



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: CITY ATTORNEY

**Prepared by: Lisa Goldfien,
Assistant City Attorney**

City Manager Approval: _____

TOPIC: LIABILITY CLAIMS ADMINISTRATION SERVICES

SUBJECT: RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH GEORGE HILLS COMPANY FOR THE PROVISION OF THIRD-PARTY LIABILITY CLAIMS ADMINISTRATION SERVICES FOR A ONE-YEAR PERIOD, IN AN AMOUNT NOT TO EXCEED \$95,950

RECOMMENDATION:

Adopt a resolution authorizing the City Manager to approve a one-year agreement with George Hills Company for the provision of third-party liability claims administration services in an amount not to exceed \$95,950.

BACKGROUND:

For cities the size of San Rafael, with our level of staffing, it is not possible to reliably maintain the capacity in-house to manage claims adjustments, investigations, and other liability claims administration functions for property damage and personal injury claims made by third parties against the City. Therefore, the City has historically contracted for these services with an outside claims administration company.

In 2001, after an extensive Request for Proposals (RFP) process to qualify, investigate, and interview candidates to administer the City's third-party liability claims, the City awarded a contract to George Hills Company, a long-established Northern California provider of third-party liability claims administration for public entities. Since then, George Hills has handled the City's liability claims out of its Sonoma and Solano County offices. The claims have been handled efficiently, promptly and at reasonable cost.

The City's current agreement for services with George Hills Company is scheduled to expire on June 30, 2020. Last year staff had proposed issuing a Request for Proposals (RFP) for this service for the period beginning July 1, 2020, however with work priorities changing this year as a result of the COVID-19 Stay-in-Place order, staff determined not to issue the RFP this year, and instead seeks to renew the agreement for services with George Hills Company again for another year.

FOR CITY CLERK ONLY

File No.: _____

Council Meeting: _____

Disposition: _____

ANALYSIS:

City staff has been happy with the services provided by George Hills Company. Mr. Rodger Hayton, the account manager for the City's claims, has actively and very successfully investigated and resolved third-party claims and has diligently supervised litigation of those claims that have not been resolved at an early stage. A recent claims audit by the City's excess insurance pool, the California Joint Powers Risk Management Association, concluded that "Overall, claim files receive the attention and work required to show the good results that are being seen on files."

The proposed all-inclusive fee for the company's services from July 1, 2020 through June 30, 2021 is \$95,950. This fee covers all claims administration services and provides additional administrative services including direct access to the company's claims data system, the provision of monthly reports and loss runs, assistance with audits, and filing of regulatory reports.

City staff has confidence in the company's ability to effectively manage the City's liability claims and recommends renewal of the company's contract for another year.

FISCAL IMPACT:

For Fiscal Year 2020-21, the annual fee of \$95,950 represents an increase of less than three percent over the current year fee of \$93,350. There are sufficient funds and current-year appropriations in the City's general liability internal service fund to support the proposed contract.

OPTIONS:

The City Council has the following options to consider on this matter:

1. Adopt the resolution as recommended by staff approving a one-year agreement.
2. Adopt resolution with modifications.
3. Direct staff to return with more information.
4. Take no action.

RECOMMENDED ACTION:

Adopt a resolution authorizing the City Manager to approve a one-year agreement with George Hills Company for the provision of third-party liability claims administration services in an amount not to exceed \$95,950.

ATTACHMENTS:

1. Resolution
2. 2020-2021 Agreement for Claims Adjusting and Administration Services

RESOLUTION NO. _____

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH GEORGE HILLS COMPANY FOR THE PROVISION OF THIRD-PARTY LIABILITY CLAIMS ADMINISTRATION SERVICES FOR A ONE-YEAR PERIOD, IN AN AMOUNT NOT TO EXCEED \$95,950

WHEREAS, the City of San Rafael's third-party liability claims administration services have been provided by George Hills Company for the past several years; and

WHEREAS, the City has been very satisfied with the services provided by George Hills Company, and the City wishes to continue to contract for such services for an additional year;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of San Rafael hereby approves and authorizes the City Manager to execute an Agreement with George Hills Company for the Provision of Third-Party Liability Claims Administration Services for a term of one year (July 1, 2020 to June 30, 2021), in an amount not to exceed \$95,950 and in a form approved by the City Attorney.

I, **LINDSAY LARA**, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the San Rafael City Council held on the 1st day of June 2020, by the following vote to wit:

AYES: Councilmembers:
NOES: Councilmembers:
ABSENT: Councilmembers:

LINDSAY LARA, City Clerk

CLAIMS ADJUSTING AND ADMINISTRATION
SERVICE CONTRACT

This contract is made and entered into this 1st day of July 2020 by and between the CITY OF SAN RAFAEL, hereinafter referred to as "CLIENT", and GEORGE HILLS COMPANY, INC., hereinafter referred to as "GH".

GH is a California Corporation doing business as licensed, independent insurance adjusters and administrators, with John Chaquica, CEO, responsible for contract compliance and terms. Chris Shafer, Vice President Claims Administration, shall oversee the daily operations. The company's corporate office is located at 3043 Gold Canal Dr, Suite 200, Rancho Cordova, California, 95670, telephone, (916) 859-4800.

The CLIENT is the City of San Rafael, located at 1400 Fifth Avenue, San Rafael, CA 94901.

