



## SERVICE CONTRACT FOR WORKERS' COMPENSATION CLAIMS HANDLING

THIS SERVICE CONTRACT FOR WORKERS' COMPENSATION CLAIMS HANDLING is made and entered into this 11th day of January 2010, but is effective for all purposes as of the 1st day of February 2010, by and between the CITY OF MIAMI BEACH (referred to as the "Client"), and JOHNS EASTERN COMPANY, INC. (referred to as the "Service Agent").

WITNESSETH:

WHEREAS, the Client has undertaken to self-insure its Workers' Compensation liability in accordance with the Workers' Compensation Law and other applicable statutes and regulations; and

WHEREAS, the Service Agent is engaged in the supervision and administration of programs for self-insured employers;

WHEREAS, the Client desires to engage the Service Agent for, and the Service Agent desires to assist the Client in workers' compensation claims handling;

NOW, THEREFORE, for and in consideration of the premises and of the mutual obligations, performance of services, and payment of compensation set forth herein, the parties agree as follows:

1. Engagement. The Client hereby engages the Service Agent to supervise and administer the Self-Insured Workers' Compensation Program of the Client in accordance with the Workers' Compensation Law as adopted and amended by the State of Florida (the "Law") and the applicable rules and regulations as promulgated by the applicable agencies of the State of Florida relating to the Law (the "Rules"), all in accordance with the Service Agent's proposal dated September 3, 2009 a copy of which is attached hereto and incorporated herein by this reference (the "Proposal").
2. Term. Subject to termination pursuant to Paragraph 9, the term of this Agreement shall begin as of February 1, 2010 and shall terminate on January 31, 2015; provided.
3. Fund for Payment of Claims. The Client has the sole obligation and responsibility for funding the payment of claims made by its employees under the Law and Rules. The Service Agent assumes no duty to fund any such claims at any time and shall have no obligation to advance funds for any such payment. The Client agrees to maintain all necessary funds for payment of claims in accordance with the Law and Rules and to inform the Service Agent of all relevant details with

respect to any such accounts in order for the Service Agent to perform its duties under this Agreement. The Client shall add to or increase the amount in any such accounts as needed, and, in any event, within five (5) business days from the Service Agent's notice to the Client to such effect.

4. **Allocated Claims Expenses.** Charges for services below are billed at negotiated rates for vendors selected by CLIENT/SERVICE AGENT unless otherwise outlined below. "Allocated Claims Expenses" shall be defined as expenses arising in connection with the settlement of claims, which shall be defined as expenses directly allocated to a particular claim to be discharged from the accounts funded by the CLIENT specified in Paragraph 3, including, but not limited to:
  - a. Attorneys' and legal assistants' fees for claim and any lawsuits, before and at trial, on appeal, or otherwise;
  - b. Court and other litigation and settlement expenses, including, without limitation:
    - (i) Medical examinations to determine extent of liability;
    - (ii) Expert medical and other testimony;
    - (iii) Laboratory, X-ray and other diagnostic tests;
    - (iv) Autopsy, surgical reviews, and other pathology services;
    - (v) Physician and related fees and expenses in reading, interpreting, or performing any of the foregoing tests or services;
    - (vi) Stenographer, process server, and other related trial preparation, trial, settlement, and court costs;
    - (vii) Witnesses fees and expenses before and at trial, deposition, settlement discussions, or otherwise; and
  - c. Fees and expenses for surveillance, private investigators, or otherwise,
  - d. Fees for the indexing of injured employees,
  - e. Fees for any work done outside the office, including, but not limited to, field investigations necessary to determine compensability, liability, Special Disability Trust Fund or subrogation recoverability, claimant control, attendance at mediations, hearings and depositions, attendance at management meetings, attendance at medical consultations or hearings, appraisals, case management, recorded statements,

- f. Telephonic medical management will be \$195.00 per lost time and medical only exposure whose dates of loss fall between February 1, 2010 and January 31, 2013. This fee applies only to cases handled by the Service Agent.
  - g. Fees for over-night or special mail service for various documents,
  - h. Fees for examining and reducing hospital and medical bills as appropriate are \$5.95 per bill and 30% of savings over and above Fee Schedule savings.
  - i. Photocopying and/or CD-ROM copies, review of relevant documentation.
  - j. Pre-Certification of Hospital Admissions, On-Site Case Management, Peer Review, Medical Care Audits, and Hospital Bill Audits.
  - k. Medicare Set-Aside (MSA) services to include; recommendation for MSA submission, MSA cost projection, MSA submission, liability MSA services, comprehensive drug utilization review, lien search, conditional lien dispute, projection update.
5. Compensation for the Service Agent. For performing its services under this Agreement, the Service Agent shall be entitled to the following compensation:

- a. Fees for claims handling for the Client's exposures whose dates of loss fall between February 1, 2010 and January 31, 2011 will be a minimum and deposit of \$200,000.00. The Service Agent will bill this minimum and deposit quarterly, with the first payment due upon program inception.

The annual minimum and deposit covers handling 450 workers' compensation exposures. If the number of exposures exceeds 450, the Service Agent will increase the fees proportionately. This fee covers all claims management/administration and data processing services outlined in the original proposal. All years are subject to audit.

- b. Fees for claims handling for the Client's exposures whose dates of loss fall between February 1, 2011 and January 31, 2012 will be a minimum and deposit of \$200,000.00. The Service Agent will bill this minimum and deposit quarterly, with the first payment due upon program inception.

The annual minimum and deposit covers handling 450 workers' compensation exposures. If the number of exposures exceeds 450, the Service Agent will increase the fees proportionately. This fee covers all claims management/administration and data processing services outlined in the original proposal. All years are subject to audit.

- c. Fees for claims handling for the Client's exposures whose dates of loss fall between February 1, 2012 and January 31, 2013 will be a minimum and deposit of \$200,000.00. The Service Agent will bill this minimum and deposit quarterly, with the first payment due upon program inception.

The annual minimum and deposit covers handling 450 workers' compensation exposures. If the number of exposures exceeds 450, the Service Agent will increase the fees proportionately. This fee covers all claims management/administration and data processing services outlined in the original proposal. All years are subject to audit.

- d. Fees for years 2013/14, and 2014/15 will not exceed 7.5% over the previous year's fees.
  - e. Allocated expenses are costs associated with investigation and/or adjustment of a claim. The Service Agent will charge the allocated expense to the claim file. Fees for any field investigation will be \$95.00 per hour, \$0.55 a mile, and 1.00 per color photograph, and administrative expenses. The Service Agent will bill at these rates all activities involving handling, controlling or settling an employer's liability on a claim.
  - f. Loss control services are available through the Service Agent's consultant at a rate of \$95.00 per hour. The Service Agent can customize Safety/Loss Control services to meet the Client's program and risk needs. This service is offered on an as needed basis.
6. Excess Reporting Obligation - Unless otherwise specified in this addendum, Service Agent agrees that reporting claims to excess insurance carrier is the Service Agent's responsibility. It is the responsibility of the Client to provide accurate coverage information regarding any insurance policies insuring claims covered by this contract. The information for all claim years that the Service Agent is handling will be made available to the Service Agent within 90 days of contract inception. New insurance information on renewal years will be made within 90 days of renewal date. Excess information will include name and claims reporting address and phone number of all carriers, policy number, effective dates, limits of liability, deductibles, specific retentions and loss funds. Actual policies will be provided. This information is required for each claim year that the Service Agent is handling for the Client. If this information is not made available as outlined in this Paragraph, Service Agent will not be responsible for any penalties, interest, or reductions in excess recoveries because of late reporting.
7. Continuing Handling of Claims After Termination of Contract or Legally Imposed Mandates. Upon termination of this Agreement as set forth in paragraph 8, the Service Agent agrees to continue handling all claims that have been made and reported to it prior to such date of termination for thirty (30) days unless the parties have agreed otherwise in writing.

Upon repeal of any service mandated by the workers' compensation law and/or other applicable statutes and/or regulations, the Service Agent agrees to continue handling all claims under the repealed service that have been reported to it prior to the date of such repeal for thirty (30) days unless the parties have agreed otherwise in writing.

Upon exiting, client data will be provided to the new TPA either by a series of attachments to one or more email messages containing zip files which can be password-protected or via CD ROMS. The claim files may exist as paper files and will be shipped as such. If the claim files are stored as images in a document retrieval system, they will be provided via CD ROM or the most current means of providing data. The cost for this will be no greater than \$3,500.00. The Client will be billed for any additional programming to help in data transfer.

