City's protocols are such that claimant is not to be contacted, that will be documented in the adjuster's file notes.
- An acknowledgment letter or email will be sent to all pertinent parties containing the adjuster's contact information and claim number unless instructed otherwise.

## Best Practice Claim Data and Information Management

George Hills' ability to develop and maintain the City's data metrics for decision-making as well as provide accurate statistical reporting is due solely to our commitment to best practices in our Information Technology processes. In 2015, we migrated our claims data to Insurity's CMIS – CXP. This change has provided George Hills and our clients with much greater expert resources. Additionally, George Hills can rely on Insurity's commitment to security to ensure your data is safe. To illustrate this commitment, Insurity completes an annual disaster recovery exercise to safeguard against potential data loss.

Timely resolution of claims is another best practice we employ. Generally speaking, the longer a file is open, the costlier it is for our clients. Superfluous open reserves on our client's book of business can negatively affect financial results. As such, one of the items reviewed by the supervisors when they are auditing files is timeliness of closures. The supervisor will also review whether the adjuster is continuing to update the claim diary. Every time an adjuster picks up a file, they should do everything necessary to get the file closer to resolution.

## Data Entry

When a claim/loss is received, the supervisor completes an Initial Claim Data Entry (ICDE) form and emails it to the assigned claims processor for the opening of the electronic claim file. The designated support staff will perform the following actions:

- Assign a claim number
- Enter the data into CXP within 24 hours of receipt of the claim/loss
- Attach any paperwork received with the claim to CXP
- Notify the responsible adjuster via email upon completion of data entry

These actions trigger CXP to set an automatic diary for the adjuster and their supervisor

## File Set-Up

Upon receiving notification of data entry completion, and upon instruction taken from the Initial Claim Data Entry form, the claims processor will take the following steps:

- Send an acknowledgment of new assignment to the City's within 24 hours of receipt of assignment.
- Make initial phone contact with the claimant or their attorney, if so instructed, and send an acknowledgment letter to the claimant or their attorney.
- Attach all pertinent paper documentation to the claim/loss to the CXP file.

Once notified that the claim has been entered and acknowledgment letter has been sent, the adjuster will review the information in CXP for accuracy.

- **File Notepad** – A file note will be created in Notepad each time an activity occurs. Dropdown boxes for notepad types allow the adjuster to be specific as to the type of activity (i.e., phone call, correspondence received or sent, claim filed). The subject line allows for further specific yet brief information for an at-a-glance review in CXP. Notepads are important to document phone conversations or receipt of materials; they serve as a chronological "outline" of what activity has taken place.
- **Plan of Action (POA)** – Each file is required to have an initial claim review note (within the first seven days of receipt) outlining the basics of the claim. After that, Notepad entries reflect an updated Plan of Action (a type of Notepad entry) every 30 days. the City's will have online access to the POA entries in



the claim summary view. The POA's are also available as a report for the City's and are useful for claim reviews.

- **Reserves** – Adjusters are required to set initial file reserves for indemnity and expenses (legal and adjusting) within five days of assignment.
- **Payments** – This tab is used to enter all payments issued by the City's and/or by George Hills. All payments will have a copy of the invoice, a copy of the release/settlement agreement, any OFAC checks, and W-9's as needed.

### Reserving of Claims

The establishment of reserves is a significant task, as it impacts critical areas such as funding levels and future debt. George Hills' philosophy is to establish separate reserves for indemnity and expense. However, George Hills will reserve according to the City's policy. Adjusters review the reserves of a claim each time they touch the file, and specifically on each diary date. Reserves take into consideration liability as to the City's and comparative fault of the claimant/plaintiff, type of injury, damages, prognosis, expenses (e.g., medical and wage), and any anticipated general damages. George Hills normally reserves on a "most probable outcome" basis.

### Updating Clients on Major Reserve Changes

the City's will receive monthly reports which include reserves and/or reserve changes. CXP will send push notifications when the reserve change meets the threshold that George Hills and the City have established. Our best practices dictate that all reserve changes be entered as soon as the adjuster becomes aware of the need for a change.

### Supervisory Approval of Reserve Changes

The decision-making authority on revising the reserve is initially set at the level where the work is being done. However, large increases in reserves will be reported immediately to the supervisor and/or the City's as required.

### Notification and Updating of Excess Insurers

It is the responsibility of the adjuster to promptly report any case meeting the reporting requirements of the excess carrier or as instructed by the client.

