



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 THREE-YEAR PERIOD, IN AN AMOUNT NOT TO EXCEED \$299,800

RECOMMENDATION:

Adopt a resolution authorizing the City Manager to approve a three-year agreement with George Hills Company for the provision of third-party liability claims administration services in an amount not to exceed \$299,800.

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, 2021.

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

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

early stage. A claims audit performed in 2020 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 contract cost 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 a three-year term.

FISCAL IMPACT:

The total cost of the current one-year contract is \$95,950. For the proposed new contract, the total annual will increase by approximately 3% to \$97,800 for FY 2021-22 and will increase by approximately 3% per year to \$99,650 for FY 2022-23 and \$102,350 for FY 2023-24. The total cost over three years will be \$299,800. The first-year costs are accounted for in the proposed FY 2021-22 budget as part of the City's general liability internal service fund and funds for the ongoing costs for future years have been earmarked.

OPTIONS:

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

1. Adopt the resolution as recommended by staff approving a three-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 three-year agreement with George Hills Company for the provision of third-party liability claims administration services in an amount not to exceed \$299,800.

ATTACHMENTS:

1. Resolution
2. July 1, 2021- June 30, 2024 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 THREE-YEAR
PERIOD, IN AN AMOUNT NOT TO EXCEED \$299,800**

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 three years (July 1, 2021 to June 30, 2024), in an amount not to exceed \$299,800 and in the form included with the staff report for this resolution, subject to final approval as to form 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 21st day of June 2021, by the following vote to wit:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

LINDSAY LARA, City Clerk

CLAIMS ADJUSTING AND ADMINISTRATION
SERVICE CONTRACT BETWEEN
THE CITY OF SAN RAFAEL AND GEORGE HILLS COMPANY, INC.

This contract is made and entered into this 1st day of July, 2021 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 Shaffer, Vice President Claims Administration, shall oversee the daily operations.

The company's corporate office is located at P.O. Box 278, Rancho Cordova, California, 95741, telephone, (916) 859-4800.

The CLIENT is 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 and property claims adjusting and administration services for those claims assigned per the Scope of Services (Section II). 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 Scope of Services and Client Expressed Authority and Limitations form, attached hereto as Exhibit A. CLIENT shall determine the scope of services to be provided by GH by signing the the Scope of Services and Client Expressed Authority and Limitations for each Contract. The Scope of Services and Client Expressed Authority and Limitations form shall be the controlling document for the scope of claims adjusting services to be provided by GH for CLIENT and may be amended as needed during the Contractual period.

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 serve as the custodian of the client's data, for documents related to each of the claims subject to this agreement only, and as such shall electronically retain all related records through the life of this contract. Upon termination of this contract, GH shall dispose of or transfer the data at the client's direction. 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 claim 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 to GH 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 (i.e., lawyer, 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 ("PHI"). 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 PHI and/or claims data; or (ii) the violation of any state or federal statute, ordinance, or regulation by CLIENT or a third party in transmitting and/or disclosing the claims data.

VIII. **COMPENSATION, FEES AND EXPENSES**

The following compensation, fees and expenses, shall be paid in consideration for the services provided by GH as described in Section II – Scope of Services, which has been agreed to, including claims activity. This section shall remain enforced and services provided during the term of this contract, unless otherwise amended pursuant to section XIX of this Contract.

The amounts to be paid pursuant to this Contract are detailed in two distinct areas of services: first, under subsection A below, “General and Administrative Services,” which is outlined above in paragraph II, Scope of Work, and stated in greater detail in Attachment A, Sections A, E, F and H; and second, services specifically related to claims handling and administration, which is detailed in Attachment A, Sections B, C, D, G and I, for which an annual fixed fee is charged pursuant to subsection B, “Claim Administration Services,” as stated below. Both fees will be billed together monthly. Additionally, if CLIENT elects any optional services that are listed in subsection C below, such agreed upon additional amounts will also be billed together monthly.