8. Disputes Subject to Arbitration. Any dispute or claim arising out of or relating to this Agreement or any breach thereof shall be resolved by submission of such dispute or claim to an arbitration panel composed as follows: The Client and the Service Agent shall each select one member of the panel and the two selected members shall select a third member. The parties agree to follow the rules of the American Arbitration Association.
9. Termination. This Agreement may be terminated by either the Client or the Service Agent by giving prior written notice of ninety (90) days. In the event of such termination, compensation paid or payable to Service Agent under Paragraph 5 shall be prorated as appropriate. Notwithstanding anything in this Paragraph 8 to the contrary, the insolvency or filing for relief from creditors of any party pursuant to the United States Bankruptcy Code or the material breach of a material provision of this Agreement by any party shall permit the other party to cancel this Agreement immediately upon written notice.
10. Covenants of the Service Agent and the Client. Each of the Service Agent and the Client agrees to use its normal and ordinary professional care and diligence in the performance of its duties under this Agreement and will use its best efforts to comply at all times with the Law and the Rules.
11. Indemnification. Service Agent agrees to indemnify and hold harmless the Client and its officers, employees, and agents, from and against any and all actions, claims, liabilities, losses and expenses, including but not limited to, attorneys' fees, for personal, economic or bodily injury, wrongful death, loss of or damage to property, at law or in equity, which may arise or be alleged to have arisen from the negligent acts, errors, omissions or other wrongful conduct of the Service Agent, its employees, agents, sub-contractors, or any other person or entity acting under Service Agent's control, including without limitation any and all temporary personnel assigned to the Client pursuant to this Agreement, in connection with the Service Agent's performance of the Services pursuant to this Agreement; and to that extent, the Service agent shall pay all such claims and losses and shall pay all



state or jurisdiction other than Florida would otherwise apply).

- (ii) The headings of the various Paragraphs in this Agreement are inserted for the convenience of the parties and shall not affect the meaning, construction, or interpretation of this Agreement.
  - (iii) Any provision of this Agreement which is determined by a court of competent jurisdiction to be prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction. In any such case, such determination shall not affect any other provision of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect. If any provision or term of this Agreement is susceptible to two or more constructions or interpretations, one or more of which would render the provision or term void or unenforceable, the parties agree that a construction or interpretation which renders the term or provision valid shall be favored.
- d. This Agreement constitutes the entire Agreement, and supersedes all prior agreements and understandings, oral and written among the parties to this Agreement with respect to the subject matter hereof.
- e. (i) If, within ten (10) days after demand to comply with the obligations of one of the parties to this Agreement served in writing on the other, compliance or reasonable assurance of compliance is not forthcoming, and the other party takes steps to enforce rights under this Agreement pursuant to Paragraph 8 or otherwise, the prevailing party in any action shall be entitled to recover all reasonable costs and expenses (including reasonable attorneys' and legal assistants' fees before and at trial, on appeal, or otherwise.)
- (ii) If any monies shall be due either of the parties to this Agreement hereunder and shall not be paid within forty-five (45) days from the due date of such payment, interest shall accrue on such unpaid amount at the rate of 1% per month in accordance with the Florida Prompt Payment Act - F.S.218.70-79.
- ~~f. This Agreement shall be binding upon and inure to the benefit of the successors in interest and assigns of the parties.~~
- g. The parties to this Agreement will execute and deliver, or cause to be executed and delivered, such additional or further documents, agreements,

or instruments and shall cooperate with one another in all respects for the purpose of carrying out the transactions contemplated by this Agreement.

- h. This Agreement may be executed in any number of counterparts, each of which shall be considered an original, but all of which together shall constitute one and the same instrument and shall become effective when each of the parties has executed at least one of the counterparts even if all the parties have not executed the same counterpart.

IN WITNESS WHEREOF, the parties have executed this Agreement effective for all purposes as of February 1, 2010.

**CITY OF MIAMI BEACH**

*Krist Pachter*  
City Clerk

*Matti F. Bower*  
Matti Herrera Bower  
Mayor

WITNESSES:

*Franklin*  
*A. Roman*

**JOHNS EASTERN COMPANY, INC.**

*Beverly Adkins*  
Beverly Adkins, AIM, AIC  
Executive Vice President



**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

*[Signature]* 2-11-10  
City Attorney Date