

RESOLUTION NO.: 46 -2010
INTRODUCED BY: Alexander

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A
WORKERS' COMPENSATION GROUP RATING PROGRAM
EMPLOYER ADMINISTRATIVE SERVICES AGREEMENT WITH
COMPMANAGEMENT, INC.

WHEREAS, the Director of Finance has recommended that the City enter into an agreement with a third-party administrator for its workers' compensation group rating program and other workers' compensation administrative services as an efficient and economical means to manage the City's workers' compensation matters;

NOW, THEREFORE, Be It Resolved by the Council of the City of Richmond Heights, State of Ohio, that:

Section 1: The Mayor is authorized to enter into an agreement with CompManagement, Inc. for a term beginning August 28, 2010 through August 27, 2011, for an annual fee not to exceed \$1,960.00 and in a form substantially similar to the agreement attached hereto and incorporated herein as Exhibit A.

Section 2: The Director of Finance is authorized and directed to appropriate to a proper account the amount necessary for the agreement authorized in Section 1 of this Resolution.

Section 3: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4: This Resolution shall take effect and be in force from and after the earliest period allowed by law.

PASSED: _____

Daniel J. Ursu, Mayor

APPROVED: _____

ATTEST: _____

Betsy Traben
Clerk of Council

David H. Roche
President of Council

CompManagement, Inc.

GROUP RATING AGREEMENT

This Agreement is entered into as of 8/28/2010, between
COMPManagement, INC., a Sedgwick CMS Company (CMI)
an Ohio corporation with a mailing address of P.O. Box 884, Dublin, Ohio 43017-0884
and **City Of Richmond Heights** (the Client), Policy No. **31808002**
with a mailing address and fax number of 26789 Highland Rd Cleveland OH 44143-1429 (216)383-6320

The Client has insured its employees for workers' compensation coverage as required by federal or state laws and regulations.

The Client is a member in good standing of Ohio Municipal League (the Sponsoring Organization) and the Sponsoring Organization requires the services of an administrator to establish, operate and process claims filed on behalf of its members' workers' compensation group rating program for the policy period commencing January 1, 2011 and ending December 31, 2011 (the Program).

CMI administers and processes claims on behalf of employers subject to workers' compensation laws and regulations of the State of Ohio, the Ohio Industrial Commission, and the Ohio Bureau of Workers' Compensation (OBWC). In order to comply with the requirements of the Program, the Client desires to have CMI administer and process the claims submitted against the Client, and CMI desires to provide such services.

STATEMENT OF AGREEMENT

Now, therefore, it is agreed as follows:

1. AUTHORIZED REPRESENTATIVE

- 1.1 The Client acknowledges that the Sponsoring Organization has designated CMI as the Third Party Administrator (TPA) to establish, coordinate and administer the Program, including, but not limited to, receiving, processing and examining claims filed against the Client. The Client reserves the right to engage the services of an attorney, at Client's sole expense, for such claims-related matters in which such representation would be appropriate.
- 1.2 The Client hereby grants to CMI on its behalf the necessary authority to execute action on any documents which may be required in order to carry out the obligations of this Agreement. CMI shall use reasonable efforts (as defined by CMI) to consult with the Client regarding matters which require a Client decision. In the event CMI is unable to reach the Client, the Client agrees to hold CMI harmless concerning any actions taken in such circumstances.

2. INDEPENDENT CONTRACTOR. In performing services pursuant to this Agreement, CMI shall be acting as an Independent Contractor of the Client, and not as an employee or agent of the Client.