1) **General and Administrative Services**

a. **Annual Administration Fee:**

FY21-22: \$3,800

FY22-23: \$3,900

FY23-24: \$4,100

b. **Mileage – Adjuster:** Mileage is paid at the IRS rate.

c. **MMSEA:** There is a \$250 annual reporting fee. which are paid directly to ExamWorks, for the performance of CMS reporting.

d. **Adjuster Travel Expenses:** GH will separately charge for any travel expenses in connection with attendance at mediations, settlement conferences, trials, etc. This will be subject to prior approval and that actual expenses will be submitted with receipts on a monthly basis.

e. **CXP Access Fee:** Access to the CMIS is Included in the annual administration fee, it includes the setup and management of up to five (5) user accounts through CXP.

f. **iMetrics Report Fee:** There will be no charge for our iMetrics business intelligence reports with executive in-person debriefs.

- g. **Custom Reports:** Additional charges for custom reporting shall be defined as, requiring a third-party programmer for three hours or more and is client specific.
- h. **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 are known, GH 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 for all services. Catastrophic Fees under this section only apply to CLIENTs which have selected a “Fixed Fee” or “Time and Expense with a cap” payment options.
- i. **3% Escalator:** GH pricing option for the contract is a 3% annual increase.
- j. **General File:** A general administrative file shall be established and maintained to track effort related to services necessary to fulfill our contractual obligations and not otherwise associated with a claim.
- k. **Paper Files:** GH is prepared to take the lead to arrange for all services relating to conversion storage, copying, scanning, shipping, and disposal. GH will provide you a quote for any services related to storage, retrieval, copying, scanning, shipping, and disposal of paper files.

2) Claims Administration Services

- a. **Time and Expense:** For informational purposes only, where a contract is based on Time and Expenses or for purposes of Catastrophic Fees under Section VIII(1)(h), the GH Claims team charges time to each claim on the basis of 1/10th time for based on the task performed. This time and further descriptions shall be on each monthly invoice.

The current hourly rates are:

Supervisor:	\$115/hour*
Adjuster:	\$95/hour*
Claims Processing:	\$75/hour*

**Subject to the 3% escalator*

- c. **Fixed Fee Per Year**

The CLIENT elects a fix fee as compensation for services performed by GH pursuant to this Contract. The following fees are calculated on an

annual basis but charged to the CLIENT monthly (prorated) for services rendered as described herein.

Fixed Fee	
Year One: FY21-22	\$93,750
Year Two: FY22-23	\$95,500
Year Three: FY23-24	\$98,000

3) First Party Subrogation Services And Fees

GH is a claim administration firm experienced in the handling of first party subrogation claims and is ready and capable of performing such services on behalf of CLIENT. GH does not handle subrogation claims with a value of less than \$1000. For any claim in excess of \$1,000, CLIENT authorizes GH to initiate its Subrogation Services as described more fully in Attachment A, Scope of Services and and Client Expressed Authority and Limitations as well as Attachment A-1, Subrogation Agreement. Our services are unique to a first party loss of the CLIENT caused by the intentional or negligent act of a third party. CLIENT will pay a Subrogation Fee in the amount of 30% for each and every recovery obtained. The minimum amount to be paid to GH will be \$250 per claim upon recovery.

4) Optional Services

a. Legal Services and Consultation (Optional):

GH employs in-house General Counsel which have vast experience in claims and litigation handling for all claims which are, or could be, subject to this agreement. GH offers the services of its attorneys as an additional resource for GH clients as follows:

- i. Litigation Management: \$ _N/A_ * p/hour
 These services include the oversight of all assigned GH claims adjusters and monitoring and handling of “watch list” claims (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.
- ii. 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.

- iii. 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 identifying coverage issues, providing input and assistance on 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.
- iv. 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.
- v. 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.
- vi. Professional and Financial Services: \$150/hour
As related to risk management and loss prevention in alignment with the scope of services.

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

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 be for three (3) years and shall commence on July 1, 2021 through and including June 30, 2024. Either party may terminate this contract for any reason upon issuing a ninety (90) day written notice to the other party pursuant to section XVIII of this Contract.