George Hills will notify the City's excess carrier in any number of situations according to the requirements of the excess policy carrier's stipulations. First, the excess carrier is notified no later than 30 days after receipt of notice of a reportable claim. Second, notification is sent when reserves are set on any reportable claim or suit involving multiple claims or suits arising out of one occurrence or any claims or reserves amounting to 50 percent or more of the retained limit. Third, excess carriers are notified regarding Title 42 USC 1983 cases in which a complaint has been served, and the plaintiff is represented by legal counsel or with reserves of 25 percent or more of the retained limit. Lastly, regardless of the reserve, notification is sent for any claim involving the following:

- One or more fatalities
- Loss of a limb
- Loss of use of any sensory organ

- Quadriplegia or paraplegia
- Third-degree burns involving ten percent or more of the body
- Serious facial disfigurement
- Paralysis
- Closed head injuries

### Diaries and Claim Progress Notes

Diary systems are established to ensure that each assigned case is reviewed *at least* once every 30 days on active files, extended diaries up to 90 days on those waiting activity by others, and up to 180 days on those files in which the adjuster is awaiting the expiration of the statute of limitations. All diaries are maintained through CXP.

File notes indicate the prompt establishment of an initial diary date and subsequent follow-up diary dates at intervals dependent on claim activity. Notes include action taken from the previous note entry and an updated Plan of Action documenting the adjuster's plan for future activity to move the claim towards resolution. No claim is re-diaried without indicating specifically why no further action was taken.

George Hills' claims supervisor will maintain separate diaries and other audit controls necessary to review and ensure timeliness in handling as well as ensuring other claims standards and reporting requirements are being met.

### 8. Procedure for investigating each claim and reporting result and recommendation to Risk Manager and City Attorney.

George Hills will coordinate with City to complete a comprehensive and factual investigation within thirty days of the City's knowledge of claim or critical incident. This investigation will include statements from claimants and witnesses, appropriate official reports, and photos. If necessary, we will coordinate and direct field investigation.

### 9. Detailed description of how the vendor would report to the Risk Manager and City Attorney any mistakes, errors, omissions, negligence, or other misconduct of city employees that may have caused or contributed to the alleged occurrence.

George Hills will identify any error, omission, or misconduct by any City employee related to the claim and to communicate this to the City Attorney's Office as an Attorney-Client Privileged Communication. We will communicate to the City Attorney's Office, as an Attorney-Client Privileged Communication, any recommended corrections or repairs to property, improvements, etc., and any recommended changes to policies or procedures or other best practices, as risk reduction or avoidance measures. George Hills will then make a recommendation to the City once the investigation is complete. All notices pertaining to claim insufficiency, returning late claims, claim rejections, etc., will be timely and in accordance with the relevant Governmental Code provisions.



## CITY OF RIALTO

### DISCLOSURES REQUIRED BY PERSONS OR ENTITIES CONTRACTING WITH THE CITY OF RIALTO\*

Pursuant to City of Rialto Municipal Code Section 2.48.510, all persons or business entities supplying any goods or services to the city, or seeking a loan or grant awarded by the city, whether through an application or proposal, shall disclose in such application or proposal whether any city officer, employee, or consultant may have a financial or non-financial interest in the person or business entity, or in any member, employee, owner, or officer of the business entity.

- A financial interest shall mean any interest that is prohibited under state law, including California Government Code Sections 1090 and 87100, and California Code of Regulation Section 18700 *et seq.*
- A non-financial interest shall mean any interest that is prohibited by City of Rialto Municipal Code Section 2.48.450.

For the purpose of helping the City understand whether City personnel might have a conflict of interest in you or your organization, please disclose below whether you or any of your members, employees, paid or unpaid officers, paid or unpaid directors, or owners are (or are related to) a City elected or appointed official, a City officer, or a City employee or consultant.


Name of Your Organization's Affected Member, Employee, Paid or Unpaid Officer, Paid or Unpaid Director, or Owner	Name of City Elected or Appointed Official, City Officer, a City Employee or Consultant	Relationship Between the Two
N/A		

**George Hills nor any of its employees have any conflict of interest with the City of Rialto.**

By submitting this [application/proposal], or supplying any goods or services to the City, the [applicant/vendor/contractor/consultant] hereby attests under penalty of perjury, personally and/or on behalf of the entity [submitting this application/proposal or supplying any goods or services to the City] that no City of Rialto elected or appointed official, employee or consultant has a financial or non-financial interest, as such terms are defined in California Government Code Sections 1090 and 87100 and in City of Rialto Code of Ordinances Section 2.48.145, in the [applicant/vendor/contractor/consultant], except as specifically disclosed herein.

