

Town of Palm Beach
Liability, Auto Physical Damage, Property, and Workers' Compensation
Third Party Administration Services

AGREEMENT FOR THIRD PARTY ADMINISTRATION (TPA) SERVICES

THIS AGREEMENT made and entered into this 13th day of September 2018, by and between Town of Palm Beach, a municipal corporation of the State of Florida, hereinafter referred to as the "Town" and Preferred Governmental Claim Solution "PGCS" of Florida, hereinafter referred to as "Administrator".

WITNESSETH

WHEREAS, the Town desires to engage the services of Third Party Administrator to provide claims management services for the Town's liability, auto physical damage, property, and workers' compensation claims in accordance with this Agreement;

WHEREAS, Administrator is qualified and desires to provide claims management services for the Town's liability, auto physical damage, property and workers' compensation claims in accordance with this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto do mutually agree as follows:

I. AGREEMENT TERM

1. The effective date of this Agreement shall be October 1, 2018. Agreement term shall expire on September 30, 2019 subject to termination as provided herein.
2. This Agreement constitutes the entire understanding of the parties with respect to provision of services.

II. ADMINISTRATOR FEES

Town shall pay Administrator an annual flat rate of \$26,400 as the third party administrator during the period of this Agreement. This amount will be paid in monthly installments during the term of this Agreement.

Town shall pay Administrator a fee of \$237 per user for a remote access license to Risk Master. This license fee is valid for a period of 5 years. There will be (12) remote access license for a

cost of \$2,844. The number of remote license may increase or decrease based upon the needs of the Town.

III. SCOPE OF SERVICES

Administrator will serve as the third party administrator for all claims and will provide the following services under this Agreement:

1. Administer and adjust all claims in compliance with applicable laws, rules and regulations governing the administration of the Town's insurance claims.
2. Provide qualified and experienced personnel capable of servicing all claims of the Town. Any change in adjuster assigned to the Town must be provided in writing in advance of said change.
3. Administrator will maintain an office with a toll-free telephone number which is located in Florida.
4. Administrator must be able to manage the claims with a comprehensive database system which will allow internet access for the Town to view the adjuster's notes, pay history, financials and other pertinent information needed by the Town at no additional charge to the Town.
5. Administrator (assigned claims adjuster) shall contact the claimant and/or injured employee within 24 hours of claim notification.
6. Administrator will investigate, including taking a recorded statement from the claimant and any witnesses for each reported claim or loss, including investigation into the compensability of each reported workers' compensation claim or loss and conduct such reasonable investigations as necessary to protect the Town from waiving any defenses available in liability or under the workers' compensation statute.
6. Maintain an electronic and hard/paper file for each claim or loss, which shall be available for review by the Town. By the terms of this contract it is agreed that any and all electronic and hard/paper files for each claim or loss is owned by the Town of Palm Beach.
7. Perform administrative and clerical duties for each claim or loss, including the preparation of checks or vouchers, compromises, releases, agreements and any other documents prepared and/or approved by legal counsel necessary to finalize a claim.
8. Recommend claim reserves and update as appropriate only with the approval of the Risk Manager.

9. Provide narrative and analytical reports of all claims as required by the Town.
10. Administrator must obtain approval from the Town prior to any settlements.
11. Claims adjusters and appropriate claims managers shall attend in person quarterly claim review meetings to be held at the Town or a location agreed upon by the Town and Administrator.
12. Notify the Town's Risk Manager and excess carriers of claims or losses with respect to which potential losses may exceed the Town's stop loss, self-insured retention and/or deductible and provide said parties with information on the current status of those claims or losses.
13. Coordinate investigations on litigated claims with the Town and approved legal defense counsel, excess carrier(s), etc. This includes negotiation of settlements, subrogation and reimbursement from excess carrier(s).
14. The Town's Risk Manager will attend all mediations or settlement meetings along with the claims adjuster and defense attorney for claims handled through the insurance program.
15. Provide all claim forms and other forms as required by the State of Florida that are appropriate for efficient administration of the Town's claims.
16. Report all claims to the excess carrier(s) according to the insurance policy reporting requirements. For any late reporting penalties imposed by the carrier due to late reporting by the Administrator, the Administrator will either pay the penalties directly or reimburse the Town for those amounts within 30 days of request for reimbursement from the Town.
17. Administrator will submit requests to the excess carrier for all payments above the self-insured retention or deductible on behalf of the Town. The reimbursement checks will be forwarded to the Town and the amount recovered will be entered into Administrator's claim database for each file. A quarterly report of all submissions to excess carriers will be provided to the Town.
18. Investigate and pursue all subrogation and liens on behalf of the Town in all states permitting subrogation. Monies received from all subrogation within the Town's self-insured retention and/or deductible shall be the revenue of the Town. There shall be no additional charge to the Town for subrogation of claims.
19. Administrator shall perform medical control and management of workers' compensation claims in conjunction with the Risk Manager. Such medical control and management shall be performed in accordance with the industry standard applicable to such services.