IT IS HEREBY AGREED by and between the parties signing this contract as follows:

I. GENERAL

CLIENT is desirous of availing itself of liability claims adjusting and administration services. GH is a Third-Party Claims Administrator handling self-insured claims and is ready to and capable of performing such services. As such, GH may act as a representative of the CLIENT when directed for the investigation, adjustment, processing, and evaluation of general liability, motor vehicle, and potential money damage claims or incidents filed by third parties against the CLIENT, or against parties for whom the CLIENT is alleged to be legally responsible, which are premised upon allegations of willful, intentional, negligent, or careless acts and/or omissions ("CLAIMS").

II. SCOPE OF SERVICES

GH agrees to provide complete claim handling services on each accident or incident, as directed by CLIENT. Each CLAIM will be subject to the GH Client Expressed Scope of Work Standards and Instructions form in practice at that time. CLIENT shall determine the scope of services to be provided by GH by signing the Client Expressed Scope of Work Standards and Instructions for each contract. The Client Expressed Scope of Work Standards and Instructions form shall be the controlling document for the scope of claims adjusting services to be provided by GH for CLIENT. Services to be provided by GH on behalf of CLIENTS for a CLAIM may include all or some of the following:

A. INVESTIGATIVE SERVICES

- 1) Receipt and examination of all reports of accidents or incidents that are or may be the subject of claims.
- 2) Investigate accidents or incidents as warranted, to include on-site investigation, photographs, witness interviews, determination of losses and other such investigative services necessary to determine all CLIENT losses but not to include extraordinary investigative services outside the expertise of GH.
- 3) In the event CLIENT or other agency conducts any investigation, GH shall review for completeness.

- 4) Maintain service on a 24-hour, 7 days per week basis, to receive reports of any incident or accident which may be the subject of a liability claim and provide immediate investigative services to the extent necessary to provide a complete investigation.
- 5) Undertake items of investigation requiring special handling for CLIENT at the direction of the CLIENT's Attorney or authorized representative.

B. LIABILITY CLAIM HANDLING SERVICES

- 1) Promptly set up a claim file upon receipt of the claim and maintain a claim file on each potential or actual claim reported.
- 2) Assess and evaluate the nature and extent of each claim and establish claims reserves for indemnity and legal expense.
- 3) GH will follow any CLIENT policy regarding rejection instructions, individual to send the rejection and if a denial letter should be sent simultaneously.
- 4) Ensure timely claim handling, including contact and follow-up with claimants regarding claim issues and processing.
- 5) Any bodily injury claim that is being pursued shall be indexed. Notice only matters or precautionary bodily injury claims that are not pursued do not need to be indexed.
- 6) Determine the need for defense representation, recommend legal counsel, and manage litigation activity.
- 7) Report claims to the excess insurer in compliance with excess carrier's reporting requirements and coordinate with the excess insurer on a claim's progress in accordance with the excess insurer's reporting requirements.
- 8) Maintain records on any such claim and notify CLIENT when CLIENT is about to exhaust the Self-Insured Retention.
- 9) Obtain settlement contracts and releases upon settlement of claims or potential claims not in litigation.
- 10) Perform periodic quality control reviews of CLIENT and excess insurance (if applicable) statutory requirements to ensure compliance.
- 11) Perform the necessary data gathering for the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) and the Set Aside Contracts in compliance with Section 111 of the MMSEA including the required reporting. (*See Attachment B*)
- 12) To the extent there is privileged information shared between agencies, which is subject to protection under the HIPAA/PHI Act, GH shall implement all necessary measures in compliance with the Act, via a Business Associates Agreement (BAA) to be issued by the CLIENT.

- 13) GH shall notify CLIENT via electronic mail at such time a file has been closed.

C. LEGAL SUPPORT SERVICES

- 1) Upon notification by the CLIENT that litigation has been filed on an open claim, GH shall follow the litigation referral process as outlined in the Client Expressed Scope of Work Instructions form.
- 2) Obtain and maintain a Litigation Plan and Budget.
- 3) Review legal bills for compliance with Litigation Plan and reasonableness.
- 4) Cooperate with and assist any defense counsel assigned to litigation of open claims and provide such investigative services as directed during pre-trial and trial stages.
- 5) Assist in responding to discovery or preparing discovery.
- 6) At the request of the CLIENT, attend mandatory settlement conferences on behalf of CLIENT.
- 7) Appear on behalf of CLIENT in small claims actions filed against CLIENT on open claims handled by GH.
- 8) Review, evaluate and adjust defense counsel invoices for services.
- 9) Regularly discuss, review, and direct investigation issues, discovery, and case strategy with counsel.
- 10) Review and evaluate case evaluations, correspondence and status reports forwarded to GH by counsel.
- 11) Cooperate with counsel as a team with an open communication approach on each case to obtain the most economical and best result for the CLIENT.