Name of Person/Entity: George Hills

Title: CEO

Signature:  Date: November 23, 2021



#### **2.48.450 Employee conflict of interest.**

- (1) No covered person shall participate in the making of a grant or contract by the city in which the covered person has a conflicting interest.
- (2) For purposes of this section, the following definitions shall apply:
  - (a) A “covered person” includes any person who holds an elected or appointed City office, a City officer, a City employee, and any person who is a consultant to the City.
  - (b) A “conflicting interest” includes, but is not limited to, those decisions where:
    - (i) A covered person holds or has held within the previous twelve months a position with a potential grant or contract recipient;
    - (ii) A close relative of a covered person holds or has held within the previous twelve months a position with a grant or contract recipient;
    - (iii) A close relative of the spouse or domestic partner of a covered person holds or has held within the previous twelve months a position with a grant or contract recipient.
  - (c) “Position” includes the status of a member, employee, owner, paid or unpaid officer of, paid or unpaid leadership position in, or had an ownership interest in, a grant or contract recipient.
  - (d) A “close relative” includes a spouse, parent, grandparent, child, grandchild, aunt, uncle, or cousin.
  - (e) “Participate in the making of a grant or contract” includes participation in: drafting a solicitation or contract; negotiating, voting on, approving, or executing a grant or contract; discussion of same with any city officer or employee; or attempts in any way to influence the making of a grant or contract.
- (3) This prohibition shall not apply to a contract let by written competitive bid where the contract will be awarded to the person or entity who submits the lowest responsible and responsive bid.
- (4) Except for the Mayor or a member of the City Council, a covered person may request a waiver of any potential conflict of interest in writing from the City Manager. Any request for such a waiver must include full disclosure of the potential conflict of interest and a statement detailing any mitigating factors. The request and the City Manager’s response shall be provided to the City Council prior to any vote to approve the contract or grant, or if City Council approval is not required, at least five days before the contract or grant is approved. The request and the City Manager’s response shall be considered a public record.
- (5) The prohibitions in this section are in addition to any applicable federal or state conflict of interest laws, including but not limited to Government Code section 1090, and Government Code section 87100 *et seq.*

(6) Any person who violates this section is subject to the following:

(a) Public censure;

(b) If the conflict of interest was in the making of a contract, a prohibition from participation in the making of a contract by the city for a period of time up to twelve (12) months from the date of the imposition of the discipline;

(c) If the conflict of interest was in the making of a grant, a prohibition from participation in the making of a grant by the city for a period of time of up to twenty-four (24) months from the date of the imposition of the discipline;

(d) An administrative fine pursuant to Chapter 1.10 of this code.

(7) The discipline specified herein may be imposed:

(a) By the City Manager in the case of any employee or consultant who violates this section.

(b) By the City Council in the case of any person who holds an elected or appointed City office, or any City officer who violates this section.



## ***BUSINESS LICENSE***

**Expires on: 12/31/2022**

**License Number:** BL21-0817  
**Effective Date:** 11/30/2021  
**Business Type:** PROFESSIONAL SERVICE  
CITY CONTRACT-PROFESSIONAL SERVICE AGREEMENT

This business tax receipt does not permit the holder to operate in violation of any City law, ordinance or regulation. Any change in location or ownership must be approved by the City Business Tax Section, subject to zoning restrictions. This Receipt does not constitute an endorsement, approval or disapproval of the holder's skill or competence or of the compliance or noncompliance of the holder with other laws, regulations or standards.

**Business Address**

2515 VENTURE OAKS WAY STE 100

**Business Name & Mailing Address**

GEORGE HILLS COMPANY, INC  
GEORGE HILLS COMPANY, INC  
P.O. BOX 278  
RANCHO CORDOVA, CA 95741

*Sean Moore*

Business Licenses are non-transferable

VALID ONLY WHEN SIGNED



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/22/2021

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

<b>PRODUCER</b> Arthur J. Gallagher & Co. 2121 N. California Blvd., Suite 350 Walnut Creek CA 94596	<b>CONTACT</b> NAME: Certificate Department PHONE (A/C, No, Ext): 925-299-1112      FAX (A/C, No): 925-299-0328 E-MAIL ADDRESS: CertRequests@ajg.com														
<b>INSURED</b> George Hills Company Inc. PO Box 278 Rancho Cordova CA 95741	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> <tr> <td>INSURER A: Citizens Insurance Company of America</td> <td>31534</td> </tr> <tr> <td>INSURER B: Allmerica Financial Benefit Insurance Co</td> <td>41840</td> </tr> <tr> <td>INSURER C: Hanover American Insurance Company</td> <td>36064</td> </tr> <tr> <td>INSURER D: Hiscox Insurance Company Inc.</td> <td>10200</td> </tr> <tr> <td>INSURER E: Underwriters at Lloyd's London</td> <td>15792</td> </tr> <tr> <td>INSURER F: Travelers Casualty and Surety Co of America</td> <td>31194</td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Citizens Insurance Company of America	31534	INSURER B: Allmerica Financial Benefit Insurance Co	41840	INSURER C: Hanover American Insurance Company	36064	INSURER D: Hiscox Insurance Company Inc.	10200	INSURER E: Underwriters at Lloyd's London	15792	INSURER F: Travelers Casualty and Surety Co of America	31194
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 License#: 0726293  
 GEORHIL-03

