



CITY OF COLUMBIA
AGENDA MEMORANDUM

MEETING DATE: July 19, 2016

DEPARTMENT: Legal

FROM: *Shari Ardis, Legal Administrator*

SUBJECT: Service Agreement for the City of Columbia's Self-Insured Tort Liability Program, as requested by the Legal Department. Award to Companion as a Third Party Administrator in the amount of \$231,550.00. This firm is located in Columbia, SC. Funding Source: 6088938-645100, 6038932-645100 and 6068936-645100

FINANCIAL IMPACT:

ATTACHMENTS:

- Companion Tort TPA 2016 (PDF)

**Companion Third Party Administrators
Service Agreement for Administration of a
South Carolina Tort Liability Self-Insurance Program**

Article I: Parties to the Agreement

This Service Agreement ("Agreement") is made effective this 1st day of July, 2016, between Companion Third Party Administrators, a division of Planned Administrators Inc. ("PAI") (hereinafter referred to as "Companion") and City of Columbia (South Carolina) (hereinafter referred to as the "City").

Article II: Background

The City warrants to Companion that it is a self-funded municipality under the South Carolina Tort Claims Act, and that it self-insures against all exposure for Tort Liability. The City desires to have Companion provide third party claims management services in connection with this self-insured program. Companion will provide such services on the terms and conditions hereinafter stated and does hereby warrant that it can provide all the services set out in this Agreement. Companion warrants it is duly authorized by all applicable state and federal regulatory authorities to perform the services set out herein, or it will contract with appropriately licensed representatives for those services or jurisdictions where Companion is not licensed or approved to provide such services.

Article III: Term of Agreement

1. Initial Term of Agreement: The initial term of this Agreement will be for two (2) years and this Agreement shall commence on July 1, 2016 at 12:00 AM Eastern Standard Time and terminate on June 30, 2018 at 11:59 PM Eastern Standard Time, unless this Agreement is extended or renewed before June 30, 2018 by written agreement executed by both parties. The City shall, in its sole discretion, have the option to negotiate a one-time renewal of this Agreement for an additional two-year term, which would begin on July 1, 2018 at 12:00 AM Eastern Standard Time, at the agreed upon 3% rate increase for the service fees provided for herein.

2. Termination of Agreement: This Agreement may be terminated during its term by either party for any reason, at anytime, provided that a written notice of such cancellation is received by the other party not later than ninety (90) days prior to the cancellation of this Agreement. In the event of a material breach of this Agreement by either party, including the City's failure to pay the fees provided for herein, this Agreement may be terminated upon ten (10) days written notice by the non-breaching party so long as the breaching party does not cure the material breach during the notice period.

3. Discontinuance of Operations: Should the City file for or is placed into bankruptcy or discontinue its business operation for any reason, all of the fees provided for herein shall become immediately due to Companion and shall be paid immediately. Upon the discontinuation of business operation, this Contract shall immediately terminate without notice, and Companion shall have no further obligation to continue to provide the services called for in this Agreement, and this Agreement shall be considered terminated as of the date the City ceases operations or files for bankruptcy.

4. Post-Termination: Upon termination of this contract:

(a) Companion will process to conclusion those qualified claims or losses remaining open at the termination of this Agreement for which it has been paid in full at the time of the termination. Companion, through its agents, employees or attorneys, shall continue to be entitled to inspect all necessary files and records and make copies or extracts from those files and records.

(b) Companion and the City shall cooperate with one another and devise the manner, means and format to promptly provide the City possession of the files that the City requests in writing be returned to it. The City shall be provided access to the files and records that Companion has maintained for qualified claims or losses (but the City shall not be entitled to any computer hardware, firmware, software, or other information proprietary to Companion). City is entitled to obtain copies of any and all non-claims related files (general administrative, marketing, risk management, etc.) pertaining to the City and maintained by Companion. Companion shall safeguard all files and records in its possession until such time as those records are transferred to the City or until two (2) years after the termination of this Contract, whichever occurs first.

Article IV: General Conditions of Agreement

1. Full and complete understanding of Agreement: This Agreement represents the full and final understanding of the parties with respect to the subject matter described herein and supersedes any and all prior agreements or understandings, written or oral, express or implied. The parties agree to undertake this Agreement in good faith.