D. REPORTS AND PROCEDURES:

- 1) Within thirty (30) days of assignment, or sooner if practicable, required, or requested, GH will provide CLIENT with a full factual report pursuant to specified claims handling instructions, showing name(s) of claimant(s), type of claim, date of loss, comments on liability, reserve recommendations, settlement recommendations, and other pertinent information. Subsequent to the initial thirty (30) day report, the GH will report as often as warranted by any important change in status but no longer than every (90) days until the claim closes unless extended diary is appropriate.
- 2) All original reports, documents, and claim data of every kind or description, that are prepared in whole or in part by or for the GH in connection with this contract shall be CLIENT's property and constitute the GH's work product for which compensation is paid. A copy of all reports, documents, and claim data of every kind or description that is in

whole or in part by or for the CLIENT is the property of the GH. Additional copies of original reports, documents, and data requested by the CLIENT will be at the CLIENT's expense in accordance with this contract.

- 3) GH agrees that CLIENT have access and the right to audit and reproduce any of the GH's relevant records to ensure that the CLIENT is receiving all services to which the CLIENT is entitled under this Contract or for any purpose relating to the Contract.
- 4) CLIENT shall provide GH with written authorization allowing any other agency or person to obtain similar access to confidential information as noted in 3 above. Such authorization is inclusive of HIPAA Act or PHI privileged information.

E. DATA

- 1) Utilize its claims system—CXP (Claims Xpress).
- 2) Record all claim information including all financial data.
- 3) Provide CLIENT and broker Read only on-line access to the claims data system, if desired by CLIENT. (up to five users)
- 4) Provide monthly standard loss run and check register.
- 5) Provide annual claims data report upon request. Written authorization may be required for confidential information.
- 6) Provide assistance to CLIENT in developing customized reports when requested (may require additional charge).
- 7) Arrange for electronic file conversion for any open and closed claims at the direction of CLIENT.

F. CLAIM REVIEW MEETINGS

GH shall, on a mutually agreed periodic basis, meet with Client to review and discuss claims inventory and claims results of past period and delivery of services by CLAIM ADMINISTRATOR.

G. FINANCIAL ACCOUNTING

- 1) Establish and maintain a trust fund for the purpose of paying indemnity and expenses that may be due on the claims. The amount to be maintained in the trust fund shall be determined by the Client.
- 2) Maintain a copy of all checks drawn by the GH to pay claims and claims related expenses.
- 3) Submit monthly check registers of all transactions made for the period.
- 4) Complete or update Attachment B "Preferred Method of Check Processing" for check processing options.

- 5) Approval process shall be documented in GH Client Expressed Scope of Work Standards and Instruction Form.
- 6) GH will provide monthly bank reconciliation reports to CLIENT for audit purposes.

H. SUBROGATION SERVICES

GH is a claim administrative firm experienced in the handling of subrogation claims and is ready and capable of performing such services. CLIENT may retain GH for Subrogation Services by signing a separate agreement, an example of which is attached hereto as Exhibit A. Such services are distinct from subrogating a loss from an additional insured from a claim filed by a third party. Our services are unique to a first party loss of the CLIENT caused by the intentional or negligent act of a third party. Such losses generally are for the recovery of damages, loss, and/or additional types of damages.

- Labor costs, fully loaded and including benefit costs, for district or other personnel responding to or in any manner providing services;
- Services or materials provided by outside vendors or contractors;
- Internal or external Vehicle or equipment use and/or rental;
- Materials and/or goods utilized for the repair/replacement of damaged property; and/or
- Additional fees that may be specific to the individual entity that are provided for within district ordinances or other governing document.

III. **DENIAL, COMPROMISE OR SETTLEMENT OF CLAIMS**

It is agreed that CLIENT has granted \$0 authority to GH for the purpose of compromising, settling, and paying any claims against CLIENT being handled by GH. GH will issue payment for legal expenses as defined in the Client Expressed Scope of Work form. Prior approval to compromise or settle any claim, or pay any expense will be obtained from the designated claims officer or employee on matters exceeding the authority granted above.

IV. **FILE RETENTION**

GH shall electronically retain CLIENT's records consistent with CLIENT's retention policy or up to a maximum of seven (7) years whichever is shorter. CLIENT and GH may agree via a separate signed agreement to retain records for a longer period of time.

V. **CONFIDENTIALITY**

All data, documents, discussions, or other information developed or received by or for GH in PERFORMANCE of this contract are confidential and not to be disclosed to any person except as authorized by CLIENT or CLIENT's designee, or as required by law.

VI. CONFLICT OF INTEREST

In the event GH receives a claim from the CLIENT in which there arises a "conflict of interest," GH shall immediately notify CLIENT. CLIENT may then, at their expense choose to hire another well-qualified claims firm to handle that particular claim to a conclusion. GH covenants that it presently knows of no interest, direct or indirect, which would conflict in any manner with the performance of services required under this contract.

