

AMENDED AND RESTATED PROFESSIONAL SERVICES AGREEMENT

This Amended and Restated Professional Services Agreement (“Amended Agreement” or “Agreement”) is made and ratified to be effective retroactively as of July 1, 2021 (Effective Date), by and between Workers’ Compensation Administration, LLC, a California limited liability company (“Consultant”), and the City of Lompoc, a municipal corporation (“City”). Consultant and City are referred to herein individually as a “party” and collectively as the “parties.”

RECITALS

WHEREAS, City previously entered into that certain Services Agreement with Consultant with an effective date of July 1, 2021, (the “Original Agreement”) for a period of five years and an amount of \$581,844, under which Consultant agreed to act as the City’s designated Account Manager for the required reporting of claimants who are Medicare beneficiaries to Centers for Medicare and Medicaid Services, as required by Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, as amended, and as more fully described in Exhibit A attached to the Agreement (the “Services”); and

WHEREAS, the Term provision of the Original Agreement incorrectly stated that the term of the Agreement would commence on July 1, 2016 and continue until June 30, 2021, but should have stated that it would commence on July 1, 2021 and continue until June 30, 2026; and

WHEREAS, the Original Agreement was approved by the then-City Manager and did not include the required approval as to form by the City Attorney, attestation by the City Clerk, or approval by City Council, as required by the Lompoc Municipal Code; and

WHEREAS, Consultant provided the Services under the Original Agreement and received payment from the City in accordance with the fee schedule set forth in the Original Agreement; and

WHEREAS, City still requires Consultant’s services, and desires to amend and restate the Original Agreement to correctly reflect the term of the Agreement, extend the Agreement for one additional year, and ensure that it has all necessary approvals; and

WHEREAS, the City Council of the City of Lompoc agrees that it is in the City’s best interests to amend and restate the Original Agreement and hereby expressly ratifies this Amended Agreement.

WHEREAS, Consultant and City desire to enter into this Agreement to memorialize their agreements regarding the Consultant Services to be provided to City.

NOW, THEREFORE, in consideration of the mutual representations, warranties and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Consultant and City agree as follows:

ARTICLE 1 ENGAGEMENT

1.1. Engagement: City hereby engages Consultant to provide the Consultant Services described in Exhibit A, and Consultant hereby accepts such engagement, all on the terms and

conditions set forth herein. Consultant will determine the method, detail and means of performing the services detailed below.

ARTICLE 2 REPRESENTATIONS AND WARRANTIES

2.1. Representations and Warranties of Consultant: Consultant hereby represents and warrants to City, at all times during the term of this Agreement, that Consultant is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California.

2.2. Representations and Warranties of City: City hereby represents and warrants to Consultant, at all times during the term of this Agreement, that City is organized and established pursuant to the laws and ordinances of the State of California.

ARTICLE 3 CONSULTANT STATUS AND QUALIFICATIONS

3.1. Independent Consultant: Consultant's services are being provided to the City as that of an independent contractor. Consultant represents and warrants that the personnel used to provide services to the City pursuant to this Agreement are classified by Consultant as employees. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a federal or state agency, a court of competent jurisdiction, or the California Public Employees' Retirement System ("CalPERS") to be classified as other than an independent contractor for the City, then Consultant shall indemnify, defend, and hold harmless the City for the payment of any and all assessed fines, penalties, judgments, employee and/or employer contributions, and any other damages and costs assessed to the City as a consequence of, or in any way attributable to, the assertion that Consultant or any staff Consultant used to provide services under this Agreement are employees of the City. Consultant represents and warrants that the personnel used to provide services to the City pursuant to this Agreement are classified by Consultant as employees and that Consultant issues or will issue a W-2 to such personnel.

3.2. Payment of Income Taxes: Consultant is responsible for paying when due all income taxes, including estimated taxes, incurred as a result of the compensation paid by City to Consultant for services satisfactorily rendered under this Agreement. On request, Consultant will provide City with proof of timely payment. Consultant agrees to indemnify, defend and hold harmless City for any and all claims, costs, losses, fees, penalties, interest, or damages, including court costs and reasonable attorney's fees, resulting from Consultant's failure to comply with this provision.

3.3. Use of Employees or Subcontractors: Consultant may, at Consultant's own expense, use any employees or subcontractors as Consultant deems necessary to satisfactorily perform the services required of Consultant by this Agreement. City may not control, direct, or supervise Consultant's employees or subcontractors in the performance of those services.