20. Arrange for independent medical evaluations or other experts to the extent deemed necessary by the Administrator with the approval of the Risk Manager.
21. Jointly and in conjunction with the Risk Manager select a panel of physicians or other health care providers to treat employees and a panel of medical specialist to provide long-term or specialty care for the Town's Medical Management program. The Town will have final approval of any medical doctors placed into the care of their employees. In order to facilitate timely continuation of ongoing medical treatment, the Administrator will utilize services of the Town's Occupational Health Clinic whenever possible for all referrals to and/or the selection of medical facilities and specialists.
22. Arrange for required medical appointments as indicated by the approved treating medical provider(s) within 24 hours of notification.
23. Coordinate with the Risk Manager in order to develop ways of using any medical facility more effectively.
24. Administrator will monitor the treatment programs recommended for employees by physicians, specialists and other health care providers by reviewing all medical reports so prepared and by maintaining such contact with these providers as may be appropriate and in conjunction with the Risk Manager.
25. Assist the Town with the interpretations of medical reports as needed. Assist the Town in returning the injured employee to work as needed. The Administrator will comply with all applicable state and federal laws regarding medical reports and data including but not limited to HIPPA.
26. Assist the Town in arranging for rehabilitation or retraining of employees in appropriate cases. The Administrator will utilize telephonic or field nurse case management only when authorized by the Town.
27. Administrator must notify the Risk Manager of any networks utilized on the Town's claims.
28. Administrator shall submit and pay medical bills pursuant to Rule 69L-7.602.
29. Administrator will provide all reports, forms and documents to the State of Florida as required per Florida State Statutes.
30. The Administrator, at their expense will ensure all claims and payment data is included in the loss runs (detailed and summary). Historical data from all prior third party Administrators will be included in the loss runs (detailed & summary).
31. Loss runs will be provided to the Town on a monthly basis for detailed and summary reports sorted separately by each claim, policy year, department/location and claim

type in an excel and pdf format. Specific detail and summary reports must also be provided. There will not be an additional charge for any loss run reports provided by the Administrator. The following reports are required, but not limited to:

- Weekly payment register
 - Monthly detailed and summary loss reports – all years; all claim types
 - Annual detailed and summary loss reports – all years; all claim types
 - Subrogation and lien reports
 - Litigation reports
 - Legal payment reports
 - 5 Year Summary Loss
 - Coverage Report
 - Large Loss Report
 - Open claims only by department
32. Administrator will provide the Town with remote access to enter all new claims and review claim data; along with entering Certificates of Insurance and reviewing documents within Risk Master or other software provided by Administrator. Administrator shall provide all necessary training to utilize Risk Master or other equivalent software. All detailed claim and COI data maintained by the Administrator is the property of the Town. The Administrator must provide the Town with all detailed claim and COI data in a transferrable and readable format as directed by the Town's IT Manager and upon request by the Town or upon termination of this agreement.
33. Assist the Town as needed in arranging for a bank account to be used for issuing checks under this Agreement.
34. Administrator shall make all applicable payments in accordance with Florida State Statute, excess carrier(s) policy language and legal precedent from the Town's bank account. Fees, interest or civil penalties incurred due to late payments or adjuster mishandling are to be paid by the Administrator unless late reporting was caused by the Town.
35. Administrator to provide the Town with a weekly payment register for all checks issued by the Administrator from the Town's bank account in order for the Town to properly fund the bank account.
36. Checks issued by Administrator shall not be mailed until the Town has advised Administrator that the funds have been transferred into the bank account.
37. All Indemnity payment checks shall be issued to the Town and mailed to the Town's Risk Manager.
38. Administrator must prepare, maintain, and file statistical data, records, or reports as required by excess insurance carriers, Town's actuaries, and the State of Florida.