## COVERAGES

CERTIFICATE NUMBER: 1283200352

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	OBFH38992901	10/1/2021	10/1/2022	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMP/OP AGG \$4,000,000 \$
B	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	AWFH38993201	10/1/2021	10/1/2022	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$	Y	Y	OBFH38992901	10/1/2021	10/1/2022	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$
C	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y	WZFH38994301	10/1/2021	10/1/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
D E F	Professional Liability/\$25k Reten Cyber/Internet Liability Crime/Fidelity			MPL210588921 ESJ0321762976 106989288	10/1/2021 10/1/2020 10/1/2021	10/1/2022 1/1/2022 10/1/2024	\$3,000,000/\$3,000,000 \$2,000,000 \$1,000,000 Retro: (9-18-2018) \$2,000,000 \$25,000 Retention

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate holder is covered as an Additional Insured as per form 391-1006 08 16. Coverage is Primary and Noncontributory as per form 391-1003 08 16. GL & Auto Waiver per form 391-1003 08 16. Auto Additional Insured-Primary and Non-Contributory per form 461-0478 12 12. WC Waiver of Subrogation per WC 04 03 06 (Ed 04-84).

ADDITIONAL INSURED(S): City of Rialto, its respective elected and appointed officers, directors, officials, employees, agents and volunteers.

## CERTIFICATE HOLDER

## CANCELLATION

 City of Rialto  
 Attn: City Manager  
 150 S. Palm Ave.  
 Rialto CA 92376

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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**Policy Number: OBFH38992901**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**BUSINESSOWNERS LIABILITY SPECIAL BROADENING ENDORSEMENT**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

<b>SUMMARY OF COVERAGES</b>	<b>Limits</b>	<b>Page</b>
1. Additional Insured by Contract, Agreement or Permit	Included	1
2. Additional Insured - Broad Form Vendors	Included	2
3. Alienated Premises	Included	3
4. Broad Form Property Damage - Borrowed Equipment, Customers Goods and Use of Elevators	Included	3
5. Incidental Malpractice (Employed Nurses, EMT's and Paramedics)	Included	3
6. Personal and Advertising Injury - Broad Form	Included	4
7. Product Recall Expense	Included	4
Product Recall Expense Each Occurrence Limit	\$25,000 Occurrence	5
Product Recall Expense Aggregate Limit	\$50,000 Aggregate	5
Product Recall Deductible	\$500	5
8. Unintentional Failure to Disclose Hazards	Included	6
9. Unintentional Failure to Notify	Included	6

This endorsement amends coverages provided under the Businessowners Coverage Form through new coverages and broader coverage grants. This coverage is subject to the provisions applicable to the Businessowners Coverage Form, except as provided below.

The following changes are made to **SECTION II - LIABILITY**:

**1. Additional Insured by Contract, Agreement or Permit**

The following is added to **SECTION II - LIABILITY, C. Who Is An Insured**:

**Additional Insured by Contract, Agreement or Permit**

- a. Any person or organization with whom you agreed in a written contract, written agreement or permit to add such person or organization as an additional insured on your policy is an additional insured only with respect to liability for "bodily injury", "property damage", or "personal and advertising injury" caused, in whole or in part, by your acts or omissions, or the acts or omissions of those acting on your behalf, but only with respect to:

- (1) "Your work" for the additional insured(s) designated in the contract, agreement or permit;

- (2) Premises you own, rent, lease or occupy; or

- (3) Your maintenance, operation or use of equipment leased to you.

- b. The insurance afforded to such additional insured described above:

- (1) Only applies to the extent permitted by law; and

- (2) Will not be broader than the insurance which you are required by the contract, agreement or permit to provide for such additional insured.

- (3) Applies on a primary basis if that is required by the written contract, written agreement or permit.

- (4) Will not be broader than coverage provided to any other insured.

- (5) Does not apply if the "bodily injury", "property damage" or "personal and advertising injury" is otherwise excluded from coverage under this Coverage Part, including any endorsements thereto.

**c. This provision does not apply:**

- (1) Unless the written contract or written agreement was executed or permit was issued prior to the "bodily injury", "property damage", or "personal injury and advertising injury".
- (2) To any person or organization included as an insured by another endorsement issued by us and made part of this Coverage Part.
- (3) To any lessor of equipment:
  - (a) After the equipment lease expires; or
  - (b) If the "bodily injury", "property damage", "personal and advertising injury" arises out of sole negligence of the lessor.
- (4) To any:
  - (a) Owners or other interests from whom land has been leased if the "occurrence" takes place or the offense is committed after the lease for the land expires; or
  - (b) Managers or lessors of premises if:
    - (i) The "occurrence" takes place or the offense is committed after you cease to be a tenant in that premises; or
    - (ii) The "bodily injury", "property damage", "personal injury" or "advertising injury" arises out of structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor.
- (5) To "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" or the offense which caused the "personal and advertising injury" involved the rendering of or failure to render any professional services by or for you.

