

## **NON-EXCLUSIVE INSURANCE AGENT SERVICES AGREEMENT**

This agreement ("Agreement"), entered into this 13<sup>th</sup> day of September, 2018, by and between Arthur J. Gallagher Risk Management Services, Inc., "AJG" a Illinois corporation, hereinafter "Insurance Agent" or "Agent", with offices located at 2255 Glades Road, FL 33431 and the Town of Palm Beach, a Florida municipal corporation ("Town"), with offices located at 360 South County Road, Palm Beach, FL 33480.

**WHEREAS**, AJG is to provide insurance for the Town for its insurance renewal to be effective October 1, 2019.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and value of which is hereby acknowledged by both parties, the parties agree as follows:

### **Article 1**

#### **Incorporation by Reference**

1. The terms and conditions of the Town's Request for Qualifications RFQ No. 2012-18 for Property, Liability, Workers' Compensation and Ancillary Coverages and the Insurance Agent's response to RFQ 2012-18 provided to the Town are hereby incorporated into this Agreement as Exhibit A. In the event of any inconsistency in interpreting this Agreement, RFQ No 2012-18, provided to the Town, the Town's interpretation shall prevail.

### **Article 2**

#### **Insurance Agent's Specific Obligations**

1. Insurance Agent will provide the insurance agent services in conjunction with the insurance policy or policies provided by Insurance Agent in accordance with the insurance agent requirements set forth in this Agreement. Breach of these requirements shall be considered a breach of this Agreement.
  - (a) The insurance policy or policies to be provided by the Insurance Agent pursuant to this Agreement are as follows:

- i. Medical Malpractice Coverage – Occupational Health Clinic (Town Nurse & Contract Physician); if needed
- ii. Crime
- iii. Flood Insurance policies with NFIP (8 policies)
- iv. Storage Tank Pollution Liability
- v. Marine Hull & Liability/Protection & Indemnity Coverage
- vi. Fiduciary Liability – Investment Advisory Board
- vii. Fiduciary Liability – Town of Palm Beach Employee Retirement Board

The Town agrees not to hold AJG responsible for deficiencies in the insurance coverages listed above which have been purchased by other insurance agents on behalf of the Town, until AJG has a reasonable opportunity to make a review and to provide the Town with their recommendations of any said deficiencies.

Any substantive change, that may occur at any time, as determined solely by the Town, in the quality of the insurance company providing said coverage, an increase in the associated premiums, reduction in the scope of said coverage provided, or an increase or decrease in associated deductible or self-insured retention, thereof may be grounds for the Town to modify this agreement and obtain coverage from an alternative insurance agent, insurance company or underwriters or may be grounds for the Town to unilaterally terminate this Agreement in the Town's sole discretion. The Town may make modifications to this agreement throughout the contract period and any such modifications shall be in writing.

(b) Work with the Town's Risk Manager in risk analysis, preparation of underwriting, submissions/specifications, marketing, program design and carrier selection. Insurance Agent will be actively involved to ensure the proper coverage for whatever the program may require. Maintain contact with global insurance markets, which are interested, available, and qualified to provide insurance and loss prevention services to the Town.

- (c) The Town will receive zero hours of loss control services from AJG as part of this Agreement. Should the Town desire loss control services the rate is \$1,000 per day (8 hours) or \$150 per hour. All travel expenses are included in this rate.
- (d) Support the Town's efforts in continual development of Risk Management Policies. To include: presentation of industry standard practices; assistance in development of policies that support the goals of the Town toward use of local resources; innovation in the design of risk funding of the Town toward use of local resources; and assist in presentations to policy and decision making authorities. Inform the Town of application Federal and State compliance legislation, legislative trends and issues and necessary governmental filings.
- (e) Coordinate with Town staff to assure that up-to-date exposure data is incorporated into issuance of newly purchased policies as enumerated herein.
- (f) Issue and deliver valid and timely binders for applicable insurance policies purchased by the Town as enumerated herein.
- (g) Assure that insurance policies being purchased as enumerated herein will be delivered in accordance with the proposal(s) that were negotiated and/or accepted by the Town.
  - i. Verification of policy language, checking for: accuracy, appropriate forms, compliance with requirements, proper application to risk. Assure that the policies issued reflect not less than policy terms, conditions, coverage amounts and options than were accepted by the Town.
  - ii. Immediately correct policy deficiencies before delivery to the Town.
  - iii. Promptly deliver the policies to the Town within 30 days of policy inception. If any deficiencies from the accepted proposal remain, provide a timeline for their resolution to the satisfaction of the Town.
  - iv. Agent is responsible for billing of premiums to the Town. All premiums shall be provided net of commission. All invoices should be sent to the Risk Manager.