39. The Administrator must prepare, maintain and file statistical information required by the workers' compensation rating bureaus, including all data required for the promulgation of the Town's experience modification and state assessments.
40. The Administrator will provide for the security of all Town claims data to include adequate provisions for protection from unauthorized access to the Town's claims data. Any access to the Town's claims data by Administrator affiliates, the public or any person or any person or entity is strictly prohibited without the Town's prior written permission.
41. Administrator shall prepare 1099 forms in accordance with Federal and State laws for all vendors paid through the Administrator on behalf of the Town. A copy of each 1099 form shall be provided to the Town.

IV. TOWN'S RESPONSIBILITIES

The Town shall have and perform the following duties, obligations, and responsibilities:

1. The Town shall establish a bank account at a bank of the Town's choosing and this account will be used to process claim checks. The Town will be responsible for the proper funding of this account as well as all banking fees, bank interfaces and the bank reconciliations. Administrator shall use the funds deposited by the Town into the account to pay claim settlements as authorized by the Town, and to pay interim claim payments, indemnity payments, medical expenses and allocated expenses.
2. It is the Town's responsibility to establish and replenish the bank account with funds sufficient to cover all claim payments. The Town may, at its discretion, increase or decrease the minimum funding levels based on actual claim activity. The bank account shall remain in effect until all claims activity ceases under this Agreement.
3. Town shall be responsible for the funding of claims, losses, or liabilities, which fall under the established annual stop loss, self-insured retention and/or deductible to include but are not limited to: cost of medical and/or indemnity payments, outside investigation of claims, surveillance, vocational rehabilitation, on-site case management, legal fees, court or hearing costs, depositions, documents and exhibits, witness fees, photography and other incidental and special costs. Initial coverage costs shall be borne by the Town as normal claims related expenditures and shall be charged against the Town's account.

V. ADMINISTRATOR'S RESPONSIBILITY

1. Administrator shall indemnify and hold harmless the Town, its officers, and employees from liabilities, damages, losses and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the Administrator and persons or entities employed or utilized by the Administrator in the performance of this agreement.
2. Administrator shall be liable for the recovery of claim processing errors arising from Administrator's performance pursuant to the terms of this Agreement, accepting liability for any such error that is reasonable, made in good faith, and within acceptable industry standards. Administrator shall use diligent efforts toward the recovery of any loss therefrom.
3. It is understood and agreed that Administrator is and shall remain an independent contractor with respect to the services being performed by the Administrator pursuant to this Agreement and shall not for any purpose be deemed an employee of the Town, nor shall the relationship of the parties be deemed that of partners or joint ventures.
4. Administrator shall duly consider all written notices and recommendations made by Town relative to the administration of claims, including medical and litigation services with the understanding that the final authority rests with the Town. Administrator shall not be responsible or liable for any action or inaction of the Town, which is contrary to a lawful written recommendation or instruction by Administrator, applicable by law, and/or workers' compensation law that causes any claim to not be properly adjusted, administered, and/or processed.
5. During the performance of this Agreement, Administrator shall procure and maintain, for the life of this Agreement, General Liability coverage with limits not less than \$1,000,000 per occurrence/\$2,000,000 aggregate endorsing the Town of Palm Beach as an additional insured; Cyber liability with a limit of liability not less than \$1,000,000; Professional Liability/Errors & Omissions with a limit of liability not less than \$1,000,000; Workers' Compensation pursuant to Florida State Statue 440 and Employer's Liability coverage with limits of liability in the amount of \$500,000 each accident, \$500,000 disease (each employee) and \$500,000 disease (policy limit).
6. If the Town conducts a Request for Proposal during the Agreement period, Administrator shall fully cooperate and provide any and all documentation desired for the Request for Proposal.