**d. With respect to the insurance afforded to these additional insureds, the following is added to **SECTION II - LIABILITY, D. Liability and Medical Expense Limits of Insurance:****

The most we will pay on behalf of the additional insured for a covered claim is the lesser of the amount of insurance:

1. Required by the contract, agreement or permit described in Paragraph **a.**; or
2. Available under the applicable Limits of Insurance shown in the Declarations.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations

- e. All other insuring agreements, exclusions, and conditions of the policy apply.**

**2. Additional Insured - Broad Form Vendors**

The following is added to **SECTION II - LIABILITY, C. Who Is An Insured:**

**Additional Insured - Broad Form Vendors**

- a. Any person or organization that is a vendor with whom you agreed in a written contract or written agreement to include as an additional insured under this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business.**
- b. The insurance afforded to such vendor described above:**
  - (1) Only applies to the extent permitted by law;
  - (2) Will not be broader than the insurance which you are required by the contract or agreement to provide for such vendor;
  - (3) Will not be broader than coverage provided to any other insured; and
  - (4) Does not apply if the "bodily injury", "property damage" or "personal and advertising injury" is otherwise excluded from coverage under this Coverage Part, including any endorsements thereto
- c. With respect to insurance afforded to such vendors, the following additional exclusions apply:**

The insurance afforded to the vendor does not apply to:

  - (1) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reasons of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement;
  - (2) Any express warranty unauthorized by you;

- (3) Any physical or chemical change in the product made intentionally by the vendor;
  - (4) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instruction from the manufacturer, and then repackaged in the original container;
  - (5) Any failure to make such inspection, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business in connection with the sale of the product;
  - (6) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
  - (7) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor;
  - (8) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
    - (a) The exceptions contained within the exclusion in subparagraphs (4) or (6) above; or
    - (b) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
  - (9) "Bodily injury" or "property damage" arising out of an "occurrence" that took place before you have signed the contract or agreement with the vendor.
  - (10) To any person or organization included as an insured by another endorsement issued by us and made part of this Coverage Part.
  - (11) Any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.
- d. With respect to the insurance afforded to these vendors, the following is added to **SECTION II - LIABILITY, D. Liability and Medical Expense Limits of Insurance:**
- The most we will pay on behalf of the vendor for a covered claim is the lesser of the amount of insurance:
1. Required by the contract or agreement described in Paragraph a.; or
  2. Available under the applicable Limits of Insurance shown in the Declarations;
- This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.
- 3. Alienated Premises**
- SECTION II - LIABILITY, B. Exclusions, 1. Applicable To Business Liability Coverage k. Damage to Property,** paragraph (2) is replaced by the following:
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises and occurred from hazards that were known by you, or should have reasonably been known by you, at the time the property was transferred or abandoned.
- 4. Broad Form Property Damage - Borrowed Equipment, Customers Goods, Use of Elevators**
- a. The following is added to **SECTION II - LIABILITY, B. Exclusions, 1. Applicable To Business Liability Coverage, k. Damage to Property:**

Paragraph (4) does not apply to "property damage" to borrowed equipment while at a jobsite and not being used to perform operations.

Paragraph (3), (4) and (6) do not apply to "property damage" to "customers goods" while on your premises nor to the use of elevators.
  - b. For the purposes of this endorsement, the following definition is added to **SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions:**
    1. "Customers goods" means property of your customer on your premises for the purpose of being:
      - a. Worked on; or
      - b. Used in your manufacturing process.
  - c. The insurance afforded under this provision is excess over any other valid and collectible property insurance (including deductible) available to the insured whether primary, excess, contingent or on any other basis.
- 5. Incidental Malpractice - Employed Nurses, EMT's and Paramedics**
- SECTION II - LIABILITY, C. Who Is An Insured,** paragraph 2.a.(1)(d) does not apply to a nurse,

emergency medical technician or paramedic employed by you if you are not engaged in the business or occupation of providing medical, paramedical, surgical, dental, x-ray or nursing services.

## 6. Personal Injury - Broad Form

a. **SECTION II - LIABILITY, B. Exclusions, 2. Additional Exclusions Applicable only to "Personal and Advertising Injury"**, paragraph e. is deleted.

b. **SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions, 14. "Personal and advertising injury"**, paragraph b. is replaced by the following:

b. Malicious prosecution or abuse of process.

c. The following is added to **SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions, Definition 14. "Personal and advertising injury"**:

"Discrimination" (unless insurance thereof is prohibited by law) that results in injury to the feelings or reputation of a natural person, but only if such "discrimination" is:

(1) Not done intentionally by or at the direction of:

(a) The insured;

(b) Any officer of the corporation, director, stockholder, partner or member of the insured; and

(2) Not directly or indirectly related to an "employee", not to the employment, prospective employment or termination of any person or persons by an insured.

d. For purposes of this endorsement, the following definition is added to **SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions**:

1. "Discrimination" means the unlawful treatment of individuals based upon race, color, ethnic origin, gender, religion, age, or sexual preference. "Discrimination" does not include the unlawful treatment of individuals based upon developmental, physical, cognitive, mental, sensory or emotional impairment or any combination of these.

e. This coverage does not apply if liability coverage for "personal and advertising injury" is excluded either by the provisions of the Coverage Form or any endorsement thereto.