3.4. Qualifications: Consultant represents it is qualified and has the skills necessary to perform the services under this Agreement in a competent and professional manner, without the advice or direction of City.

3.5. No Benefit Contributions: City shall have no obligation under this Agreement to compensate or pay applicable taxes for or provide employee benefits of any kind to any person employed or retained by Consultant.

ARTICLE 4 GENERAL RESPONSIBILITIES OF CONSULTANT

4.1. Minimum Amount of Service: Consultant agrees to devote as much time and attention to the performance of the Consultant Services under this Agreement as may be, in Consultant's sole discretion, required to accomplish the tasks described herein to accomplish the results for which the Consultant is responsible under this Agreement.

4.2. Consultant Scope of Services: Consultant agrees to provide the Consultant Services described in Exhibit A, attached hereto and incorporated herein by reference, including those additional services requested by City and accepted in writing by Consultant during the term of this Agreement.

4.3. Nondiscrimination: There shall be no discrimination against any person employed pursuant to this Agreement in any manner forbidden by law.

4.4. Non-Exclusive Relationship: Consultant may represent, perform services for, and contract with as many additional clients, persons, or companies as Consultant, in Consultant's sole discretion, sees fit.

4.5. Time and Place of Performing Work: Consultant may perform the services under this Agreement at any suitable time and location Consultant chooses.

4.6. Materials and Equipment: Consultant will supply all materials and equipment required to perform the services under this Agreement.

4.7. Professional Skill: It is further understood and agreed by and between the parties hereto that Consultant is skilled in the professional calling necessary to perform the work agreed to be done by it under this Agreement, and City, not being skilled in such matters, relies upon Consultant to perform the work in a skillful manner in accordance with generally accepted professional practices, and Consultant agrees to thus perform its work, and the acceptance of its work by City shall not operate as a release of Consultant from said Agreement.

4.8. Insurance: Consultant shall, at Consultant's sole cost and expense and throughout the term of this Agreement and any extensions thereof, carry adequate insurance including a commercial general liability policy and an Errors and Omissions policy, both in the amount of not less than \$1,000,000. Consultant shall also, at Consultant's sole cost and expense and throughout the term of this Agreement and any extensions thereof, carry automobile liability insurance with liability limits of not less than \$500,000 for the injury or death of a person or persons and property damage in any accident. City, its elective officials, officers and employees shall be named as an additional insured on the commercial general liability and automobile liability policies. Each type of insurance mentioned herein shall be written by a financially responsible company or companies authorized to do business in the State of California. Consultant shall provide City with certificates of insurance on forms acceptable to the City of all policies written and each shall contain an endorsement that they are not subject to cancellation without 30 days written notice being given to City by the insurance company or companies writing such insurance.

4.9. Workers' Compensation: Consultant agrees to provide workers' compensation insurance for Consultant and Consultant's employees and agents and agrees to defend, hold harmless and indemnify City for any and all claims arising out of any injury, disability, or death of any of Consultant's employees or agents.

4.10. Assignment: Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Consultant without the prior written consent of City, which consent shall not be unreasonably withheld.

4.11. Business Tax Receipt: Consultant shall maintain a valid Business Tax Receipt with the City of Lompoc during the term of the Agreement.

4.12. Ownership of Documents: All reports and documents prepared by Consultant under this Agreement are the property of City and shall be turned over to the City upon completion of this Agreement. Consultant shall not release any data, information, and/or materials resulting from the project without prior written consent from City.

4.13. Personnel: City shall have final approval of Consultant staff assigned to work under this Agreement. Consultant shall identify in writing the staff assigned to work under this Agreement and shall give City no less than ten days' written notice prior to any change in the staff assigned to work under this Agreement.

ARTICLE 5 COMPENSATION OF CONSULTANT

5.1. Compensation for Consultant Services: Consultant shall provide all Consultant Services in accordance with the terms, and at the compensation amounts and schedule of remittance, set forth in Exhibit B, which is incorporated by this reference as though set forth in full; provided, that the parties understand and agree the fee schedule is not an estimate but is the complete costs for which Consultant shall provide the Consultant Services.