3. SERVICES. In administering and processing claims submitted under the Program, CMI shall provide the following Standard Services:

- 3.1 review status of claims and rate histories to determine eligibility for participation in current and future group plans (entry requirements are determined by the Sponsoring Organization);
- 3.2 record all relevant claim information received from the Client and forward all correspondence to the appropriate agency for processing;
- 3.3 confer with the Client as to disputed cases, and contact the claimant, medical provider(s), and/or the involved state agencies as appropriate;
- 3.4 review all lost time claims to determine if all awards and reserves are made within the rules and regulations of the OBWC, requesting corrections in those cases where overpayments or incorrect reserves have been established, to the extent that such errors, when corrected, will result in favorable rate changes and/or refunds;
- 3.5 review all lost time claims to determine if "handicap refund," "second injury fund," or other cost relief is due the Client;
- 3.6 review all claims to determine if rehabilitation intervention is appropriate (costs relating to such intervention must be pre-approved by the Client and shall be the Client's responsibility);
- 3.7 upon authorization of the Client arrange for an independent medical exam of claimant(s), the costs of such exam being the responsibility of the Client;
- 3.8 maintain, within its offices, such records as are necessary to verify the Client has assigned rate(s), including but not limited to, data processing files and actuarial records, which shall be the property of CMI;
- 3.9 confer with the Client regarding any changes or recommendation about a given claim, including arranging for representation at agency hearings as required;
- 3.10 report to the Client, through personal contact or special bulletins, any changes in procedures produced by legislative or administrative revisions; and
- 3.11 other services listed on Exhibit A, if any is attached to this Agreement.

4. REPORTS. CMI shall provide the Sponsoring Organization with an annual report summarizing those claims against Participating Members of its Group during the previous year and/or affecting the current workers' compensation-rating period. Upon reasonable request of the Client, CMI shall provide the Client with special reports pertaining to certain claims.

5. **LOSS PREVENTION SERVICES.** CMI shall assist the Client in developing a consistent program to insure the quality control aspects of medical treatment for injured employees, and to insure full disclosure of medical facts for the determination of compensability. CMI shall also consult with the Sponsoring Organization regarding Accident Prevention, Safety Practices, Specific Code Requirements, and other matters relating to workers' compensation in order to reduce the number of work-related injuries and diseases.
6. **OBLIGATIONS OF THE CLIENT.** During the term of this Agreement, the Client shall comply with all of the terms and conditions set forth in this Agreement, and all policies, protocols, acceptance criteria, accident prevention programs, claims management programs, and rules and regulations of the Program, including without limitation the following:
 - 6.1 The Client shall comply with all statutes and regulations of the State of Ohio, whether currently in force or enacted in the future, that apply to the Program, including but not limited to the OBWC group rating rules (Ohio Admin. Code 4123-17-61 through 4123-17-68). The Client accepts sole responsibility for understanding and complying with these rules.
 - 6.2 The Client shall distribute claims forms to employees and medical suppliers as necessary.
 - 6.3 The Client shall submit to CMI all claims applications, supporting documentation, and follow-up correspondence it receives pertaining to a claim filed against it.
 - 6.4 The Client shall implement accident and safety programs established by the Sponsoring Organization or CMI or under the Program for the purpose of reducing injuries and to comply with the OBWC group rating requirements.
7. **PROGRAM PARTICIPATION.** The Client acknowledges that the Sponsoring Organization or CMI may from time to time promulgate new rules and regulations as are reasonably justified. The Client represents, warrants and covenants that it is in compliance with the following OBWC participation requirements or that, as of the date indicated below, it shall be in compliance with such requirements:
 - 7.1 The Client is and must remain a member in good standing with the Sponsoring Organization during the policy period.
 - 7.2 The Client has not applied to more than one group plan for the policy period.
