

RESOLUTION NO.: 52-2016
INTRODUCED BY: O'Toole

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH COMPMANAGEMENT, LLC, A SEDGWICK CLAIMS MANAGEMENT SERVICES, INC. COMPANY, FOR THIRD-PARTY ADMINISTRATION SERVICES FOR WORKER'S COMPENSATION CLAIMS.

WHEREAS, the City is in need of third-party administration services for workers' compensation claims filed by City employees; and

WHEREAS, the firm CompManagement, LLC, a Sedgwick Claims Management Services, Inc. company, has satisfactorily assisted the City in the past with respect to these type of services.

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, LLC, A Sedgwick Claims Management Services, Inc. company, for workers' compensation third-party administration services, a copy of which is attached hereto and incorporated herein as "Exhibit A", for an amount not to exceed Two Thousand Three Hundred Ninety-Five Dollars (\$2,395.00) for calendar year 2016.

Section 2: The Director of Finance is authorized and directed to appropriate to a proper account the amount necessary for the services set forth 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: _____

David H. Roche, Mayor

APPROVED: _____

ATTEST: _____

Betsy Traben
Clerk of Council

Eloise Cotton-Henry
President of Council

WORKERS' COMPENSATION SERVICE AGENCY AGREEMENT

This Agreement is entered into between the employer specified on Exhibit A attached hereto and made a part of this Agreement ("Client") and CompManagement, LLC, a Sedgwick Claims Management Services, Inc. company ("CompManagement").

Client has insured its employees for workers' compensation coverage as demanded by any and all federal or state statute(s). The administrator of Client's plan(s) requires the services of an organization to process and analyze the claims filed on behalf of its employees. CompManagement administers and processes claims on behalf of employers subject to workers' compensation requirements within the Ohio statute(s). Client desires to have CompManagement administer, process and analyze the claims submitted against its workers' compensation risk, and CompManagement is agreeable to providing such services.

STATEMENT OF AGREEMENT

Now, therefore, it is agreed as follows:

- 1 AUTHORIZED REPRESENTATIVE**
 - 1.1 Client hereby grants to CompManagement 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. CompManagement shall use reasonable efforts (as defined by CompManagement) to consult with Client regarding matters which require a Client decision. In the event CompManagement is unable to reach Client, Client agrees to hold CompManagement harmless concerning any actions taken in such circumstances.
 - 1.2 Client reserves the right to engage the services of an attorney, at Client's sole expense, for claims-related matters in which such representation would be appropriate.
- 2 INDEPENDENT CONTRACTOR.** In performing services pursuant to this Agreement, CompManagement shall be acting as an Independent Contractor of Client, and not as an employee or agent of Client.
- 3 SERVICES.** In administering and processing claims submitted under this plan, CompManagement shall provide the following Standard Services:
 - 3.1 Record all relevant claim information received from Client and forward all correspondence to the appropriate agency for processing.
 - 3.2 Confer with Client's designated representative(s) in those cases where a dispute occurs, and, when appropriate, contact the claimant, medical provider(s), and/or state agency.
 - 3.3 Analyze, on an individual claim basis, claims to determine if rehabilitation intervention is appropriate. Any cost relating to such intervention must be pre-authorized by Client, and shall be Client's responsibility.
 - 3.4 Consult with Client when the period of disability for any injury/disease claim exceeds that which, in CompManagement's experience, would be expected.
 - 3.5 Upon authorization by Client, arrange for an employer or independent medical examination of claimant(s). The cost of such examination shall be the responsibility of Client.
 - 3.6 Upon notification of a scheduled administrative hearing, arrange for a qualified representative to attend on behalf of Client as permitted by law, or notify Client that representation is not deemed necessary, and arrange for witness attendance, as necessary.
 - 3.7 Review claims and request corrections in those cases where overpayments or incorrect reserves have been established.
 - 3.8 Review appropriate claims to determine if "handicap refund," "second injury fund," or other cost relief is due Client resulting from a pre-existing condition or injury.
 - 3.9 Maintain, within its offices, such records as are necessary to verify Client's assigned rate(s), including, but not limited to data processing files, individual claim records, payroll records, policy records, and manual assignments.
 - 3.10 Conduct an annual review of Client's policy for possible participation in available Ohio Bureau of Workers' Compensation ("OBWC") programs, and report to Client regarding eligibility for recommended programs. If Client qualifies for participation in one or more discount/alternative rating programs, and elects to enroll in said program(s), Client must comply with all statutes and regulations of the State of Ohio, whether currently in force or enacted in the future, and must meet all requirements for participation in the program(s). Client accepts sole responsibility for understanding and complying with these rules, regulations and requirements.
 - 3.11 Upon request, survey Client's operations and make recommendations to improve procedures relative to injury investigations, personnel training and claim processing policies as they relate to workers' compensation.
 - 3.12 Report to Client, through personal contact or special bulletins, any changes in procedures produced by legislative or administrative revisions, as deemed necessary.
 - 3.13 Upon request, meet with Client to review and discuss the past, current, and future workers' compensation rate assignments and all relevant account activity.
 - 3.14 Other services listed in any Exhibits incorporated herein or Addenda agreed to and signed by both parties. If, and only if, Client is enrolled and accepted into an OBWC group rating or group retrospective rating program, CompManagement shall provide services in the attached Exhibit corresponding to that program.
- 4 RECORD RETENTION.** Records accumulated and maintained by CompManagement during the period of this Agreement shall be the property of CompManagement. Upon expiration of this Agreement, and all terms herein, said records will be the property of Client.
- 5 REPORTS.** For the purpose of continued Client awareness of the status of claims and the overall condition of the policy, upon request, CompManagement shall provide standard reports pertaining to the policy and/or claims.
- 6 LOSS PREVENTION.** For the purpose of initial and continuing improvement in the cost effectiveness of Client's workers' compensation plan, the following services are offered:
 - 6.1 Upon request, CompManagement shall conduct a basic review of Client's internal procedures to evaluate accident control requirements and recommend appropriate changes to enhance the current safety program. Any service requested beyond basic consultation and recommendations will be considered Non-Standard Services (see Section 11 below) and may incur additional fees.
 - 6.2 Upon request, and in cooperation with Client's Managed Care Organization, CompManagement shall assist in the development of a consistent program to ensure the quality control aspects of medical treatment for the injured employee, and to ensure the full disclosure of medical facts for the determination of compensability.
 - 6.3 Upon request, CompManagement shall provide telephonic consultation with respect to Accident Prevention, Safety Practices, Specific Code Requirements, and other matters relating to workers' compensation in order to assist Client in the reduction of work-related injuries and diseases.
- 7 PREMIUMS.** Client is solely responsible for any assessments of premiums owed to OBWC, including additional monies owed by Client due to rate changes or rating program/discount program assessments calculated by OBWC.
- 8 TERM.** The initial term of this Agreement shall be for one year commencing on the date outlined in Exhibit A attached hereto and incorporated herein, and shall automatically renew itself from year to year unless written notification to the contrary is given by either party thirty (30) days prior to the current expiration date.

9 PAYMENT FOR SERVICES.

- 9.1 Client shall pay to CompManagement for Standard Services, Reporting Services, Loss Prevention Services and CompManagement's other obligations under this Agreement an annual Service Fee as defined on Exhibit A. The service fees on each renewal and extension of this Agreement shall be increased on an annual basis over the service fees for the preceding year in an amount equal to five (5) percent.
- 9.2 In the event of an increase of more than twenty percent (20%) in either claims activity or reported payroll/premium, the annual fee may be subject to further adjustment at any time, with the consent of both parties.
- 9.3 Client shall pay all invoices (charges billed in advance) within thirty (30) days of receipt of such invoice.
- 9.4 Payment of Client's Service Fee or remittance of other required documents specified in Section 10 of this Agreement constitutes Client's acknowledgement and acceptance of all of the terms and conditions of this Agreement. Payment of Client's Service Fee for any succeeding automatic renewal term and remittance of other documents as specified in Section 10 of this Agreement constitutes Client's continuing acknowledgement and acceptance of all of the terms and conditions of this Agreement during that renewal period.
- 9.5 Service fees are not refundable.