2. Headings: Headings herein are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

3. Amendment of Agreement: This Agreement may only be amended, modified or changed by a written statement signed by both parties to this Agreement.

4. Sole benefit: This Agreement is for the sole benefit of the parties hereto, and in no event shall this Agreement be construed to be for the benefit of any third party, nor shall either party be liable for any loss, liability, damages or expenses to any person not a party to this Agreement, including but not limited to the employees of the

City.

5. Partnership/Joint Venture – Not intended or created: Nothing in this Agreement is intended, nor shall it be deemed to constitute a partnership or joint venture between the parties.

6. Performance: Companion shall be fully responsible for exercising reasonable care at all times in the performance of its obligations hereunder.

7. Errors and Omissions Liability Insurance: Companion agrees that throughout the duration of this Agreement, it will maintain a policy of insurance which would indemnify City for any liability for damages up to Two Million Dollars (\$2,000,000.00) Dollars that may arise out of Companion's errors or omissions in performing its obligations under this Agreement.

8. Assignment and Subcontract: This Agreement is not assignable by Companion. Additionally, Companion will not subcontract for any services provided for under this Agreement without prior consent of the City.

9. Successors in Interest: This Agreement shall be binding upon and inure to the benefit of the successors in interest and permitted assigns of the parties hereto.

10. Severability: The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if the invalid or unenforceable provision had been stricken or revised to the minimum extent necessary to make it valid and fully enforceable under applicable law.

11. Waiver: The failure of any party to enforce any provisions of this Agreement shall not constitute a waiver by such party of any provision. A past waiver of a provision by either party shall not constitute a course of conduct of a waiver in the future with respect to that same provision.

12. Confidential Information: "Confidential Information" shall include all information relating to claim information and loss history relating to the City's employees or claimants. Companion may only utilize the confidential information for the purpose of performing its obligations under this Agreement. Notwithstanding the preceding, Companion may use the City's Confidential Information for Companion's internal purposes (such analysis, aggregation and summary purposes) provided that such data is de-identified and the confidentiality of such Confidential Information is maintain by Companion.

13. Limitations of Parties' Liability: By entering into this Agreement, it is hereby expressly agreed by the parties to this Agreement that: Companion does not assume any liabilities to any person or entity or make any warranty (express or implied), except those expressly set forth in this Agreement.

14. Timing of Services: Companion may exercise its own judgment, within the parameters set forth herein, as to the time and manner in which it performs the services required hereunder.

15. Practice of Law: It is understood that Companion will not perform and the City will not request performance of any services which may constitute the practice of law.

16. Applicable Law: The terms and conditions of this Agreement shall be governed by the laws of the State of South Carolina, both as to interpretation and performance. Companion agrees to subject itself to the jurisdiction and venue of the Circuit Courts of Richland County, South Carolina as to all matters and disputes arising or to arise under this Agreement and the interpretation and performance thereof.

17. Notices: Any notice required to be given under this Agreement shall be sent by certified or registered mail postage prepaid to:

In the case of Companion:

Tosca Walls, Director, TPA Operations (or her successor)
Companion Third Party Administrators
P.O. Box 100159
Columbia, South Carolina 29202

In the case of the City:

Dana M. Thye, Deputy City Attorney (or her successor)
City of Columbia
P.O. Box 667
Columbia, South Carolina 29202

and

Chip Timmons, Risk Manager (or his successor)
City of Columbia
P.O. Box 147
Columbia, South Carolina 29217

Article V: Duties and Obligations of Companion

In consideration of the service fees outlined in Article VIII of this Agreement, Companion agrees to provide the following services:

1. To provide all appropriate claims forms believed by Companion to be beneficial for the efficient operation of the City's self-insured program. All forms shall be

approved by the City's legal counsel prior to use by Companion.

2. To review all qualified claim, incident, or loss reports against the City. Unless otherwise directed, to determine liability of the City under state or federal law.

3. To conduct an investigation of each reported qualified claim or loss (as defined above in subparagraph 2) to the extent deemed necessary by Companion in the performance of its obligations hereunder.