## 7. Product Recall Expense

a. **SECTION II - LIABILITY, B. Exclusions, 1. Applicable To Business Liability Coverage,**

**o. Recall of Products, Work or Impaired Property** is replaced by the following:

**o. Recall of Products, Work or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

(1) "Your product";

(2) "Your work"; or

(3) "Impaired property";

If such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it, but this exclusion does not apply to "product recall expenses" that you incur for the "covered recall" of "your product".

However, the exception to the exclusion does not apply to "product recall expenses" resulting from:

(4) Failure of any products to accomplish their intended purpose;

(5) Breach of warranties of fitness, quality, durability or performance;

(6) Loss of customer approval, or any cost incurred to regain customer approval;

(7) Redistribution or replacement of "your product" which has been recalled by like products or substitutes;

(8) Caprice or whim of the insured;

(9) A condition likely to cause loss of which any insured knew or had reason to know at the inception of this insurance;

(10) Asbestos, including loss, damage or clean up resulting from asbestos or asbestos containing materials; or

(11) Recall of "your products" that have no known or suspected defect solely because a known or suspected defect in another of "your products" has been found.

b. The following is added to **SECTION II - LIABILITY, C. Who Is An Insured**, paragraph 3.b.:

"Product recall expense" arising out of any withdrawal or recall that occurred before you acquired or formed the organization.



- c. The following is added to **SECTION II - LIABILITY, D. Liability and Medical Expenses Limits of Insurance:**

**Product Recall Expense Limits of Insurance**

- a. The Limits of Insurance shown in the SUMMARY OF COVERAGES of this endorsement and the rules stated below fix the most that we will pay under this Product Recall Expense Coverage regardless of the number of:

- (1) Insureds;
- (2) "Covered Recalls" initiated; or
- (3) Number of "your products" withdrawn.

- b. The Product Recall Expense Aggregate Limit is the most that we will reimburse you for the sum of all "product recall expenses" incurred for all "covered recalls" initiated during the policy period.

- c. The Product Recall Each Occurrence Limit is the most we will pay in connection with any one defect or deficiency.

- d. All "product recall expenses" in connection with substantially the same general harmful condition will be deemed to arise out of the same defect or deficiency and considered one "occurrence".

- e. Any amount reimbursed for "product recall expenses" in connection with any one "occurrence" will reduce the amount of the Product Recall Expense Aggregate Limit available for reimbursement of "product recall expenses" in connection with any other defect or deficiency.

- f. If the Product Recall Expense Aggregate Limit has been reduced by reimbursement of "product recall expenses" to an amount that is less than the Product Recall Expense Each Occurrence Limit, the remaining Aggregate Limit is the most that will be available for reimbursement of "product recall expenses" in connection with any other defect or deficiency.

**g. Product Recall Deductible**

We will only pay for the amount of "product recall expenses" which are in excess of the \$500 Product Recall Deductible. The Product Recall Deductible applies separately to each "covered recall". The limits of insurance will not be reduced by the amount of this deductible.

We may, or will if required by law, pay all or any part of any deductible amount, if applicable. Upon notice of our payment

of a deductible amount, you shall promptly reimburse us for the part of the deductible amount we paid.

The Product Recall Expense Limits of Insurance apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for the purposes of determining the Limits of Insurance.

- d. The following is added to **SECTION II - LIABILITY, E. Liability and Medical Expense General Conditions, 2. Duties in the Event of Occurrence, Offense, Claim or Suit:**

You must see to it that the following are done in the event of an actual or anticipated "covered recall" that may result in "product recall expense":

- (1) Give us prompt notice of any discovery or notification that "your product" must be withdrawn or recalled. Include a description of "your product" and the reason for the withdrawal or recall;

- (2) Cease any further release, shipment, consignment or any other method of distribution of like or similar products until it has been determined that all such products are free from defects that could be a cause of loss under this insurance.

- e. For the purpose of this endorsement, the following definitions are added to **SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions:**

1. "Covered recall" means a recall made necessary because you or a government body has determined that a known or suspected defect, deficiency, inadequacy, or dangerous condition in "your product" has resulted or will result in "bodily injury" or "property damage".