Termination for Convenience: CLIENT may at any time and for any reason terminate this Agreement upon ninety (90) days written notice to GH pursuant to section XVIII of this Contract. Notice shall be deemed served on the date of mailing. Upon receipt of such notice, GH shall discontinue services at the end of the 90-day period 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 through the date of termination, per Section VIII.

Termination Costs: If termination takes place in less than three (3) years from start of term, CLIENT may be subject to a fee, not to exceed \$2,500, intended to cover costs associated with outgoing data conversion, transition and contract close out.

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, and all GH employees, shall have the status of an independent contractor of the CLIENT 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 arising directly or indirectly from the negligent action, conduct, or failure to act by GH personnel ("Indemnity Event"), except that indemnity under this section does not apply with respect to any claim, demand, action, or cause of action arising out of the sole negligence or willful misconduct of the CLIENT. This right to indemnity shall not cover any claims in which there is a failure to give GH prompt and timely notice, within thirty (30) days of notice received by the CLIENT which implicates this provision, but only if and to the extent that such failure materially prejudices the defense of such claims. 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, of the policy which covers the Indemnity Event held by GH, in place at the time of the Indemnity Event.

CLIENT will defend, indemnify, and hold harmless GH, and/or employees of 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. In any cases subject to this indemnity provision, wherein GH, or any employee of GH, is named in a filed or verified complaint simply by virtue of the fact it is the CLAIMS ADMINISTRATION firm, or an employee thereof, on a given claim, the CLIENT will defend GH, and/or its employees, at no cost to GH or its employees.

XIV. INSURANCE

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

wording. GH will provide a waiver of subrogation endorsement on the workers compensation policy.

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 sent via certified U.S. Mail, postage prepaid, to the following address:

GH
George Hills Company
Attn: John Chaquica, CEO
P.O. Box 278
Rancho Cordova, CA 95741.

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

Client:
Robert F. Epstein
City Attorney
City of San Rafael
1400 Fifth Avenue
San Rafael, CA 94901

This subsection only, regarding Notices, may be amended unilaterally by either party by and through the mailing of new or amended contact information to the other party via certified U.S. Mail at any time.

XIX. AMENDMENT

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, excepting only, modifications to the contact information to which Notices shall be sent under subsection XVIII.


XX. 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.

XXI. 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.

6/14/21
Date

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

Date

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

ATTEST:

Lindsay Lara, City Clerk

APPROVED AS TO FORM:

Robert F. Epstein, City Attorney

ATTACHMENT A

SCOPE OF SERVICES AND CLIENT EXPRESSED AUTHORITY AND LIMITATIONS UNDER THE CONTRACT

This Attachment A is intended to provide the scope of services and specific service expectations in the Service Contract, that would not otherwise require revision during the contract period, and which may differ from or elaborate upon our Client Service Profile. Services to be provided by GH on behalf of CLIENTS may include all or some of the following,

I. SERVICES INCLUDED IN THE CONTRACT

A. General Administrative Services

Throughout each year GH performs numerous functions which support claims administration on behalf of the Client, but do not include any claims handling, and are performed by non-claims personnel. Additionally, in the first year of a new client there are several “on-boarding” services that are general and administrative in nature. Below is a list of such services which are included within the terms of this Contract:

- 1) Access to CMIS and training.
- 2) A monthly listing of open claims, showing expense categories, reserves, and total incurred.
- 3) Monthly claim summary reports.
- 4) Providing loss run data and required reports.
- 5) Providing annual reports to outside agencies.
- 6) Filing of regulatory reports (such as 1099, W-9, etc.).
- 7) Establish and maintain a trust fund to pay indemnity and expenses that may be due on claims. The amount to be maintained in the trust fund shall be determined by CLIENT.
- 8) If the trust fund is not set-up with the GH preferred bank—California Bank & Trust, there may be an additional set-up fee (other banks processes can be extraordinarily time consuming).
- 9) New bank account set up (signature cards, test checks, online access, set up bank in CXP).
- 10) Discussion and agreement on the Approval process.
- 11) Process checks weekly.
- 12) Submit positive pay if applicable/monitor positive pay (review daily emails from bank for exceptions).
- 13) Maintain a copy of all checks drawn by GH to pay claims and claims related expenses.
- 14) Submit monthly check registers of all transactions made for the period.
- 15) Monitor account balance, prepare replenishment requests as needed (customize request for each client’s need).
- 16) Monthly bank reconciliation (prepared and sent to CLIENT).
- 17) Special reports that requested to go with billing invoices (by member, claim type, etc.).
- 18) Payment of invoices that are pass-throughs (i.e., invoices for medical record copies, ExamWorks, etc.).
- 19) Certificates of insurance as required by the Contract.