10 REQUIRED DOCUMENTS.

- 10.1 Service provision will depend on CompManagement receiving the necessary documents from Client. This includes, but is not necessarily limited to, the completion and submission of the following documents: (1) a signed copy of the service invoice ("Invoice"), (2) an AC-2 Permanent Letter of Authorization, and (3) the Service Fee.
- 10.2 Client understands and agrees that failure to execute and provide the necessary documents to CompManagement may nullify and void the terms of the Agreement in its entirety, at the sole discretion of CompManagement.

11 NON-STANDARD SERVICES. Non-standard services shall include any service not described above. Non-standard services may be requested by Client, and CompManagement shall promptly thereafter advise whether or not CompManagement is able and desirous of providing such service and the fee required therefor.

12 CONFIDENTIALITY/NON-SOLICITATION.

- 12.1 All statistical, financial and personnel data relating to Client and any of its employees provided to CompManagement by Client, or any employee thereof, pursuant to this Agreement is confidential, and CompManagement and its employees shall keep such information in the strictest confidence except to the extent necessary to perform the services to be rendered hereunder. Notwithstanding the foregoing, Client agrees to permit CompManagement to compile and disseminate aggregate, de-identified information for benchmarking purposes or forward to a data collection facility data for claims administered, processed, and analyzed pursuant to this Agreement, provided that such facility agrees in writing to keep Client's data confidential. Further, CompManagement shall be entitled, without violation of this section and without the prior consent of Client, to retain claims administration information and to forward claims administration information to government agencies to the extent required by law for the proper performance of the services set forth herein.
- 12.2 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.

13 LIABILITY.

- 13.1 Client agrees that CompManagement, and its respective 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 Client's workers' compensation claims or coverage.
- 13.2 CompManagement shall have no liability under this Agreement except for its actions constituting willful misconduct or gross negligence, in which case CompManagement's liability shall be limited to the annual fee then in effect under this Agreement.

14 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 thereof or of any future breach or subsequent wrongful conduct.

15 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.

16 NOTICES. All notices and communications hereunder shall be addressed to Client and CompManagement at their current respective addresses, or to such other addresses as either party may instruct in writing.

17 PRACTICE OF LAW. CompManagement shall not provide any services to Client which may be construed as the practice of law.

18 APPLICABLE LAW AND BINDING EFFECT. 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. Client may not assign this Agreement without the prior written consent of CompManagement. The parties to this Agreement hereby designate the Court of Common Pleas of Franklin County, Ohio, as a court of proper jurisdiction and venue of and for any and all actions and proceedings relating to this Agreement; hereby irrevocably consent to such designation, jurisdiction, and venue; and hereby waive any objections or defenses relating to jurisdiction or venue with respect to any action or proceeding initiated in the Court of Common Pleas of Franklin County, Ohio.

19 MISCELLANEOUS. Client acknowledges and agrees that no representations or warranties were made by CompManagement 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. Nothing contained in this Agreement shall be construed as creating any rights or benefits in or to any other party.

20 ENTIRE AGREEMENT. This Agreement, including the attached Exhibit(s) if any, 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.

For CompManagement, LLC, a Sedgwick Claims Management Services, Inc. company

By: Stephanie Byrne-Cloud
Title: Sr. Vice President

EXHIBIT B – Workers’ Compensation Group Rating Programs

This Exhibit, attached to and made a part of the foregoing Agreement, is applicable if and only if Client is enrolled in a workers’ compensation group rating program (“Program”) for any policy year during the term of this Agreement, including any renewals and extensions. Applicability of this Exhibit may be for non-consecutive periods of Program participation.

OBLIGATIONS OF CLIENT. During any term of this Agreement when Client is enrolled in a CompManagement-administered Program, Client shall comply with all of the terms and conditions set forth below, and all policies, protocols, acceptance criteria, accident prevention, safety and claims management programs, and rules and regulations of the Program.