4. With the consent of the City, to arrange for independent investigators, medical or other experts to the extent deemed necessary by Companion in connection with processing any qualified claim or loss, with the cost to be borne by the City.

5. To perform reasonable and/or necessary administrative and clerical work in connection with qualified claims or losses, including the preparation of checks or drafts drawn on the account or accounts established pursuant to Article VI below.

6. Provide all required reporting of settlements, judgments or awards, where medical expenses are paid to a Medicare-eligible claimant to the Centers for Medicare and Medicaid Services (CMS) in compliance with the Medicare Secondary-Payer Mandatory-Reporting Requirements.

7. To maintain a file for each qualified claim or loss, which shall be available for review by the City at any reasonable time.

8. To notify Excess of Loss and/or Aggregate Stop Loss insurers of the City of all qualified claims or losses according to the terms of the Excess or Aggregate agreements and provide reports in accordance with Article VII, Paragraph 2 below.

9. To employ its best efforts to pursue all qualified claims, determining if the facts support a claim by the City for subrogation and aggressively pursue the maximum amount possible for all qualified claims against third parties.

10. To assist the City's legal counsel or experts, when and as requested, in preparing the defense of litigated cases and negotiating settlements.

11. To coordinate with such other firms as the City may direct to assist in servicing Tort Liability claims or accounts. It is understood at this time that no such firms are now under contract with the City and the City agrees not to employ other firms to meet any services specifically addressed in this Agreement to be provided by Companion.

12. To maintain a current estimate of cost of all anticipated losses (hereinafter referred to as loss reserves) on each qualified claim or loss.

13. To use computer programs to furnish to the City selected loss and

informational reports either monthly, quarterly, or annually which are described under Article VII below.

14. To present a Claims Administration Report to the City periodically as requested by the City.

15. To attend and participate in meetings with City as requested to provide background and instruction to Risk Managers relating to Tort Liability procedures and claims-handling.

16. Companion agrees to have a Claims Adjuster to attend hearings, or meetings as required by the City.

17. To immediately notify the City's legal counsel of any claim, loss or report of any occurrence involving serious bodily injury or death or which may potentially exceed Fifty Thousand and 00/100 (\$50,000.00) Dollars for bodily injury and/or property damage.

Article VI: Duties & Obligations of City

1. At all times, the City agrees to provide adequate funds for the payment of both qualified claims and losses and of Allocated Loss Adjustment Expenses (ALAE). For the purposes of this Agreement, ALAE shall mean costs, charges, or expenses of third parties, incurred by Companion, its agents or its employees, which are properly chargeable to a qualified claim or loss. These expenses include, without limitation, investigators, experts and witnesses, and fees for obtaining diagrams, reports, documents and photographs.

2. The City agrees that Companion shall not be required to advance its own funds to pay losses or ALAE on behalf of the City.

3. The City agrees to deposit such funds in a bank account or accounts established by Companion in connection with this agreement. The City shall arrange for Companion to write checks on the account or accounts for use in the payment of the City's qualified claims, losses and ALAE. Such funds shall be provided at the inception of this Agreement in the amount of Fifty Thousand and 00/100 (\$50,000.00) Dollars and replenished promptly from time to time thereafter as needed upon notice by Companion to City.

4. The City agrees to provide Companion payment authority and discretion to make settlements of qualified claims and losses, and to spend money for the adjustment of, and administration of claims, within certain restrictions.

5. The City agrees that Companion shall have full discretion to redeem, compromise, or settle any qualified claim or loss for an amount not to exceed Ten Thousand and 00/100 (\$10,000.00) Dollars for bodily injury, personal injury, and

property damage, except for sewer back-up and water main breakage claims or losses and claims or losses involving allegations of false arrest, malicious prosecution, excessive force or violation of civil or constitutional rights. Sewer back-up and water main breakage claims or losses should be adjusted in compliance with the protocol to be provided to Companion by the City, within the same authority for property damage (\$10,000.00). Companion shall immediately advise of and confer with City's legal counsel of any claims or losses involving allegations of false arrest, malicious prosecution, excessive force or violation of civil or constitutional rights and obtain authority from the City to redeem, compromise or settle such cases for any amount. Companion shall obtain settlement authority from the City to redeem, compromise, or settle any qualified claim or loss which exceeds its authority.