B. 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, and upon Client's request, GH shall review and analyze for liability and/or damage issues and for possible additional follow-up investigation.
- 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.

C. Liability and 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 tort claim rejection instructions, including rejection and return of an untimely or insufficient claim.
- 4) Ensure timely tort 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 support 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 reviews, as needed, of CLIENT files and claims as well as statutory requirements to ensure compliance including excess insurance related requirements.
- 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 or PHI shared between agencies, which is subject to protection under HIPAA, GH shall implement all necessary measures in compliance with the Act and will execute a Business Associates Agreement (BAA).

D. Litigation 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) Work cooperatively with CLIENT in choosing outside counsel from approved panel, and assist defense counsel in on-going litigation defense efforts.
- 3) Obtain and maintain a Litigation Plan and Budget.
- 4) Review legal bills for compliance with Litigation Plan and Budget; Review, evaluate and adjust defense counsel invoices for legal services.
- 5) Cooperate with and assist defense counsel assigned to litigation of open claims and provide such investigative services as directed during pre-trial and trial stages.
- 6) Assist in responding to discovery or preparing discovery.
- 7) At the request of the CLIENT, attend mandatory settlement conferences on behalf of CLIENT.
- 8) Appear on behalf of CLIENT in small claims actions filed against CLIENT on open claims handled by GH.
- 9) Review and evaluate case evaluations, correspondence and status reports forwarded to GH by counsel. Regularly discuss, review, and direct investigation, discovery, and case strategy with counsel.
- 10) 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.

E. Reports and Procedures

- 1) Within thirty (30) days of assignment, or sooner if practicable, required, or requested, GH will provide CLIENT with a 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, GH will report as often as warranted by any important change in status but no longer than every ninety (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 GH in connection with this contract shall be CLIENT's property and constitute 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 GH. Additional copies of original reports, documents, and data requested by CLIENT will be at 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.

F. Data

- 1) Utilize GH's claims management system—CXP (ClaimsXpress).
- 2) Record all claim information including all financial data.
- 3) Provide CLIENT and broker Read only on-line access to the claims data system (up to five users), if desired by CLIENT.
- 4) Provide monthly standard loss run and check register.
- 5) Provide annual claims data report upon request. Written authorization and/or a Business Associate Agreement may be required for confidential information protected by HIPAA.
- 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.

G. Claim Review Meetings

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

H. 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.

I. Third Party Subrogation Services

- 1) GH personnel are well versed in the identification, handling, and pursuit of subrogation claims arising out of CLAIMS which are the subject of this Contract. Included within this contract, GH will perform the following functions:
- 2) Identify potential opportunities to recover from persons, businesses, and entities other than the CLIENT.
- 3) Prepare and file a claim with each identified entity.
- 4) As applicable, tender defense to or seek recovery from any identified entity.
- 5) With the assistance of counsel, prepare and file any necessary litigation required to effect the claim of recovery on behalf of the CLIENT
- 6) Manage litigation related to such claims made to other person, businesses or entities

J. First Party Subrogation Services

GH is a claim administration firm experienced in the handling of first party subrogation claims and is ready and capable of performing such services on behalf of CLIENT. GH does not handle subrogation claims with a value of less than \$1000. For any claim in excess of \$1,000, CLIENT may retain GH for Subrogation Services. 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, and may include:

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

II. CLIENT EXPRESSED AUTHORITY AND LIMITATIONS

The list immediately below contains numerous services provided in this Contract for which GH requests the CLIENT expressly establish authority and/or limitations, on the ability of GH to act on behalf of the CLIENT. The CLIENT will check the appropriate box establishing the authority of GH to act or the limitation as to that authority.