VI. DEFAULT AND TERMINATION

1. This Agreement may be terminated or modified with or without cause. The failure of either party to comply with any provision of this Agreement will place that party

in default. Prior to terminating the Agreement, the non-defaulting party will notify the defaulting party in writing. This notification will make specific reference to the provision(s) the defaulting party failed to comply with, the exact nature of the default, and the action that needs to occur to correct the default. The non-defaulting party will give the defaulting party a minimum of ten (10) business days to correct the default. If the default is not corrected within the allotted time, the non-defaulting party shall be permitted to terminate this Agreement, effective upon the receipt by the defaulting party of a written termination notice. 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.

2. Neither party shall, however, be excused from performance if non-performance is due to forces which are preventable, removable or remediable and which the non-performing party could have, with the exercise or reasonable diligence, prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.
3. It is understood and agreed that either party shall have the right to terminate this Agreement with or without cause:
 - (a) the Town giving Administrator not less than thirty (30) days advance written notice of termination.
 - (b) Administrator giving the TOWN not less than thirty (30) days advance written notice of termination.

VII. OWNERSHIP AND RETENTION OF CLAIM FILES

1. Administrator will retain electronic and hard detailed claim files during the time the Agreement is in effect. Electronic and hard detailed claim file data created pursuant to this Agreement is the ultimate property of the Town.
2. Upon termination of the Agreement, all hard copy detailed claim files will be provided to the Town by the Administrator and the Town will pay for an agreed upon cost for the transporting of these detailed claim files. All electronic detailed claim data will be provided to the Town in a transferrable and readable format as indicated by the TOWN's IT Manager.

VIII. NOTICE

Whenever written notice is required under the terms of this Agreement, it shall be delivered either in person or by registered mail, postage prepaid to the appropriate party. Notice by registered mail

shall be addressed to both parties listed below in case of Town:

Karen Temme, ARM
Risk Manager
Town of Palm Beach
360 S. County Road
Palm Beach, FL 33480

Danielle Olson, M.A., SPHR, SHRM-SCP
Director of Human Resources
Town of Palm Beach
360 S. County Road
Palm Beach, FL 33480

Notice by registered mail shall be addressed to the party listed below in case of Administrator:

Ken Picton
Vice President
Preferred Governmental Claim Solution
615 Crescent Executive Court, Suite 600
Lake Mary, FL 32746

The provisions of this Agreement supersede any prior Agreements or understandings.

IX. ENFORCEMENT

The Agreement shall be governed by the laws of the State of Florida. In the event that it becomes necessary for either party to employ counsel to collect their obligation or to enforce this Agreement, whether or not suit is brought, the prevailing party shall recover a reasonable attorney's fee, including fees on appeal. For all enforcement actions against Administrator or the Town, jurisdiction will be in Palm Beach County, FL and the Agreement will be interpreted according to the laws of the State of Florida.

X. DEFENSES

1. Administrator agrees to defend and hold the Town harmless:

- (a) for any penalty or fine the Town shall suffer that is solely the fault of Administrator;
- (b) for the recovery of claims processing errors arising from Administrator's performance, pursuant to the terms of this agreement, excepting liability for any such error that is reasonable, made in good faith, and within acceptable industry standards. Administrator shall use diligent efforts toward the recovery of any loss.
- (c) for any claims resulting from errors, omissions or negligence on the part of Administrator unless the actions of Administrator were taken at the direction of the Town or as the result of the Town's negligence.

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

Town of Palm Beach

Preferred Governmental Claim Solution

Authorized Signature

Authorized Signature

Kirk Blouin
Typed or Printed Name

Typed or Printed Name

Town Manager
Title

Title

Date

Date

Approved by Town Council on September 13, 2018.

ATTEST:

Kathleen Dominquez, Town Clerk

Corporate Seal