VII. CLIENT RESPONSIBILITY

CLIENT agrees to the following:

- 1) CLIENT shall cooperate with GH as reasonably necessary for GH to perform its services.
- 2) CLIENT agrees to provide direction to GH as requested regarding particular project requirements.
- 3) CLIENT shall identify a primary contact person(s) for an account as well as for billing and loss run submission. In addition, CLIENT shall be responsible for reporting all changes in the primary point of contact to GH.
- 4) CLIENT shall be responsible for reporting all Bodily Injury Claims in addition to all other items noted in Attachment B to this Agreement "Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA)"
- 5) CLIENT shall be responsible for updating GH on any changes to coverage/policy language; including limits, retentions/deductibles and coverage changes by April 30 of each year.
- 6) CLIENT shall obtain any necessary consent in the collection of any CLIENT data that is transmitted to a third party (ie. actuary or auditor). CLIENT shall provide GH with reasonable assurances that it has the necessary consent to transmit CLIENT data to a third party. CLIENT acknowledges that the claims data may contain confidential and/or protected health information. In the event CLIENT authorizes and directs GH to provide claims data to a third party, CLIENT will indemnify, defend and hold harmless GH from and against all claims, damages, losses and expenses, including court costs and reasonable attorneys' fees, arising out of or resulting from:(i) any action against GH that is based on any negligent act or omission of CLIENT or a third party in transmitting and/or disclosing the claims data; or (ii) the violation of any statute, ordinance, or regulation by CLIENT or a third party in transmitting and/or disclosing the claims data.

VIII. COMPENSATION

CLIENT agrees to pay GH for services described in Section II – Scope of Services.

Adjuster fees will be incurred only when necessarily required in the form of adjuster's fees as delineated in Section II, Scope of Services and will be invoiced as worked.

1) Adjuster fees will be as follows:

a. Annual Flat Fee as follows:

- FY20-21 \$92,000

The above compensation shall apply to services provided during the year of this contract. Compensation for services provided during subsequent years shall be re-negotiated as a result of services or other factors unanticipated by either party.

b. Compensation: Is based on the Client Expressed Scope of Work Instructions form, completed and signed by CLIENT. In the event claims volume has deviated from information provided due to being incomplete, inaccurate, or claims being re-opened additional fees shall be discussed to reconcile with scope of services. (*Applicable to Flat Fee and Time and Expense with a Cap billing*)

c. Auto Expense: Standard IRS rate

d. Claims Processor: Should there be a need for a Claims Processor, the rate shall be \$70* per hour.

e. Allocated file expenses to be paid at cost. (*See Attachment D*)

f. Custom reporting beyond the above will be furnished upon request at an additional cost to be agreed upon by the GH and CLIENT.

g. Catastrophic Fees:

GH recognizes that there are events that are unanticipated and catastrophic. When such events occur, it requires additional hours for the handling of such claims. As such, to preserve the quality and efficiency of service for which we have been known, George Hills proposes that should any one catastrophic event occur resulting in five or more claimants or two or more claimants with their own defense counsel, CLIENT shall be billed at the current hourly rate.

2) Startup Fee: N/A.

There is a one-time startup fee to include, but not limited to, onboarding process and documentation, data entry, location code hierarchy setup, report template creation, new client setup – bank account, vendors, W-9, etc.

3) MMSEA Reporting Fee(s):

a. One-time CMS setup fee (paid to ExamWorks): \$150 N/A

b. Annual Account Maintenance/Reporting Fee (paid to ExamWorks): \$250

4) Annual Administration Fee as Follows:

- FY20-21 \$3,700

And shall be for the following:

- a. Data access to claims data system.
- b. Monthly listing of open claims by date of loss, department, location, and alpha by name showing expense categories, reserves and total incurred.
- c. Monthly claim summary reports, within 15 days of month-end .
- d. Provide loss run data required reports and respond to/discuss with actuaries and auditors (claims and financials).
- e. Provide annual reports to outside agencies.
- f. Financial accounting if applicable.
- g. Filing of regulatory reports such as 1099, W-9, etc.

5) Legal Services and Consultation (Optional):

- a. Litigation Management: \$ _N/A_ * p/hour
These services include the oversight of all assigned claims adjusters and monitoring and handling of “watch list” (highest exposure, most complex litigation). These services are also available on a claim by claim basis in support of the Lead Adjuster assigned due to the complexity of the claims.
- b. Monitoring Counsel: \$ _N/A* p/hour
This case specific service includes evaluating coverage issues, monitoring claim and litigation strategy, analyzing liability and damage issues, participating in discussions regarding resolution by trial or settlement, and controlling costs.
- c. Outside General and Special Counsel: \$ _N/A* p/hour
These services include confidential analysis and problem solving for managing risk and avoiding unnecessary litigation and provides immediate access to legal advice This includes analyzing coverage issues, Public Records Act Requests, tort claim handling and strategy, conflicts of interest, oversight of outside litigation counsel and providing legal opinions on potential and active litigation.
- d. Coverage Counsel: \$ _N/A* p/hour
These services include review and analysis of memorandums of coverage and excess/umbrella policies to address and offer advice and consultation regarding coverage issues.
- e. Trial/Mediation/Board Meetings Attendance: \$ N/A* p/hour
These services include attending Board Meetings, trial, mediation, and other court hearing attendance including appearing before Courts of Appeal. Analysis and consultation provided before, during and after these significant litigation events can reduce exposure and maximize opportunities for resolution.
- f. Legal Training and Seminars:\$N/A* p/hour

These services include providing customized seminars and training upon request. Subject areas include memorandums of coverage, all aspects of risk management, claims handling and litigation, employment law and general liability claims. Courses are customized to address the client's specific needs.

NOTE: These services are traditionally Time and Expense; however, an annual fee can be considered.