INVESTIGATION:

- George Hills will conduct all investigations
- CLIENT will conduct all investigations
- X 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.):

- X 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*). Check all that apply.

Protocols for Rejections

- X GH needs authorization
- GH does not need authorization
- X GH sends the Rejection
- CLIENT sends the Rejection
- X GH sends out Denial Letter simultaneously with Rejection outlining the reason

LITIGATION:

Check all that apply.

- X GH will handle litigated claims
 - X Full
 - As assigned
 - 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

X At CLIENT request only

Small Claims Actions filed against CLIENT

X GH always appears

At CLIENT request only

Legal Counsel

X 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 always sends Litigation Assignment packets to Legal Counsel

CLIENT specific Litigation Guidelines: Yes No

CLIENT specific Litigation Referral Form/Letter: Yes No

CLIENT specific Litigation Budget Form: Yes No

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

EXCESS REPORTING:

X GH will 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.

CLIENT will 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.

AUTHORITY LEVELS:

Reserve within SIR:

X \$0.00 Other: \$ (specify amount)

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

Medical Treatment:

X 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. The Excess JPA/Carrier will provide GH with activity documentation above the SIR.

GH will reserve to Full Value and track recoveries.

THIRD PARTY SUBROGATION SERVICES:

GH is authorized to initiate third party subrogation claims on behalf of CLIENT

X GH must obtain authorization to initiate third party subrogation claims on behalf of CLIENT.

FIRST PARTY SUBROGATION SERVICES:

CLIENT elects to incorporate the first party subrogation services of GH into the contract

CLIENT authorizes GH to initiate first party subrogation claims on behalf of CLIENT

CLIENT agrees to the additional compensation payable to GH for its first party subrogation services as follows:

GH shall be entitled to _____% of the gross recovery for each claim initiated by GH through its first party subrogation efforts.

CLIENT agrees to the terms and conditions stated in Attachment B, Subrogation Services.

6/14/21

Date

BY:



John E. Chaquica, CEO
GEORGE HILLS COMPANY INC.

BY:

Date

Jim Schutz, City Manager
CITY OF SAN RAFAEL

ATTACHMENT A-1

SUBROGATION AGREEMENT

This Subrogation Agreement is made and entered into this 1st day of July, 2021 by and between the _____, hereinafter referred to as "CLIENT", and GEORGE HILLS COMPANY, INC., hereinafter referred to as "GH".

- I. GH does not handle subrogation claims with a value of less than \$1000. For those claims in excess of \$1000, 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.
 - 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. CLIENT will pay a Subrogation Fee in the amount of 30% for 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 small claims court actions, 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.

III. 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.

6/14/21
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) GH uses CA Bank & Trust
- b) Clients Choice

Name

Address

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

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; Chris Shaffer, Vice President; Kimberly Santin, Finance Director

5. Accountability

- a) Positive Pay: Yes No

GH recommends positive pay to mitigate the potential for fraud.

- b) Check Registers: Yes No
Weekly Monthly

- c) Statement to be balanced by client, or
 Statement to be balanced by GH with copies to client

ATTACHMENT D 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 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, including travel related expenses.

ATTACHMENT E

BUSINESS ASSOCIATE AGREEMENT BETWEEN LIABILITY COOPERATIVE OF NEVADA AND GEORGE HILLS COMPANY, INC.

This Business Associate Agreement (“BAA”) is made and entered into this 1st day of July, 2021 by and between the CLIENT, hereinafter referred to as “CLIENT,” and GEORGE HILLS COMPANY, INC., hereinafter referred to as “GH.”

I. RECITALS

WHEREAS, on or about DATE, GH entered into a written contract with CLIENT to perform obligations and services related to the handling and administration of general liability claims filed against or with CLIENT.

WHEREAS, the obligations of the Contract require that CLIENT provide to GH date, documents, and information which may contained protected health information (“PHI”) and/or electronic PHI (“ePHI”) within the definition of the Health Information Portability and Accountability Act (“HIPAA”) related to the general liability claims, for the purpose of administering those claims.