- (h) Promptly and accurately process insurance policy endorsements and other change requests as needed.
- (i) Within 30 days of policy inception Insurance Agent will specify to the Risk Manager the loss control and safety services available from the insurers whose policies were purchased through the agent and thereafter coordinate loss control and safety services desired by the Town.
- (j) Assist the Town in filing claims with insurers from whom the Town has purchased policies through the agent.
- (k) Be available for risk management meetings with the Town and for meetings with the Town Council, as desirable during the year.
- (l) Issue Certificates of Insurance, within forty-eight (48) hours of receipt of a request for the same from the Town.
- (m) Monitor and notify the Town of major developments regarding the insurance industry or the Town's insurers or policies as enumerated herein that may affect the Town.
- (n) Respond to coverage or other insurance policy questions as may be presented by the Town within twenty-four (24) hours.
- (o) At mutually agreeable dates and times to be initiated by Insurance Agent, but not less than annually, Insurance Agent will review with Town staff the premium and coverages of the Town for the policies purchased and benchmark Town pricing and coverage against relevant, confidential municipal peer groups both with and without claim experience calibration/consideration.
- (p) Insurance Agent will provide the Town's Risk Manager, no less than 150 days prior to renewal of individual coverages as enumerated herein or as may be requested by the Town, meet with the Town's Risk Manager to present a marketing report. This report is to provide the Town with: current program evaluation; marketing timetable; ratings of markets to be approached; broker recommendations and reasons; and anticipated rates and premium. Organize the presentation of the risk financing plan and exposures to the appropriate markets. Review the presentation plan and documents with the Town's Risk Manager for approval to proceed. Advise the Town on methods of optimizing and developing high-quality relationships with

the markets as a trusted client. Negotiate best terms, rates and conditions. Monitor the financial condition of insurers, including their ability to pay claims promptly, and advise the Town whenever any insurer is downgraded by any applicable rating agency.

- (q) Not less than 150 days before renewal, proposals for additional insurance markets assigned to Insurance Agent by the Town for which there are no conflicts with other qualified agents of the Town shall be obtained, and provided to the Town with a listing of all companies contacted, detail spreadsheets of all proposals received and all rejection letters, if any.
- (r) Insurance Agent will provide a matrix of final, written renewal proposals received to the Town to include an evaluation of coverage, limits and cost not less than 45 days prior to October 1<sup>st</sup>. This shall be received in time for Town staff to prepare and present the insurance renewal to the Town Council at its regularly scheduled September Town Council meeting. If unable to meet this requirement Insurance Agent shall provide a written explanation to the Town sufficient to enable the Town to corroborate the agent's explanation.
- (s) If the Town conducts an RFQ or RFP process for coverages provided, Insurance Agent will promptly provide necessary background and rating data, and premium/claims history information desired for the RFQ or RFP.
- (t) Insurance Agent will cooperate with the Town in developing a fair reduction of the contracted agent/broker remuneration in the event the Town exercises the option to solicit competition for one or more types of insurance outside the agent of record contract.
- (u) Insurance Agent will fully disclose insurance policy premiums and commissions or other remuneration received for the sale of such policies to the Town.
- (v) Insurance Agent will permit the Town to conduct an audit of all remuneration/revenues attributable to the Town's account and to fully cooperate with persons designated by the Town to perform such audit, subject to 30 days notice to Insurance Agent.
- (w) Insurance Agent will provide to the Risk Manager an stewardship report by September 1<sup>st</sup>. This report must include, but is not limited to, a schedule of policies

in force, premiums, losses, commissions and fees earned or waived, developments and trends in the markets for these coverages; and proposals for change in the Town's coverages. Also include any measures that may broaden the current coverages and any premium cost reductions that may be available. Highlight accomplishments, loss control services, claims advocates, and any special services provided to the Town.