- 6) Conversion Fee: \$0
GH will charge for any services related to conversion storage, copying, scanning, shipping and disposal. This fee is intended to cover costs associated with data conversion, transition, and contract close out. The data conversion fee is dependent on many factors which will need to be discussed. N/A
- 7) The above compensation shall apply to services provided during the term of this contract. Any changes in the terms of compensation shall be submitted to CLIENT by June 1st each year. Submission changes in the terms of compensation shall be in writing and subject to mutual agreement that shall be an amendment to this Agreement.
- 8) A General Administrative File shall be established and maintained to track effort related to services necessary to fulfill the contractual obligations not otherwise associated to a claim.
- 9) *GH Hourly Rate – The hourly rates identified in this Agreement are subject to an annual COLA of up to 3%.

IX. PAYMENT SCHEDULE

GH will submit its invoices to CLIENT, and payment shall be made by CLIENT, within a reasonable period of time, not to exceed thirty (30) days from the date of the invoice.

X. TERM AND TERMINATION

The term of this contract shall commence on July 1, 2020 through and including June 30, 2021. Either party may terminate this contract for any reason upon issuing a 90 day written notice to the other party.

Termination for Convenience: CLIENT may at any time and for any reason terminate this Agreement upon ninety (90) days written notice to GH. Notice shall be deemed served on the date of mailing. Upon receipt of such notice, GH shall immediately discontinue services in connection with the scope of services of this Agreement. Upon such termination, GH shall be entitled to payment from CLIENT for services completed and provided prior to notice of termination, at GH's current hourly rate.

Upon completion of data conversion and return of data back to CLIENT (electronic and/or hard copy), GH will destroy any remaining files.

XI. FAIR EMPLOYMENT

It is the policy of GH to provide fair and equal treatment to all staff members. GH is an Equal Opportunity Employer and does not discriminate in any way against any person on the basis of age, race, sex, color, national origin, national ancestry, physical disability,

medical condition, mental disability, religion, creed, marital status, sexual orientation, gender identification, gender expression, use of family care leave or any other classification deemed protected by law.

XII. INDEPENDENT CONTRACTOR

In performing claims administrative services herein agreed upon, GH shall have the status of an independent contractor and shall not be deemed to be an officer, employee, or agent of CLIENT.

XIII. INDEMNIFICATION

GH will defend, indemnify, and hold harmless CLIENT from and against all claims, demands, actions, or causes of action, which may arise, from the action, conduct, or failure to act by GH personnel ("Indemnity Event"), except that indemnity does not apply with respect to the sole negligence or willful misconduct of the CLIENT. This indemnity shall not cover any claims in which there is a failure to give GH prompt and timely notice, but only if and to the extent that such failure materially prejudices the defense. For an Indemnity Event, the maximum amount recoverable by CLIENT against GH for damages and costs (inclusive of attorneys' fees) is limited to the insurance policy limits in place at the time of the Indemnity Event.

In those cases wherein the GH is named in a filed or verified complaint simply by virtue of the fact it is the CLAIMS ADMINISTRATION firm on a given claim, the CLIENT will defend the GH, at no cost to the GH; CLIENT will defend, indemnify, and hold harmless the GH from and against all claims, demands, actions, or causes of action, which may arise, from the action, conduct, or failure to act by CLIENT.

XIV. INSURANCE

The GH shall provide CLIENT with Certificates of Insurance duly executed by an insurance company or companies authorized to transact business in the State of California, and said Certificates shall certify that the GH has in full force and effect: (1) \$1,000,000 coverage applying to bodily injury, personal injury, property damage; (2) \$3,000,000 Each Claim/Annual Aggregate Professional Liability coverage; (3) statutory limits for workers compensation coverage; and (4) fidelity coverage for theft of CLIENT property in the amount of \$1,000,000 per loss., (5) GH shall name CLIENT as additional insured by separate endorsement.

GH will provide thirty (30) days written notice, prior to the cancellation or reduction in insurance coverage will be provided.

XV. EMPLOYEE SOLICITATION

During the period of this contract, and for a period of one (1) year thereafter, GH agrees not to solicit for employment any CLIENT employee contacted during the performance of this contract; CLIENT agrees not to solicit for employment, or employ, during the period of this contract, and for a period of one (1) year thereafter, any employee of GH contacted by the CLIENT during the performance of this contract.

XVI. PERMITS, LICENSES, CERTIFICATES

GH, at GH'S sole expense, shall obtain and maintain during the term of this Contract, all permits, licenses, and certificates required in connection with the performance of services under this Contract, including appropriate business license.

XVII. ARBITRATION

GH and CLIENT agree that in the event of any dispute with regard to the provisions of the Contract, the services rendered or the amount of GH'S compensation and the dispute cannot be settled through informal negotiation, the parties agree first to try in good faith to settle the dispute by mediation before resorting to arbitration. The parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to JAMS, or its successor, for mediation, and if the matter is not resolved through mediation, then it shall be submitted to JAMS, or its successor, for final and binding arbitration. Either party may commence mediation by providing to JAMS and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with JAMS and with one another in selecting a mediator from the JAMS panel of neutrals and in scheduling the mediation proceedings. The parties agree that they will participate in the mediation in good faith and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator or any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration at any time following the initial mediation session. The mediation may continue after the commencement of arbitration if the parties so desire. Any arbitration arising out of or related to this Agreement shall be conducted in accordance with the expedited procedures set forth in the JAMS Comprehensive Arbitration Rules and Procedures as those Rules exist on the effective date of this Agreement, including Rules 16.1 and 16.2 of those Rules. In any arbitration arising out of or related to this Agreement, the arbitrator shall award to the prevailing party, if any, the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration.