5.2. Payment will be in accordance with City's standard accounts payable process on a quarterly basis in accordance with the payment schedule set forth in Exhibit B. Consultant agrees to submit an invoice for each quarterly payment no less than forty-five (45) days prior to the date such payment is due. Payment to be made by accounts payable check processed and available as part of the weekly disbursement cycle, available each Friday for mailed delivery. Electronic payments are also available upon vendor registration at:

<https://selfservice2.ci.lompoc.ca.us/vss/Vendors/default.aspx>.

5.3. Consultant shall submit invoices to the Accounts Payable Division identifying the project by City Project Number (if applicable) on each invoice, as follows:

Electronically (preferred) to:

ap@ci.lompoc.ca.us

City of Lompoc
Attn: Accounts Payable
100 Civic Center Plaza
Lompoc CA 93436

5.4. The provisions of Article 9 of this Agreement will govern any dispute associated with compensation.

5.5. If City fails to pay any portion of the fees set forth in Exhibit B, then Consultant may immediately cease providing Consultant Services.

ARTICLE 6 OBLIGATIONS OF CITY

6.1. Cooperation of City: City agrees to comply with all reasonable requests of Consultant and provide access to all documents reasonably necessary to the performance of Consultant's duties under this Agreement.

6.2. Conflict of Interest: No officer, employee, director or agent of City shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested; nor shall any such person have any interest, direct or indirect, in this Agreement or the provisions thereof.

6.3. Assignment: Neither this Agreement nor any duties or obligations under this Agreement may be assigned by City without the prior written consent of Consultant, which consent shall not be unreasonably withheld.

ARTICLE 7 TERMINATION OF AGREEMENT

7.1. Termination: Unless earlier terminated as set forth below, this Agreement shall be effective as of the date first set out above and shall remain in full force and effect after execution of this Agreement by City and Consultant until June 30, 2027. Consultant shall satisfactorily complete Consultant Services pursuant to this Agreement within that term, unless the term is modified as permitted for modifications of this Agreement.

7.2. Termination on Notice: Notwithstanding any other provision of this Agreement, City may terminate this Agreement at any time by giving ten-days' written notice to Consultant.

7.3. Termination on Occurrence of Stated Events: This Agreement will terminate automatically on the occurrence of any of the following events:

- (a) Bankruptcy or insolvency of either party.
- (b) The assignment of this Agreement by either party without the consent of the other party; the parties agree that neither party will unreasonably withhold consent to such an assignment.

7.4. Termination for Default: If either party defaults in the performance of this Agreement or materially breaches any of its provisions, then the non-breaching party may terminate this Agreement by giving written notification to the breaching party. Termination will take effect immediately on receipt of notice by the breaching party or five days after mailing of notice, whichever occurs first. For the purposes of this paragraph, material breach of this Agreement includes, but is not limited to, the following:

- (a) Consultant's failure to satisfactorily complete the Consultant Services;
- (b) City's material breach of any representation, warranty or agreement contained in this Agreement;
- (c) Consultant's material breach of any representation, warranty or agreement contained in this Agreement.

7.5. Repayment of Quarterly Payment: Upon termination of this Agreement prior to the end of any calendar quarter pursuant to this Article 7, Consultant shall reimburse City a pro rata share of the applicable quarterly payment, based on the following: the applicable quarterly payment divided by 91.25 (i.e., 365/4), times the number of days remaining in that applicable quarter after the date of termination.

ARTICLE 8 INDEMNIFICATION

8.1. To the extent permitted by applicable law, Consultant will indemnify, defend and hold harmless City and each of its officers, employees and agents for any workers' compensation benefits that arise as a result of errors, omissions, torts, intentional acts or other negligence on the part of Consultant or Consultant's employees, unless the claim is based upon action or actions of Consultant or its employees that were undertaken at the request or authorization of City. This paragraph does not apply to situations where an applicant attorney alleges his client is entitled to additional workers' compensation benefits or penalties at the Workers' Compensation Appeals Board.

8.2 City agrees, in the event Consultant and its employees, acting at the specific direction or authorization of City becomes liable to any third party, City will indemnify and hold harmless Consultant and its employees. If Consultant or any of its employees are named as defendants in any action where the plaintiff's cause of action involves a claim hereunder, and where no liability is found as a result of any errors, omissions, torts, intentional acts or other negligence on the part of Consultant and its employees, City will indemnify and hold harmless Consultant and its employees.