1. **REQUIRED PARTICIPATION DOCUMENTS.** Client should refer to the program invitation for confirmation of the documents necessary to participate and to identify the sponsoring organization offering the Program selected by Client. The parties acknowledge that documents necessary for the Program may change from year to year. Client understands and agrees that failure to execute and provide the necessary documents to CompManagement may result, at the sole discretion of the sponsoring organization or CompManagement, in Client not being enrolled in the Program.
2. **PROGRAM PARTICIPATION.** Client understands that participation requirements of the Program are solely determined by the sponsoring organization, with consultations from its advisors including, but not limited to, CompManagement. 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 CompManagement and compliance by Client and other participating members with the group rating rules and regulations of OBWC and the requirements of the Program and this Agreement. *The sponsoring organization, at its discretion, may rescind the program invitation by giving Client notice before the filing of the program application with OBWC.* Client acknowledges that it shall have no right to continued participation in any successor group formed for any period after the initial policy year of participation. Such continued participation shall be determined on a case-by-case basis by CompManagement in its sole discretion in consultation with the sponsoring organization.

Client further acknowledges that OBWC, the Program’s sponsoring organization or CompManagement may from time to time promulgate new rules and regulations for the Program. Client represents, warrants and covenants that it is in compliance with the current policy year’s participation requirements specified by the sponsoring organization/CompManagement and OBWC. A list of the current Program requirements may be obtained by contacting CompManagement in writing to request.

3. **CLIENT DISCLOSURE; PROHIBITED PRACTICES**
 - 3.1 Client acknowledges that, as part of the enrollment process, it has made representations to CompManagement regarding its past and present status as a Professional Employer Organization or Employment Leasing Operation. Further, Client has fully disclosed and will continue to update CompManagement as to any past merger, acquisition, reorganization, consolidation or any other business activity that involves the potential combination by OBWC of Client with other workers’ compensation risk accounts. Client understands that this information has been sought to permit CompManagement to evaluate the potential impact that successorship and resulting risk combination by OBWC could have upon the Program. 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.
 - 3.2 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. 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 OBWC.

- 3.3 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 a finding by OBWC that Client is a succeeding employer, with negative financial impact on the Program. Client agrees to give written notice to CompManagement ninety (90) days in advance of any such action so that a determination may be made as to the effect on the Program.
- 3.4 Client agrees that it will be liable for and pay to a fund held by CompManagement, or its designee, an amount equal to any additional premiums imposed by OBWC on the Program and/or other participating members, for any Program year, due to a successorship imposed by OBWC on Client. This fund will be distributed on an equitable basis to other participating members that paid additional premiums to OBWC for the policy period. Client further agrees to indemnify and hold harmless the Program's other participating members, the sponsoring organization, CompManagement, and their members, directors, agents, agencies, assigns, affiliates, and/or subsidiaries from all liability arising from its action, including all losses, costs and expenses.
- 3.5 Client further recognizes that any false representation or failure to disclose material information regarding employee leasing or any business activity listed in this section will result in an obligation to indemnify CompManagement or the Program's other participating members for the negative rating or financial impact of any successorship imposed by OBWC on Client. Furthermore, in such case, CompManagement shall seek, and Client shall consent, to have Client removed from the Program and the Program.
- 3.6 This section shall survive the termination of the Agreement and/or termination of Client's participation in the Program at the conclusion of any policy year.
4. **GROUP RATE.** 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.
5. **FAILURE TO MEET PROGRAM QUALIFICATIONS.** In the event that it is determined by a court, a governmental agency, or CompManagement that the Program fails to meet the requirements for group rating plans or that Client fails to meet the requirements (whether under Ohio law or the standards of CompManagement or the sponsoring organization) for participation in the Program ("Exclusion"), the provisions of this Exhibit are not applicable as they pertain to participation in the Program. Neither CompManagement nor the sponsoring organization shall have any liability to Client for any losses or damages arising from or relating to such Exclusion.
6. **LIABILITY.**
- 6.1 Client understands and agrees that the sponsoring organization is acting only as the group sponsor for the Program and, as such, shall have no liability whatsoever under this Agreement.
- 6.2 Client agrees that the sponsoring organization, other Program participating members, CompManagement, 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 Client's worker's compensation claims or coverage.