 - 7.3 The Client is current (not more than forty-five (45) days past due) on any and all disputed premiums, assessments, penalties, or any other monies otherwise due to any fund administered by the OBWC, including retrospective rating as of the group rating application deadline.
 - 7.4 If the Client is participating in a partial payment agreement for premiums or assessments, as of the group rating application deadline, they must be current on payments due to the Attorney General's office.
 - 7.5 The Client does not have cumulative lapses in workers' compensation coverage in excess of forty (40) days within the twelve (12) month period before the group rating application deadline. However, the same cumulative lapse period will not be used to disqualify an employer for more than one (1) year.
 - 7.6 The Client is in active status for workers' compensation premium purposes as of the group rating application deadline and must remain in active status through the beginning of the rating year, January 1, 2011.
 - 7.7 The Client submits a fully completed original AC-26 Employer Statement for Group Rating Plan executed by a corporate officer, partner, or owner. CMI additionally requires execution and receipt of this signed Agreement. Lack of either item or further information which may be requested by CMI shall constitute just cause for refusal by CMI, with or without notification to the employer, to further process the employer for the group rating program.
 - 7.8 If a workers' compensation claim is incurred against the Client in the "green year" period (calendar year prior to the policy year) or the prior year, the Client shall attend an additional two hours of safety training annually.
 - 7.9 The Client shall implement the following required Safety Program parameters:
 - 7.9.1 Write a safety and health policy signed by the top company official that expresses the employer's values and commitment to workplace safety and health.
 - 7.9.2 Demonstrate visible senior management leadership that promotes the belief that the management of safety is an organizational value.
 - 7.9.3 Ensure employee involvement and recognition that afford employees the opportunity to participate in the safety management process.
 - 7.9.4 Develop a program of regular communications on safety and health issues to keep all employees informed and to solicit feedback and suggestions.
 - 7.9.5 Develop and implement orientation and training for all employees.
 - 7.9.6 Publish safe work practices so that employees have a clear understanding of how to safely accomplish their job requirements.
 - 7.9.7 Assign an individual the role of coordinating safety efforts for the company.
 - 7.9.8 Develop early return-to-work strategies to help injured or ill workers to return to work.
 - 7.9.10 Ensure all applicable OSHA-required programs are developed and associated training conducted.
8. **CLIENT DISCLOSURE; PROHIBITED PRACTICES**
 - 8.1 The Client acknowledges that, as part of the enrollment process, it has made representations to CMI regarding its past and present status as a Professional Employer Organization or Employment Leasing Operation. Further, the Client has fully disclosed and will continue to update CMI as to any past merger, acquisition, reorganization, consolidation or any other business activity that involves the potential combination by the OBWC of the Client with other workers' compensation risk accounts. The Client understands that this information has been sought to permit CMI to evaluate the potential impact that successorship and resulting risk combination by the OBWC could have upon the Program. The Client agrees that its application and acceptance into the Program are based upon its represented operating structure and resulting OBWC claim history at the time of application and enrollment.
 - 8.2 The Client does not currently operate, and does not intend to change its operations to perform, as either a Professional Employer Organization or Employment Leasing Operation, and has not, prior to this Agreement, leased its employment force from a leasing company. The Client further recognizes that any false representation or failure to disclose material information regarding employee leasing will result in an obligation to reimburse the Program and/or Participating Members for the negative financial impact of any successorship imposed by the OBWC on the Client. Furthermore, in such case, CMI shall seek to have the Client removed from the Program and the Group. The Client agrees that, during the term of this Agreement, it will not change from the current business structure to operating as a Professional Employer Organization or Employment Leasing Operation as defined by the OBWC.