2. "Product recall expense(s)" means:

- a. Necessary and reasonable expenses for:

- (1) Communications, including radio or television announcements or printed advertisements including stationary, envelopes and postage;

- (2) Shipping the recalled products from any purchaser, distributor or user to the place or places designated by you;
  - (3) Remuneration paid to your regular "employees" for necessary overtime;
  - (4) Hiring additional persons, other than your regular "employees";
  - (5) Expenses incurred by "employees" including transportation and accommodations;
  - (6) Expenses to rent additional warehouse or storage space;
  - (7) Disposal of "your product", but only to the extent that specific methods of destruction other than those employed for trash discarding or disposal are required to avoid "bodily injury" or "property damage" as a result of such disposal,  
you incur exclusively for the purpose of recalling "your product"; and
  - b. Your lost profit resulting from such "covered recall".
- f. This Product Recall Expense Coverage does not apply:
- (1) If the "products - completed operations hazard" is excluded from coverage under this Coverage Part including any endorsement thereto; or
  - (2) To "product recall expense" arising out of any of "your products" that are otherwise excluded from coverage under this Coverage Part including endorsements thereto.
- 8. Unintentional Failure to Disclose Hazards**  
The following is added to **SECTION II - LIABILITY, E. Liability and Medical Expenses General Conditions:**  
**Representations**  
We will not disclaim coverage under this Coverage Part if you fail to disclose all hazards existing as of the inception date of the policy provided such failure is not intentional.
- 9. Unintentional Failure to Notify**  
The following is added to **SECTION II - LIABILITY, E. Liability and Medical Expenses General Conditions, 2. Duties in the Event of Occurrence, Offense, Claim or Suit:**  
Your rights afforded under this Coverage Part shall not be prejudiced if you fail to give us notice of an "occurrence", offense, claim or "suit", solely due to your reasonable and documented belief that the "bodily injury", "property damage" or "personal and advertising injury" is not covered under this Policy.

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.

1. **SECTION I - PROPERTY**, if two or more of this coverage part's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.
2. **SECTION II - LIABILITY**, it is our stated intent that the various Coverage Parts, forms, endorsements or policies issued to the named insured by us, or any company affiliated with us, do not provide any duplication or overlap of coverage for the same claim, "suit", "occurrence", offense, accident, "wrongful act" or loss. We will not pay more than the actual amount of the loss or damage.

If this Coverage Part and any other Coverage Part, form, endorsement or policy issued to the named insured by us, or any company affiliated with us, apply to the same claim, "suit", occurrence, offense, accident, "wrongful act" or loss, the maximum Limit of Insurance under all such Coverage Parts, forms, endorsements or policies combined shall not exceed the highest applicable Limit of Insurance under any one Coverage Part, form, endorsement or policy.

This condition does not apply to any Excess or Umbrella Policy issued by us specifically to apply as excess insurance over this policy.

#### G. Liberalization

If we adopt any revision that would broaden the coverage under this policy without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this policy.

#### H. Other Insurance

##### 1. SECTION I - PROPERTY

If there is other insurance covering the same loss or damage, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But, we will not pay more than the applicable Limit of Insurance of **SECTION I - PROPERTY**.

##### 2. SECTION II - LIABILITY

If other valid and collectible insurance is available to the insured for a loss we cover under **SECTION II - LIABILITY**, our obligations are limited as follows:

###### a. Primary Insurance

This insurance is primary except when paragraph **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in paragraph **c.** below.

However, if you agree in a written contract, written agreement, or written permit that the insurance provided to any person or organization included as an Additional Insured under this Coverage Part is primary and non-contributory, we will not seek contribution from any other insurance available to that Additional Insured which covers the Additional Insured as a Named Insured except:

- (1) For the sole negligence of the Additional Insured; or
- (2) When the Additional Insured is an Additional Insured under another liability policy.

##### b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
  - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
  - (b) That is Property Insurance for premises rented to you or temporarily occupied by you with permission of the owner;
  - (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
  - (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to **SECTION II - LIABILITY, Exclusion g. Aircraft, Auto or Watercraft**; and
- (2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.

When this insurance is excess, we will have no duty under **SECTION II - LIABILITY** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the

insured's rights against all those other insurers.

- c. When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

- (2) The total of all deductible and self-insured amounts under all that other insurance.

- d. We will share the remaining loss, if any, with any other insurance that is not described in this provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations for this Coverage.

**e. Method of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable Limit of Insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable Limit of Insurance to the total applicable limits of insurance of all insurers.

- f. When this insurance is excess, we will have no duty under Business Liability Coverage to defend any claim or "suit" that any other insurer has a duty to defend. If no other insurer defends, we will undertake to do so; but we will be entitled to the insured's rights against all those other insurers.

**I. Premiums**

- 1. The first Named Insured shown in the Declarations:
  - a. Is responsible for the payment of all premiums; and
  - b. Will be the payee for any return premiums we pay.
- 2. The premium shown in the Declarations was computed based on rates in effect at the time the policy was issued. On each renewal, continuation or anniversary of the effective date of this policy, we will compute the

premium in accordance with our rates and rules then in effect.

- 3. With our consent, you may continue this policy in force by paying a continuation premium for each successive one-year period. The premium must be:

- a. Paid to us prior to the anniversary date; and

- b. Determined in accordance with paragraph 2. above.

Our forms then in effect will apply. If you do not pay the continuation premium, this policy will expire on the first anniversary date that we have not received the premium.