NOW, THEREFORE, in consideration of the mutual promises of the parties and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the PARTIES hereto agree as follows:

II. DEFINITIONS

Catch-all definition:

The following terms used in this AGREEMENT shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

(a) Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean GH.

(b) Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean GH.

(c) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

III. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

Pursuant to this agreement GH agrees to:

- (a) Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;
- (b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;
- (c) Report to covered entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware;
- (d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;
- (e) Make available protected health information in a designated record set to the GH as necessary to satisfy covered entity's obligations under 45 CFR 164.524;
- (f) Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the covered entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy covered entity's obligations under 45 CFR 164.526;
- (g) Maintain and make available the information required to provide an accounting of disclosures to the GH as necessary to satisfy covered entity's obligations under 45 CFR 164.528;
- (h) To the extent the business associate is to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s); and
- (i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

IV. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- (a) Business associate may only use or disclose protected health information for the purposes described in the Contract between GH and CLIENT, specifically for the purpose of adjusting and administering the general liability claims filed against CLIENT.
- (b) Business associate may use or disclose protected health information as required by law.
- (c) Business associate agrees to make uses and disclosures and requests for protected health information consistent with covered entity's minimum necessary policies and procedures.

(d) Business associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by covered entity [if the Agreement permits the business associate to use or disclose protected health information for its own management and administration and legal responsibilities or for data aggregation services as set forth in optional provisions (e), (f), or (g) below, then add “, except for the specific uses and disclosures set forth below.”]

(e) Business associate may use protected health information for the proper management and administration of the business associate or to carry out the legal responsibilities of the business associate.

(f) Business associate may disclose protected health information for the proper management and administration of business associate or to carry out the legal and contractual responsibilities of the business associate, provided the disclosures are required by law, or business associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies business associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(g) Business associate may provide data containing PHI and or ePHI to third party entities for storage, security, and/or aggregation services relating to the claims administration services provided by GH.

V. PROVISIONS FOR COVERED ENTITY TO INFORM BUSINESS ASSOCIATE OF PRIVACY PRACTICES AND RESTRICTIONS

(a) Covered entity shall notify business associate of any limitation(s) in the notice of privacy practices of covered entity under 45 CFR 164.520, to the extent that such limitation may affect business associate’s use or disclosure of protected health information.

(b) Covered entity shall notify business associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her protected health information, to the extent that such changes may affect business associate’s use or disclosure of protected health information.

(c) Covered entity shall notify business associate of any restriction on the use or disclosure of protected health information that covered entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect business associate’s use or disclosure of protected health information.

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VI. PERMISSIBLE REQUESTS BY COVERED ENTITY

Covered entity shall not request business associate to use or disclose protected health information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by covered entity.

VII. TERM AND TERMINATION

(a) Term. The Term of this Agreement shall be effective as of DATE and shall terminate on DATE or on the date covered entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(b) Termination for Cause. Business associate authorizes termination of this Agreement by covered entity, if covered entity determines business associate has violated a material term of the Agreement and business associate has not cured the breach or ended the violation within the time specified by covered entity.

(c) Obligations of Business Associate Upon Termination.

Upon termination of this Agreement for any reason, business associate, with respect to protected health information received from covered entity, or created, maintained, or received by business associate on behalf of covered entity, shall:

Retain only that protected health information which is necessary for business associate to continue its proper management and administration or to carry out its legal and contractual responsibilities;

Return to covered entity, or destroy, the protected health information that the business associate maintains in any form;

Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as business associate retains the protected health information;

Not use or disclose the protected health information retained by business associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out above under "Permitted Uses and Disclosures By Business Associate" which applied prior to termination; and


Return to covered entity, or destroy, the protected health information retained by business associate when it is no longer needed by business associate for its proper management and administration or to carry out its legal and contractual responsibilities.

///

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(d) Survival. The obligations of business associate under this Section shall survive the termination of this Agreement.

6/14/21
Date

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

Date

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