- 8.3 The Client agrees that, during the term of this Agreement, it will not be involved in a merger, acquisition, reorganization, consolidation, or any other activity that will result in the OBWC finding that the Client is a succeeding employer, with negative financial impact on the Program. The Client agrees to give written notice to CMI ninety (90) days in advance of any such action so that a determination may be made as to the effect on the Program.
- 8.4 The Client agrees that it will be liable for and pay to a fund held by CMI, or its designee, an amount equal to any additional premiums imposed by the OBWC on the Program and/or Participating Members, for any Program year, due to a successorship imposed by the OBWC on the Client. This fund will be distributed on an equitable basis to Participating Members that paid additional premiums to the OBWC for the policy period. The Client further agrees to indemnify and hold harmless the Program, Participating Members, the Sponsoring Organization, CMI, and their members, directors, agents, agencies, assigns, affiliates, and/or subsidiaries from all liability arising from its action, including all losses, costs and expenses.
9. **GROUP RATE.** The client understands that the group rate must be estimated in advance of the policy period and is based upon the most recent policy period, and the actual group rate will vary depending upon multiple factors. The Client is solely responsible for any assessments of premiums owed to the OBWC. In no event shall CMI or the Sponsoring Organization be held liable for premiums or additional monies owed by the Client due to rate changes calculated by the OBWC.
10. **GROUP PARTICIPATION.** The Client understands that participation requirements of the Program are solely determined by the Sponsoring Organization, with consultations from its consultants including but not limited to CMI. While it is the intention of the Program to accept and retain as many applicants as possible, acceptance is contingent upon a final review by CMI and compliance by the Client and other Participating Members with the group rating rules and regulations of the OBWC and the requirements of the Program and this Agreement. *The Sponsoring Organization, at its discretion, may rescind the program invitation and declare this Agreement null and void by giving the Client notice before the filing of the program application with the OBWC.* The Client acknowledges that it shall have no right to continued participation in any successor group formed for any period after the initial term of this Agreement. Such continued participation shall be determined on a case-by-case basis by CMI in its sole discretion in consultation with the Sponsoring Organization.
11. **ALLOCATION OF SAVINGS.** Under circumstances deemed appropriate by the Sponsoring Organization, the plan administrator reserves the right to convert this Agreement to a pooled savings distribution method to equalize savings to plan participants. Under this method, the Client agrees that the Sponsoring Organization, at its own discretion, may establish a savings pool, which would equitably redistribute plan savings among members.
12. **TERM.** The initial term of this Agreement shall be for one year from 8/28/2010, with the exception of Section 8, which shall survive the termination of this Agreement. This Agreement shall renew itself at the end of the contractual period for successive one (1) year periods, subject to the Client's ability to meet the renewal criteria established by the program and the OBWC, including the payment of dues, service fees and pooling adjustments (if applicable.)
13. **TERMINATION.** The Client shall provide written notice of termination of this Agreement to CMI at least sixty (60) days before the term renewal date as defined in Paragraph 12. The Client may not otherwise terminate this Agreement or withdraw from the Program without the prior written consent of CMI and the Sponsoring Organization, either of which, the Client acknowledges, may deny such consent for any reason it deems appropriate. In the event that it is determined by a court, a governmental agency, or CMI that the Program fails to meet the requirements for group rating plans or that the Client fails to meet the requirements (whether under Ohio law or the standards of CMI or the Sponsoring Organization) for participation in the Program ("Exclusion" or "Excluded Client"), this Agreement shall continue for the remainder of the term for those services outlined in Section 3. In the alternative, the Excluded Client may provide written notice of termination to CMI, and CMI shall refund a portion of the annual fee pro-rated on the number of months remaining in the term of this Agreement. Neither CMI nor the Sponsoring Organization shall have any liability to the Client for any losses or damages arising from or relating to such Exclusion. The Client acknowledges that in the event of termination for any reason, the Sponsoring Organization, CMI, and their respective members, directors, agents, agencies, assigns, affiliates, and/or subsidiaries shall have no liability arising out of the terms and services provided for in this Agreement.
14. **PAYMENT FOR SERVICES.** The Client shall pay to CMI for Standard Services, Reporting Services, Loss Prevention Services and CMI's other obligations under this Agreement, an annual fee which has been jointly approved and adopted by the Sponsoring Organization and CMI. CMI will provide to the Client, not less than thirty (30) days before the expiration date of any contractual period, written notice of the service fees for the next succeeding term. All fees are payable within thirty (30) days of invoice date. Late payments are subject to a service charge of 1 1/4% per month (18% annualized rate).
- 14.1 Except as otherwise provided in the Agreement, fees received from the Client are non-refundable. However, should the Client withdraw its group rating application 30 days or more prior to the group filing deadline as established by the BWC, CMI will refund Client's payment minus an administrative fee of twenty (20) percent of the annual fee or \$50.00, whichever is greater. Clients that request a withdrawal within thirty (30) days of the group filing deadline will be precluded from receiving a refund.
15. **NON-STANDARD SERVICES.** Non-standard services shall include any service not described above. The Client may request non-standard services, and CMI shall promptly advise whether or not CMI is able and desires to provide such service and the fee required for such services.
16. **CONFIDENTIALITY/NON-SOLICITATION.**
- 16.1 It is understood and agreed that all statistical, financial and personnel data relating to the Client and any of its employees provided to CMI by the Client, or any employee thereof, pursuant to this Agreement is confidential, and CMI and its employees shall keep such information in the strictest confidence except to the extent necessary to perform the services to be rendered hereunder.
- 16.2 The parties agree that they will not employ any person employed by the other during the term of this Agreement and for a period of one (1) year following its termination, without the prior consent of the other party, except in instances in which this provision is otherwise overridden by Ohio law.