- 4. Undeclared exposures or change in your business operation, acquisition or use of locations may occur during the policy period that is not shown in the Declarations. If so, we may require an additional premium. That premium will be determined in accordance with our rates and rules then in effect.

**J. Premium Audit**

- 1. This policy is subject to audit if a premium designated as an advance premium is shown in the Declarations. We will compute the final premium due when we determine your actual exposures.
- 2. Premium shown in this policy as advance premium is a deposit premium only. At the close of each audit period, we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- 3. The first Named Insured must keep records of the information we need for premium computation and send us copies at such times as we may request.

**K. Transfer of Rights of Recovery Against Others to Us**

- 1. Applicable to **SECTION I - PROPERTY** Coverage:

If any person or organization to or for whom we make payment under this policy has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

- a. Prior to a loss to your Covered Property.
- b. After a loss to your Covered Property only if, at time of loss, that party is one of the following:
  - (1) Someone insured by this insurance;
  - (2) A business firm:
    - (a) Owned or controlled by you; or
    - (b) That owns or controls you; or
  - (3) Your tenant.

You may also accept the usual bills of lading or shipping receipts limiting the liability of carriers.

This will not restrict your insurance.

**2. Applicable to SECTION II - LIABILITY Coverage:**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair such rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

We waive any right of recovery we may have against any person or organization with whom you have a written contract, permit or agreement to waive any rights of recovery against such person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard".

This condition does not apply to Medical Expenses Coverage.

**L. Transfer of Your Rights and Duties Under This Policy**

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual Named Insured. If you die, your rights and duties will be transferred to your legal representative but only while that legal representative is acting within the scope of their duties as your legal representative. Until your legal representative is appointed, anyone with proper temporary custody of your property will have your rights and duties but only with respect to that property.

Policy Number: AWFH38993201

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**BLANKET ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE PART**

- A. The following is added to **SECTION II - LIABILITY COVERAGE**, Paragraph **A.1. Who Is An Insured**:

**Additional Insured if Required by Contract**

If you agree in a written contract, written agreement or written permit that a person or organization be added as an additional "insured" under this Coverage Part, such person or organization is an "insured"; but only to the extent that such person or organization qualifies as an "insured" under paragraph **A.1.c.** of this Section.

If you agree in a written contract, written agreement or written permit that a person or organization be added as an additional "insured" under this Coverage Part, the most we will pay on behalf of such additional "insured" is the lesser of:

- (1) The Limits of Insurance for liability coverage specified in the written contract, written agreement or written permit; or
- (2) The Limits of Insurance for Liability Coverage shown in the Declarations applicable to this Coverage Part.

Such amount shall be part of and not in addition to the Limits of Insurance shown in the Declarations applicable to this Coverage Part. Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for the total of all damages and "covered pollution cost or expense" combined resulting from any one "accident" is the Limit of Insurance for Liability Coverage shown in the Declarations.

- B. The following is added to **SECTION IV - BUSINESS AUTO CONDITIONS**, Paragraph **B. General Conditions**, subparagraph **5. Other Insurance**:

**Primary and Non-Contributory**

If you agree in a written contract, written agreement or written permit that the insurance provided to a person or organization who qualifies as an additional "insured" under **SECTION II - LIABILITY COVERAGE**, Paragraph **A.1. Who Is An Insured**, subparagraph **Additional Insured if Required by Contract** is primary and non-contributory, the following applies:

The liability coverage provided by this Coverage Part is primary to any other insurance available to the additional "insured" as a Named Insured. We will not seek contribution from any other insurance available to the additional "insured" except:

- (1) For the sole negligence of the additional "insured"; or
  - (2) For negligence arising out of the ownership, maintenance or use of any "auto" not owned by the additional "insured" or by you, unless that "auto" is a "trailer" connected to an "auto" owned by the additional "insured" or by you; or
  - (3) When the additional "insured" is also an additional "insured" under another liability policy.
- C. This endorsement will apply only if the "accident" occurs:
1. During the policy period;
  2. Subsequent to the execution of the written contract or written agreement or the issuance of the written permit; and
  3. Prior to the expiration of the period of time that the written contract, written agreement or written permit requires such insurance to be provided to the additional "insured".
- D. Coverage provided to an additional "insured" will not be broader than coverage provided to any other "insured" under this Coverage Part.

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.

### WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT-CALIFORNIA

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 2 % of the California workers' compensation premium otherwise due on such remuneration.

#### Schedule

#### Person or Organization

#### Job Description

APPLIES AS BLANKET WAIVER  
CONTRACT WITH THE POLICY-  
WCPOLICYHOLDER EMPLOYEES.

FOR THOSE HAVING A WRITTEN  
HOLDER REQUIRING WOS FOR

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. (The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective  
Insured

Policy No. WZF-H389943-01

Endorsement No.

Insurance Company THE HANOVER AMERICAN INSURANCE COMPANY

Countersigned By \_\_\_\_\_