6. The City agrees that Companion shall have full discretion to make discretionary payments on any qualified claim or loss for expenses required in investigating, administering, defending and adjusting qualified claims and losses for an amount not to exceed Two Hundred and 00/100 (\$200.00) Dollars.

7. The City agrees Companion shall write checks on the account or accounts for use in the payment of the City's qualified claims, losses and allocated loss adjustment expenses (ALAE).

8. The City and Companion agree that any of the amount of check-writing authority herein may be changed at any time by the City upon ten (10) days prior written notice to Companion. Companion will print and write all checks contemplated herein.

Article VII: Management of Information Reports

1. Companion agrees to maintain computer programs for the purposes of monitoring and tracking qualified claims and losses (open and closed) that have been reported to the City.

2. Companion agrees to provide the City selected loss and informational reports either monthly, quarterly, or annually in a format to be mutually agreed upon by City and Companion.

3. Companion shall provide such electronic files and database information, on a monthly basis, as the City requires, and keep a current detailed historical database of all City claims in compliance or compatible with the Public Risk Database as is practical.

Article VIII: Service Fees and Incentives

In consideration of the agreed services to be provided under this Agreement the City agrees to the following Service Fee Schedule for new claims incurred after the effective date of this Agreement.

1. Service Fee to Companion: City agrees to pay Companion a per claim Service Fee of One Hundred Fifty and 00/100 (\$150.00) Dollars per Auto and GL Property Damage claim, Two Hundred Fifty and 00/100 (\$250.00) Dollars per Sewer claim and Four Hundred and 00/100 (\$400.00) Dollars per Auto and GL Property Damage and Bodily Injury claim. These fees are for Companion to administer claims management services for the term of this Agreement. A claim or a qualified claim is defined as all requests for payment occurring on or after July 1, 2016 arising out of a single incident or occurrence.

a. City agrees to pay Companion in quarterly installments (based on an average of 1078 annual claims) of Fifty-Seven Thousand Eight Hundred Eighty-Seven and 50/100 (\$57,887.50) Dollars in advance, beginning July 1, 2016 and every three (3) months thereafter for the first year of this Agreement. On July 1, 2017, if the number of claims for the preceding year is less than 1078, Companion will provide the City with a credit in the amount of the per claim fee against the following year's fee. Notwithstanding the preceding, in no event will Companion's fee drop below \$90,000. On July 1, 2017, if the number of claims for the preceding year is greater than 1078, the City will pay the per claim fee for each claim over 1078.

b. Payment of the above recoveries will be made by the City on a quarterly basis and adjusted annually by statements and report prepared by Companion.

c. Payments include ULAE: The above covers all unallocated loss adjustment expense (ULAE) for example: claims adjuster salaries, benefits, travel expenses, overhead, management reports, etc. As discussed above, all costs for attorneys, surveillance, medical treatment, etc. will be directly charged back to a specific claim file if deemed to be ALAE and will be charged back to the claims file as an "expense."

2. Certain Pass Through Fees: Index fees are charged for researching claims through Insurance Services (ISO) national database. This is to determine if other claims that may have been made by the Claimant and may indicate potential fraudulent claims. These fees will be charged to the City by Companion at the prevailing rate by ISO (approximately \$11 to \$12 per claim). In addition, claims are submitted to CMS via ISO. These fees will be charged at the prevailing rate by CMS (approximately \$7.30 per claim).

3. Ancillary Services: City agrees to pay Companion 10% percent of all gross recoveries made through any subrogation against third parties upon the receipt of such recovery. Pricing for other services are available.

Article IX: Signatures

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed on the day and date first above written.

CITY OF COLUMBIA (S.C.)

**COMPANION THIRD PARTY
ADMINISTRATORS, A DIVISION OF
PLANNED ADMINISTRATORS INC.**

By: _____
Teresa B. Wilson

Title: City Manager

Date: June , 2016

By: _____
David Huntington

Title: President & COO

Date: June , 2016

APPROVED AS TO FORM



Legal Department City of Columbia, SC