FORCE MAJEURE CLAUSE.

GH shall be relieved of any liability if unable to meet the terms and conditions of this Agreement due to any "Act of God", natural disasters such as earthquake or fires, floods, riots, epidemics, pandemics, including COVID-19 regulations or restrictions issued by federal, state or local governmental authorities, strikes, or any act or order which is beyond the control of GH, provided GH takes all reasonable steps practical and necessary to effect prompt resumption of its responsibilities hereunder.

XVIII. NOTICES

All notices to GH shall be personally served or mailed, postage prepaid, to the following address:

GH

George Hills Company
Attn: John Chaquica, CEO
3043 Gold Canal Drive, Suite 200,
Rancho Cordova, CA 95670

All notices to the CLIENT shall be personally served or mailed, postage prepaid, to the following address:

Client:

Copy to:

Lisa A. Goldfien
Assistant City Attorney
City of San Rafael
1400 Fifth Avenue
San Rafael, CA 94901

GH and CLIENT agree that the terms and conditions of the Contract may be reviewed or modified at any time. Any modifications to this Contract, however, shall be effective only when agreed to in writing by both the CLIENT and GH.

XIX. ENTIRE CONTRACT

GH and CLIENT agree that this contract constitutes the entire contract of the parties regarding the subject matter described herein and supersedes all prior communications, contracts, and promises, either written or oral.

XX. TIME OF ESSENCE

Time is of the essence in respect to all provisions of this Contract that specify a time for performance: provided, however that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Contract.

5/20/2020
Date

BY: 
John E. Chaquica, CEO
GEORGE HILLS COMPANY INC.

Date

BY: _____
Jim Schutz, City Manager
CITY OF SAN RAFAEL

ATTEST:

APPROVED AS TO FORM:

Lindsay Lara, City Clerk

Robert F. Epstein, City Attorney

ATTACHMENT A

SUBROGATION AGREEMENT

This Subrogation Agreement is made and entered into this ___ day of _____ 2020 by and between the CITY OF SAN RAFAEL, hereinafter referred to as "CLIENT", and GEORGE HILLS COMPANY, INC., hereinafter referred to as "GH".

I. CLIENT may, at CLIENT's own expense:

- a. Authorize GH to act as a representative of CLIENT for the investigation, adjustment, processing, supervision and evaluation of an ultimate recovery of potential money from damage claims against parties for whom it is alleged to be legally responsible.
- b. Authorize GH to engage the services of a litigation attorney to consult, review, and determine the best legal strategy available at the time to obtain the best possible result for CLIENT. Upon determination by the attorney that a civil action is in the best interest of CLIENT, GH will notify CLIENT and obtain authorization to pursue recovery in accordance with the recommendations of the litigation attorney; orc.
- c. While GH is handling a subrogation claim for CLIENT pursuant to the terms of this Contract, the institution of a civil action is determined by CLIENT to be the best course of action, CLIENT may elect to do so at CLIENT's own expense.
 - i. Recall the claim to CLIENT's control so that CLIENT may pursue recovery in a manner to be determined by the CLIENT's attorney to be in the best interest of the CLIENT.
 - ii. In the event CLIENT recalls the claim as indicated above, CLIENT shall be responsible for payment to GH for any and all time and expense incurred by GH's subrogation claim adjuster and/or other subrogation division staff up to the time wherein the claim has been recalled by CLIENT.

II. Subrogation Fee in the amount of 30% of each and every recovery obtained. The minimum amount to be paid to GH will be \$250 per claim upon recovery. However, GH has the authority to reject any claim for any reason, relieving CLIENT of any fiscal responsibility for rejected claims only.

- a. Generally, no recovery shall be agreed to involving payment plans if the recovery is less than \$5,000 and/or greater than a one-year term. Exceptions can be made on a case-by-case basis. If a recovery is agreed to exceed this amount and/or length of time, Subrogation fee shall be 45%. In the event a payment plan is authorized and entered into, the subrogation fee will be based upon the total amount of the lien and will be invoiced to the CLIENT upon the entry of the payment agreement. GH will make every attempt to enforce the provisions of the payment agreement with the claimant, but in no way guarantees the fulfillment of the terms of the payment agreement. In the event the terms of the payment agreement are not fulfilled and warrant pursuit through the small

claims process, authority to pursue through small claims will be requested.

- b. Authorize GH to appear in small claims court for recovery of funds. Authority for the pursuit of recovery through small claims will be requested prior to the filing of documents with the court to initiate the small claims action. Each appearance will be an additional fee of \$150. All costs for the handling of the small claims, i.e. service of process of documents on the responsible parties, mileage, parking, and toll shall be an additional cost and will be the responsibility of the CLIENT. Additional allocated costs shall be billed separately upon the cost being incurred, such as, but not limited to: skip tracing, service of process, and third-party sub contracted investigation.
- c. GH reserves the right to cease working on any claim whereas information has not been made available to GH within 120 days after GH has submitted the information and/or documentation request to CLIENT, at such time the claim will be closed.
- d. Due to the nature of these services, in that compensation is contingent upon recovery, if the contract is terminated prior to recovery or other closure of any claim, the CLIENT shall pay GH for all expenses and time spent, to date, on any claim(s) currently open and recovery in process. Payment shall be based on the current hourly rate of GH. GH will submit the final invoice within five business days of termination.