8.3 Notwithstanding Sections 8.1 and 8.2, Consultant shall have no liability to City for any errors, omissions, torts, criminal acts, intentional acts or other negligence by any vendor who may provide services related to the adjusting of City workers' compensation claims. Vendors include, but are not limited to, medical doctors, chiropractors, physical therapists, medical facilities, any other medical provider, medical bill review, medical utilization review, Medical Provider Network, defense attorneys, investigators, copy or subpoena services, or vocation rehabilitation counselors, regardless of whether the vendor is considered an independent contractor or agent, of either party to this Agreement.

ARTICLE 9 GENERAL PROVISIONS

9.1. Governing Law: This Agreement shall be governed in all respects by the laws of the State of California, without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction that would cause the application of the laws of any jurisdiction other than the State of California). Venue for any matter related to this Agreement shall be the Superior Court of the County of Santa Barbara.

9.2. Attorney Fees: In the event of any litigation to enforce, or construe the terms of this Agreement, the prevailing party herein shall be entitled to recover reasonable attorney's fees and costs.

9.3. Section Headings: The section headings appearing herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning, or intent of the provisions of this Agreement.

9.4. Interpretation: The terms and conditions of this Agreement shall be construed pursuant to their plain and ordinary meaning and shall not be interpreted against the maker by virtue of that party having drafted this Agreement.

9.5. Inconsistency: In the event any provision of this Agreement and the documents incorporated herein by reference are deemed to be in conflict, the provision in this Agreement shall prevail.

9.6. Entire Agreement: This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understanding of the Parties. No amendment or modification of the amendment shall be valid unless evidenced in writing and executed by the parties thereto.

9.7. Successors and Assigns: Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto. No party may assign any of its rights or obligations hereunder without the express written consent of the other party hereto, which consent may not be unreasonably withheld; provided, however, any party may assign any and all of its rights and interests hereunder to one or more of its affiliates and designate one or more of its affiliates to perform its obligations hereunder; provided, however, that such party remains liable for full and total performance of its obligations hereunder.

9.8. Notices: Any notices authorized to be given hereunder shall be in writing and deemed given, if delivered personally or by overnight courier, on the date of delivery, if a Business Day, or if not a business day, on the first Business Day following delivery, or if mailed, three days after mailing by registered or certified mail, return receipt requested, and in each case, addressed, as follows:

If to the Consultant to:

Workers' Compensation Administrators, LLC
265 E. Donovan Road
Santa Maria, CA 93454

If to City to:

City of Lompoc
Attn: City Manager
100 Civic Center Plaza
Lompoc CA 93436

And a copy to:

Aleshire & Wynder, LLP
Attn: Jeff M. Malawy
3701 Wilshire Blvd., Suite 725
Los Angeles, CA 90010

Or, if delivered by telecopy, on a Business Day before 4:00 p.m. local time of addressee, on transmission confirmed electronically, or if at any other time or day on the first Business Day succeeding transmission confirmed electronically, to the facsimile numbers provided above, or to such other address or telecopy number as any party shall specify to the other, pursuant to the foregoing notice provisions. When used in this Agreement, the term "Business Day" shall mean a day other than a Saturday, Sunday, Federal Holiday, or other day City's city hall is closed to the public.

9.9. Incorporation of Recitals: The recitals set forth above are hereby incorporated into this Agreement to the same extent as if fully restated herein.

9.10. Counterparts: This Agreement may be signed in several counterparts.

9.11. Expenses: Each party shall bear its own expenses incurred with respect to the preparation of this Agreement and the consummation of the transactions contemplated hereby.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

CITY OF LOMPOC, a municipal corporation

WORKERS COMPENSATION ADMINISTRATION, LLC:

By: _____
Dean Albro, City Manager

By: _____

Its _____

Attest:

By: _____
Stacey Haddon, City Clerk

Approved as to form:

By: _____
Jeff Malawy, City Attorney

EXHIBIT A

CONSULTANT SERVICES

In the event of any conflicts between the provisions in Exhibit A and the other terms of the Agreement, the other terms of this Agreement shall govern.

Consultant shall administer all compensation to City's injured workers as defined in Sections 3208 and 3208.1 of the California Labor Code. Compensation shall be defined as compensation under Division 4 and includes every benefit or payment conferred by Division 4 upon an injured employee, including vocational rehabilitation, or in the event of death, upon his or her dependents, without regard to negligence. All benefits provided pursuant to the above and contained in this section, shall be paid for by City, unless specifically stated otherwise.