- (x) As needed, Insurance Agent will provide all requested actual and estimated premiums for any line of coverage requested by the Town to assist the Town with planning, budgeting and forecasting associated with its risk management program. This includes times that are not associated with the actual policy renewals.
- (y) Sales Executive and/or Account Executive shall respond to the Town inquiries within 24 hours of the Town's request for routine inquiries. For an emergency when designated as such by the Town, Sales Executive and/or Account Executive shall respond to the Town within four (4) hours of Town notifying the Sales Executive and/or Account Executive of an emergency situation. Sales Executive and/or Account Executive must be able to communicate remotely via phone, e-mails, etc.
- (z) An alternate Sales Executive and/or Account Executive shall be made available to the Town in the absence of the regularly assigned Sales Executive and/or Account Executive.
- (aa) Agent shall notify the Town in writing should the designated Sales Executive and/or Account Executive be removed from the Town's account advising of the newly appointed Sales Executive and/or Account Executive and providing the Town with a full resume for this individual. Any change in the personnel assigned to the Town as indicated in the Insurance Agent's response to the RFQ No. 2012-18 may be grounds for unilateral termination of this Agreement by the Town.

## **Article 3**

### **Financial**

1. Insurance Agent shall be compensated by the Town in accordance with the Insurance Agent's RFQ 2012-18 submittal, as amended by negotiations with the Town, if any, as contained within this article.
  - (a) Insurance Agent may invoice the Town for agreed upon services in accordance with applicable terms and conditions agreed upon by the parties, but only when insurance binders have been delivered to the Town.
  - (b) Insurance Agent shall be compensated by the Town in the amount of \$10,0000 through September 30, 2019. All current and new policies purchased throughout the contract period shall be written with a zero percent (0%) commission.
  - (c) Unless the Insurance Agent has proposed a flat rate fee or fixed percentage rate of commission on policies sold to the Town for a pre-determined period of time in the Insurance Agent's response to RFQ No. 2012-18 or as may be negotiated thereafter between the parties to this Agreement. Insurance Agent will provide a ninety (90) day written notice prior to October 1, 2019 of any requested increase in commission or flat rate commission so the Town may properly consider renewal of the Agreement pursuant to section 5(a). If the Insurance Agent has proposed a flat rate fee or fixed percentage rate of commission on policies sold to the Town for a pre-determined period of time in the Insurance Agent's response to RFQ No. 2012-18 or as may be negotiated thereafter between the parties to this Agreement, the Insurance Agent is not entitled to request an increase in commission or flat rate commission for those years the Insurance Agent has committed to no increase in commission or flat rate commission to the Town.
  - (d) If Agent is being compensated based upon a fixed dollar amount or fixed percentage fee, meaning that this agreement specifies compensation and states that additional compensation will not be paid to Agent or any other party, then additional compensation is strictly prohibited. Similarly, if this agreement sets compensation based upon a fixed dollar amount or fixed percentage fee, and this agreement specifies that additional compensation shall be credited to the Town, then any additional compensation to any party must be promptly returned

to the Town. If this agreement is not based upon such fixed fee terms, then no owned or affiliated party, including brokers, wholesale brokers or third party intermediaries, may accept any type of compensation without full disclosure by Agent to the Town of the dollar amount or percentage of compensation prior to binding coverage.

- (e) In the event that Agent receives commission payments in connection with the placement procurement of Property, Liability, Workers' Compensation and Ancillary Insurance coverages excluding Flood Insurance for Town, the amount of such payments will be credited against the balance of the fee owed to Agent pursuant to this Agreement, and any commission amount in excess of such balance shall be promptly paid to Town within 30 days after receipt of such commission by Agent. In addition, it is understood and agreed that Agent, or Agent's corporate parent, subsidiaries or affiliated entities, may receive contingent payments or allowances from insurers based on factors which are not client-specific, such as the performance and/or size of an overall book of business produced with an insurer. Such contingent payments or allowances are not subject to this Agreement, and will not be credited against the balance of the fee owed to Agent pursuant to this Agreement or paid to Town.
2. Any funds returned to the Town pursuant to this Article shall be deemed an overpayment to the Agent of his/her fee or commission for service.