General Terms and Conditions

A. Successors and Assigns.

All of the rights, benefits, duties, liabilities, and obligations of the parties shall inure to the benefit of, and be binding upon, their respective successors and assigns.

B. Construction.

The title and headings of the Sections in this Agreement are intended solely for reference and do not modify, explain, or construe any provision of this Agreement. All references to sections, recitals, and the preamble shall, unless otherwise stated, refer to the Sections, Recitals, and Preamble of this Agreement. In construing this Agreement, the singular form shall include the plural and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared the Agreement.

C. Integration.

This Agreement, and all related documents referred to in this Agreement, constitute the entire Agreement between the parties. There are no oral agreements which are not expressly set forth in this Agreement and the related documents being executed in connection with this Agreement. This Agreement may not be modified, amended, or otherwise changed except by a writing executed by the party to be charged.

D. Third-Party Rights.

Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties and their respective successors and assigns, any rights or remedies.

E. Severability.

If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected.

F. Waivers.

No waiver or breach of any provision shall be deemed a waiver of any other provision, and no waiver shall be valid unless it is in writing and executed by the waiving party. No extension of time for performance of any obligation or act shall be deemed an extension of time for any other obligation or act.

G. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. The execution of this Agreement shall be deemed to have occurred, and this Agreement shall be enforceable and effective, only upon the complete execution of this Agreement by Seller and Purchaser.

H. Authority of Parties.

All persons executing this Agreement on behalf of a party warrant that they have the authority to execute this Agreement on behalf of that party.

I. Governing Law.

This Agreement shall be governed by and construed in accordance with California law.

5/20/2020
Date

BY: 
John E. Chaquica, CEO
GEORGE HILLS COMPANY INC.

Date

BY: _____
Jim Schutz, City Manager
CITY OF SAN RAFAEL

ATTACHMENT B

MEDICARE, MEDICAID, AND SCHIP EXTENSION ACT OF 2007 (MMSEA)

This law requires liability insurers, self-insurers, no fault insurers and workers' compensation insurers to report certain information to The Centers for Medicare and Medicaid Services (CMS) concerning Medicare beneficiaries. The penalty for failure to comply is \$1,000 per day, per claimant.

George Hills Company, Inc. (GH) has contracted with ExamWorks for Mandatory Insurer Reporting (MIR) for the CLIENT. ExamWorks shall represent the CLIENT—and Responsible Reporting Entity (RRE) to this existing contract and this addendum, and will be the designated reporting agent. GH will be responsible for gathering and reporting accurate claims data required by MMSEA to ExamWorks in a timely manner. GH agrees to assume the responsibility for reporting data to ExamWorks to meet all reporting requirements in accordance with MMSEA, on behalf of the RRE; including assuming responsibility for any fines or penalties that are directly caused by GH's non-compliance. GH further agrees to indemnify and hold-harmless, RRE, and staff, for any penalties or fines resulting from GH's direct failure to timely and accurately provide the reporting data to ExamWorks. The above-mentioned obligations to indemnify and hold-harmless shall not be applicable to matters relating to delays caused by RRE or other third parties, or inaccurate data supplied to GH by RRE or other third parties.

By contract with GH, ExamWorks will indemnify and hold GH harmless from and against any claim, damage, fine, loss and expense, arising in connection with, or as a result of, any error, omission, or negligent performance of its obligations as reporting agent, which indemnity will include all reasonable costs of litigation and attorneys' fees incurred. Without in any way limiting the indemnity set forth in this Contract, all work performed by ExamWorks will be done in a professional manner.

GH shall perform the necessary data gathering for RRE and ExamWorks; as such GH shall include in our monthly invoicing the time incurred for such work at our contract hourly rate, or will be included in your monthly flat fee or claims adjusting.

ExamWorks will perform the MMSEA Mandatory Insurer Reporting function for GH, and its RREs, shall be charged as an Allocated Expense, as defined in Attachment C, subject to the following. RRE will designate ExamWorks, unless otherwise requested, as its exclusive vendor for all of RRE's "Qualified Referrals" (those claims determined to require Medicare Set Aside (MSA) or a Claim Settlement Allocation (CSA) and RRE will utilize other ExamWorks services related to Medicare Secondary Payer (MSP) compliance identified in their fee schedule.

**ATTACHMENT C
PREFERRED METHOD OF CHECK PROCESSING**

1. Selection of Bank

- a) Clients Choice

Name

Address

Please provide signature cards, sample check, starting check number, name of contact person

- b) GH uses CA Bank & Trust

2. Trust Balance Desired \$_____

3. Account funding: GH will notify client when the balance falls below required balance

4A. Number of Signatures Required

- a) One
b) Two on all checks
c) Two on checks in excess of \$_____

4B If two signatures are required please specify:

- a) Both GH
b) One GH, one client

GH signers: John Chaquica, CEO; Randy Rendig, President; Kimberly Santin, Finance Director

5. Accountability

- a) Yes No Positive Pay

GH recommends positive pay to mitigate the potential for fraud.