All benefits will be provided to employees as required under the Labor Code and existing case law. When the statutory or common law is unclear in terms of how to proceed, Consultant shall proceed in the most expeditious manner, giving consideration to reasonable interpretations of the law, how the Workers' Compensation Appeals Board would handle the matter, avoidance of penalties, avoidance of unnecessary litigation, the cost of litigation and fostering good will of the injured worker toward the City.

Specifically, Consultant will perform the following duties:

1. Determine on behalf of City for each reported employee injury, those benefits, if any, that should be paid or rendered under the California Workers' Compensation Laws. The benefits shall include temporary disability, permanent disability, medical treatment, supplemental job displacement benefit, life pension and death benefits, when applicable.
2. To establish and maintain a claim file on each reported claim.
3. To make an estimate of the total costs (reserves) of all reasonable and foreseeable benefits and related expenses on each case.
4. To prepare and file on behalf of City, legally required forms with the Administrative Director of the Division of Workers' Compensation.
5. To pay on behalf of City from a bank Claim Payment Account funded by City, those sums that must be paid under the California Workers' Compensation Laws for each reported claim.
6. To pay on behalf of City from a bank Claim Payment Account funded by City, all allocated expenses incurred on each claim.
7. To have any or all medical bills reviewed by a professional bill review company to determine reasonableness and compliance with the Official California Fee Schedule.
8. In the case of serious injuries or where otherwise warranted, Consultant may have a medical coordinator assigned to monitor the medical treatment of the injured worker.
9. To hire, assign or otherwise request when necessary, an attorney, an investigator, a rehabilitation counselor, medical utilization review, a doctor for medical evaluations, a

photocopying company, an expert witness or other vendor (service provider) to help in the determination of benefits that may be owed to the injured worker. These vendors are not considered employees, agents, or independent contractors of Consultant.

10. Consultant will create a loss run series for City, as a whole and for each individual member, along with a loss run series for the Safety Officer. The loss run series will be provided on a monthly basis, within 10 days after the first of each month. Additional loss runs will be provided upon request by City at no additional cost.
11. All forms, pamphlets, and posting notices required by the Administrative Director of the Division of Workers' Compensation shall be provided by Consultant to City, at no additional expense.
12. All other responsibilities specifically related to the administration of workers' compensation benefits including acting on behalf of City to protect its interest.
13. The workers' compensation claim files are the property of City. Consultant shall make the claim files available to City at its request for an audit at any other time.

EXHIBIT B

COMPENSATION FOR CONSULTANT SERVICES

In the event of any conflicts between the provisions in Exhibit B and the other terms of the Agreement, the other terms of this Agreement shall govern.

In consideration for providing Consultant services, City agrees to pay Consultant a consulting fee in amounts and on the dates set forth below:

Contract Period and Total Fee	Payment Date	Payment Amount
Year One \$110,696	On or before July 10, 2021	\$27,674
	On or before October 10, 2021	\$27,674
	On or before January 10, 2022	\$27,674
	On or before April 10, 2022	\$27,674
Year Two \$113,460	On or before July 10, 2022	\$28,365
	On or before October 10, 2022	\$28,365
	On or before January 10, 2023	\$28,365
	On or before April 10, 2023	\$28,365
Year Three \$116,300	On or before July 10, 2023	\$29,075
	On or before October 10, 2023	\$29,075
	On or before January 10, 2024	\$29,075
	On or before April 10, 2024	\$29,075

Contract Period and Total Fee	Payment Date	Payment Amount
Year Four \$119,205	On or before July 10, 2024	\$29,801
	On or before October 10, 2024	\$29,801
	On or before January 10, 2025	\$29,801
	On or before April 10, 2025	\$29,801
Year Five \$122,184	On or before July 10, 2025	\$30,546
	On or before October 10, 2025	\$30,546
	On or before January 10, 2026	\$30,546
	On or before April 10, 2026	\$30,546
Year Six \$126,460	On or before July 10, 2026	\$31,615
	On or before October 10, 2026	\$31,615
	On or before January 10, 2027	\$31,615
	On or before April 10, 2027	\$31,615

In addition to Consulting Fee, City shall pay Consultant a fee of \$1,500 for each new claim over 100 claims in any fiscal year (7/1 – 6/30).