## **Article 4**

### **Insurance**

1. Insurance Agent shall provide the following insurance:
  - (a) Errors and Omissions insurance with a limit of liability of \$10,000,000 per occurrence.
  - (b) Insurance agent shall provide the Town with a Certificate of Insurance evidencing the above requested coverage prior to providing any services on behalf of the Town. Insurance coverage required shall be in force throughout the Agreement term. Should Insurance Agent fail to provide acceptable evidence of current insurance within seven (7) days of receipt of written notice



at any time during the term of the Agreement, the Town shall have the right to consider the Agreement breached and shall have the right to immediately terminate the Agreement.

- (c) No changes to these insurance amounts may be made without a written amendment to this Agreement.

## **Article 5**

### **Term and Termination**

1. The term of this Agreement shall be from the date of execution through September 30, 2019.
  - (a) This Agreement may be renewed by the Town for additional one-year terms. Any renewal must be in writing and executed by the parties.
  - (b) This Agreement may be terminated or modified with or without cause. If either party fails to carry out and comply with any of the covenants, conditions, and agreements to be performed by it, then the other party may notify the non-complying party of such failure or default and demand that the same be remedied within ten (10) days. In the event of the failure to so remedy within said period, the non-defaulting party shall thereupon have the right to cancel, modify and/or terminate the Agreement immediately upon delivery of written notice to the other party. Should a party receive a second notice for the same item of failure or default, such party shall have no right of remedy and the Agreement may terminate upon written notice to the defaulting party.

## **Article 6**

### **Miscellaneous**

1. Notice – All notices shall be in writing and sent via registered or certified mail addressed as follows:

Insurance Agent:	Judy Arenz. CPCU Arthur J. Gallagher –Boca Raton One Boca Plaza 2255 Glades Road, Suite 400 E Boca Raton, FL 33431
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Town of Palm Beach:	Karen Temme, ARM Risk Manager 360 South County Road Palm Beach, FL 33480
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Copy to:	Danielle Olson, <u>M.A., SPHR, SHRM-SCP</u> Director of Human Resources 360 South County Road Palm Beach, FL 33480
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- (a) Successors and Assigns – The provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. The Agreement cannot be assigned by either party without the prior written consent of the other, not to be reasonably withheld.
- (b) Force Majeure – If, because of Acts of God, strikes or other labor disputes, vendor delays, or other unavoidable cause, either party is unable to perform its obligations hereunder, such non-performance shall not be considered a breach of the Agreement.
- (c) Equal Opportunity Employer – Insurance Agent affirms that it is an Equal Opportunity Employer and will comply with all laws and regulations prohibiting employment discrimination in the performance of the Agreement.
- (d) The failure of either party to insist upon or enforce any term or provision or to exercise any right, option, or remedy of the Agreement, or to require at any time performance of any provision hereof, shall not be construed as a waiver of any such term or provision. No waiver by either party of any term or provision hereof shall be binding unless made in writing and signed by such party.

- (e) If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the remaining provisions shall remain in full force and effect.
- (f) This document, along with the documents incorporated into the Agreement in Paragraph 1.1, together with all insurance documents required hereby, and any other materials required under the bid documents shall constitute the entire Agreement. This Agreement may not be changed other than by agreement in writing signed by the parties.
- (g) In the event an action is brought by either party to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its legal fees and court costs, through all appeals, in addition to any other remedies it may be entitled to under this Agreement or otherwise under the law.
- (h) Nothing contained herein shall be deemed or construed to create any rights to any member of the public or any third party whatsoever.
- (i) Independent Contractor – Insurance Agent shall at all times be deemed to be an independent contractor and nothing in this Agreement shall be construed to create the relationship of employer and employee, principal and agent, partnership or joint venture as between the Town and Insurance Agent.
- (j) Governing Law – This Agreement shall be governed by the laws of the State of Florida and venue shall lie in Palm Beach County, Florida.
- (k) Interpretation – This Agreement shall be administered on behalf of the Town by the Town's Risk Manager or his/her designee. As used herein, the word "Town" shall refer to the Risk Manager or his/her designee unless otherwise noted or unless the context renders such construction illogical.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the day and year first written above.

WITNESSES:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

INSURANCE AGENT

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title & Date

WITNESSES:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

TOWN OF PALM BEACH

\_\_\_\_\_  
Kirk Blouin, Town Manager

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Kathleen Dominquez, Town Clerk

Corporate Seal

EXHIBIT A

RFQ 2012-18  
Property, Liability, Workers' Compensation  
And Ancillary Coverages Insurance Agent

RFQ and Addendums are available upon request