- b) Yes No Daily check registers
c) Statement to be balanced by client, or
d) Statement to be balanced by GH with copies to client

ATTACHMENT D ALLOCATED EXPENSES

Allocated Expenses

Typically, allocated expenses are those expenses that are generated by a claim (by outside vendors other than George Hills) that cannot be foreseen nor included in an agreement. These are generally allocated back to the specific claim file for which the cost was incurred and then charged back to the entity whose claim incurred that cost. In most situations are pass-through costs (with processing fees) for services and/or fees not directly generated by the TPA, but rather by a third-party consultant where the TPA has acted as an agent on behalf of the entity to necessarily outsource services to a third-party consultant and/or miscellaneous fees applicable to the specific claim applied by an outside entity, such as a court or copy service. Below, George Hills has provided a list, by no means an exhaustive list, of typical allocated expenses.

- Fees of outside counsel for claims in suit, coverage opinions, and litigation, and for representation and hearings or pretrial conferences;
- Fees of court reporters;
- All court costs, court fees, and court expenses;
- Fees for service of process;
- CMS reporting costs and fees (ExamWorks);
- Costs of undercover operatives and detectives;
- Costs for employing experts for the preparation of maps, professional photographs, accounting, chemical or physical analysis, or diagrams;
- Costs for employing experts for the advice, opinions, or testimony concerning claims under investigation or in litigation of for which a declaratory judgment is sought;
- Costs for independent medical examination or evaluation for rehabilitation;
- Costs of legal transcripts of testimony taken at coroner's inquests, or criminal or civil proceeding;
- Costs for copies of any public records or medical records;
- Costs of depositions and court reporting;
- Costs and expenses of subrogation, (if not George Hills);
- Costs of engineers, handwriting experts, or any other type of expert used in the preparation of litigation or used in a one-time basis to resolve disputes;
- Witness fees and travel expenses;
- Costs of photographers and photocopy services (if not George Hills—our costs for this is included in our rate);
- Costs of appraisal fees and expenses not included in flat fee or performed by others;
- Costs of indexing claimants;
- Services performed outside the TPA's normal geographical regions;
- Costs associated with Medicare Set-Aside analysis and submission or Medicare Conditional Lien negotiation;
- Investigation of possible fraud including SIU services and related expenses; and/or
- Any other similar cost, fee, or expense that is not otherwise included in the TPA's service fees that is reasonably chargeable to the investigation, negotiation, settlement, or defense of a claim or loss or to the protection or perfection of the subrogation rights of the entity.

**ATTACHMENT E
CLIENT EXPRESSED SCOPE OF WORK FORM**

CLIENT NAME: San Rafael, City of	CONTRACT PERIOD: 7/1/20 – 6/30/21
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This document is intended to provide specific service expectations in the Service Contract, that would not otherwise require revision during the contract period that may differ or elaborate from our Client Service Profile.

Scope of Services

INVESTIGATION:

George Hills will conduct all investigations

CLIENT will conduct all investigations

XX CLIENT will direct GH on each claim as to who performs investigations

In the event the Client or other agency conducts any investigation, GH shall review for completeness.

Retention of Vendors (appraisers, translators, copy services, Independent Adjuster, IME's Surveillance, etc.):

XX Must be preauthorized by CLIENT

Does not need preauthorization

REJECTION OF CLAIMS:

CLIENTS position regarding rejections (*e.g. if entity so dictates, a claim will be rejected for insufficiency*)

Protocols for Rejections

XX GH needs authorization

GH does not need authorization

XX GH sends the Rejection

CLIENT sends the Rejection

XX GH sends out Denial Letter simultaneously with Rejection outlining the reason

LITIGATION:

GH will handle litigated claims

Full

XX As assigned

XX Check Issuance and Data Input

Data Input only

CLIENT will handle litigated claims inhouse, with GH to capture data into SIMS

CLIENT will send data to GH weekly CLIENT will send data to GH monthly

Mandatory Settlement Conferences

GH always attends

At CLIENT request only

Small Claims Actions filed against CLIENT

GH always appears

At CLIENT request only

Legal Counsel

GH must have CLIENT authorization to refer to outside Legal Counsel

GH does not need CLIENT authorization to refer to outside Legal Counsel

GH must use CLIENT approved Legal Panel for Attorney selection

CLIENT does not have an approved Legal Panel for Attorney selection

All Litigation to be handled by CLIENT inhouse Legal

GH sends Litigation Assignment packets to Legal Counsel

CLIENT specific Litigation Guidelines: Yes No N/A

CLIENT specific Litigation Referral Form/Letter: Yes No N/A

CLIENT specific Litigation Budget Form: Yes No N/A

Pay fees for Experts, photocopies, medical records as: Expense Legal

AUTHORITY LEVELS:

Reserve within SIR:

\$500,000.00 Other: \$

Adjuster must seek approval from (client contact) to post indemnity reserves above authority level.

Medical Treatment:

Medical Authorizations should only be sent to the claimant once liability is determined to be adverse to the CLIENT.

Medical Authorizations should go out as soon as it is determined that a BI claim is being pursued.

CLAIMS EXCEEDING SIR:

GH stops tracking activity once the SIR has been reached.

GH will continue to track all activity at and/or above the SIR.

GH will reserve to Full Value and track recoveries.