17. LIABILITY

- 17.1 The Client understands and agrees that the Sponsoring Organization is only acting as the group sponsor for Participating Members and, as such, shall have no liability whatsoever under this Agreement. The Client agrees the Sponsoring Organization, all other Participating Members, and their respective members, directors, employees, agents, affiliates, subsidiaries, and successors and assigns have no liability for any and all losses, claims, causes of action, actions, liabilities, damages, costs and, whether known or unknown, arising from, in connection with, or pertaining in any way to this Agreement.
- 17.2 Except as identified in Section 17.3 below, the Client agrees that the Program, the Sponsoring Organization, other participating Members, CMI, and their respective members, directors, employees, agents, affiliates, subsidiaries, and successors and assigns shall not be liable for any awards, lawsuit damages, penalties, specific performance obligations, costs, expenses, or any other losses or obligations of any kind related to the Client's worker's compensation claims or coverage.
- 17.3 CMI shall have no liability under this Agreement except for its actions constituting willful misconduct or gross negligence, in which case CMI's liability shall be limited to the annual fee then in effect under this Agreement.
18. **WAIVER.** The failure of any party to this Agreement to object to, or take affirmative action with respect to, any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or any future breach or subsequent wrongful conduct.
19. **PENALTIES.** All penalties or fines assessed by any federal, state or local regulator shall be paid by the party responsible for the assessment of the penalty or fine.
20. **NOTICES.** All notices and communications hereunder shall be addressed to the Client and CMI at their current respective addresses, or to such other addresses as either party may instruct in writing.
21. **PRACTICE OF LAW.** The practice of law is governed by the Supreme Court of the State of Ohio. Third party administrators such as CMI are prohibited from providing services that would constitute the unauthorized practice of law. All services provided under this Agreement shall not be in violation of the rules and regulations promulgated to govern the unauthorized practice of law. Pursuant to current and future rules and regulations, CMI shall not provide any services that are construed to constitute the unauthorized practice of law.
22. **APPLICABLE LAW; BINDING EFFECT; ASSIGNMENT.** This Agreement shall be governed by the laws of the State of Ohio, and shall be binding upon and inure to the benefit of the parties and their respective successors and assigns and may not be changed orally but only in writing signed by the parties. The Client may not assign this Agreement without the prior written consent of CMI.
23. **MISCELLANEOUS.** The Client acknowledges and agrees that no representations or warranties were made by CMI to induce Client to enter into this Agreement, except for those representations and warranties contained in this Agreement. If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions hereof shall not be affected thereby, and there shall be deemed substituted for the provision at issue a valid, legal and enforceable provision as similar as possible to the provision at issue. This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed an original, but all of which together shall constitute one and the same instrument. The Sponsoring Organization and the other Participating Members shall be deemed to be third party beneficiaries of this Agreement, and as such, the Sponsoring Organization and the other Participating Members shall have all rights and benefits accruing to them as set forth in this Agreement. Except as set forth in the preceding sentence, nothing contained in this Agreement shall be construed as creating any rights or benefits in or to any other party.
24. **ENTIRE AGREEMENT.** This Agreement constitutes the entire understanding between the parties concerning its subject matter. All prior negotiations and agreements of the parties with respect to any of the duties and obligations set forth in this Agreement are merged into this Agreement. There are not other agreements or understandings between the parties, express or implied, written or oral, that are not reduced to writing herein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

SIGNATURES

CompManagement, Inc., a Sedgwick CMS Company

Employer: City Of Richmond Heights

By: Stephanie McCloud

By: _____

Printed: Stephanie McCloud

Printed: _____

Title: Vice President

Title: _____

Policy No. 31808002

Associate Name: Ohio Municipal League