

AGREEMENT  
BETWEEN  
THE CITY OF DELRAY BEACH  
AND  
PREFERRED GOVERNMENTAL CLAIMS SOLUTIONS (PGCS)  
FOR  
PROPERTY & CASUALTY THIRD- PARTY CLAIMS ADMINISTRATOR

This is an Agreement ("Agreement"), made and entered into by and between: Delray Beach, a municipal corporation of the State of Florida, hereinafter referred to as "City,"

and

Preferred Governmental Claims Solutions, a Florida corporation, hereinafter referred to as "Second Party," (collectively referred to as the "Parties").

WITNESSETH:

In consideration of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the Parties agree as follows:

ARTICLE 1  
DEFINITIONS AND IDENTIFICATIONS

The following definitions apply unless the context in which the word or phrase is used requires a different definition:

- 1.1 **Agreement** - This Agreement includes Articles 1 through 9, the exhibits and documents that are expressly incorporated herein by reference.
- 1.2 **Board** - The City Commission of Delray Beach, Florida.
- 1.3 **Contract Administrator** - The Delray Beach City Manager or the Director of the Delray Beach Finance Division. The primary responsibilities of the Contract Administrator are to coordinate and communicate with Second Party and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the

administration of this Agreement, as contrasted with matters of policy, all Parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.

- 1.4 **City Manager** - The administrative head of City appointed by the Board.
- 1.5 **City Attorney** - The chief legal counsel for City appointed by the Board.
- 1.6 **Project** - The Project consists of the services described in Article 2.

## ARTICLE 2 SCOPE OF SERVICES

- 2.1 Second Party shall perform all work identified in this Agreement and Exhibit "A". The Scope of Services is a description of Second Party's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by Second Party impractical, illogical, or unconscionable.
- 2.2 Second Party acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement.

## ARTICLE 3 TERM AND TIME OF PERFORMANCE

- 3.1 This Agreement is in full force and effect upon full contract execution by the City of Delray Beach. The term of the Agreement shall be from September 20, 2016 through September 19, 2019 with three (3) one year options to renew. The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.
- 3.2 In the event services are scheduled to end due to the expiration of this Agreement, the Second Party agrees that it shall continue service upon the request of the Contract Administrator. The extension period shall not extend for greater than three months beyond the term of the Agreement. The Second Party shall be compensated for the service at the rate in effect when the extension is invoked by the City upon the same terms and conditions as contained in this Agreement as amended. The Chief Purchasing Officer shall notify Second Party of an extension authorized herein by written notice delivered prior to the end of the term of the Agreement.



## ARTICLE 4 COMPENSATION

4.1 City will pay Second Party, in the manner specified in Section 4.3, per year not to exceed the total amount of one-hundred and twenty thousand Dollars (\$120,000.00) for work actually performed and completed pursuant to this Agreement per Exhibit B Fees. Second Party acknowledges that this amount is the maximum payable and constitutes a limitation upon City's obligation to compensate Second Party for its services related to this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon Second Party's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services.

4.1.1 Second Party acknowledges that the dollar limitation set forth in Section 4.2.1 is a limitation upon, and describes the maximum extent of, City's obligation, but does not constitute a limitation, of any sort, upon Second Party's obligation to incur expenses or perform the services identified in Article 2.

### 4.3 METHOD OF BILLING AND PAYMENT

4.3.1 Second Party may submit invoices for compensation no more often than on a monthly basis, but only after the services for which the invoices are submitted have been completed. An original invoice plus one copy are due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed. Second Party.

4.3.2 City shall pay Second Party within thirty (30) calendar days of receipt of Second Party's proper invoice, or as required by Florida Law. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by the Contract Administrator. Payment may be withheld for failure of Second Party to comply with a term, condition, or requirement of this Agreement.

4.3.3 Second Party shall pay its subcontractors and suppliers within thirty (30) days following receipt of payment from City for such subcontracted work or supplies. If Second Party withholds an amount from subcontractors or suppliers as retainage, such retainage shall be released and paid within thirty (30) days following receipt of payment of retained amounts from City.

- 4.4 Notwithstanding any provision of this Agreement to the contrary, City may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to the Contract Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by City.
- 4.5 Payment shall be made to Second Party at:

Preferred Governmental Claim Solutions (PGCS)  
615 Crescent Executive Court Suite 600  
Lake Mary, Florida 32795

#### ARTICLE 5 INDEMNIFICATION

Second Party shall at all times hereafter indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend City, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, Second Party, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against City by reason of any such claim, cause of action, or demand, Second Party shall, upon written notice from City, resist and defend such lawsuit or proceeding by counsel satisfactory to City or, at City's option, pay for an attorney selected by City Attorney to defend City. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the City Attorney, any sums due Second Party under this Agreement may be retained by City until all of City's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by City.

**PURSUANT TO SECTION 558.0035, FLORIDA  
STATUTES, AN INDIVIDUAL EMPLOYEE OR AGENT  
OF SECOND PARTY MAY NOT BE HELD  
INDIVIDUALLY LIABLE FOR NEGLIGENCE.**

#### ARTICLE 6

## INSURANCE

- 6.1 Second Party shall maintain at its sole expense, at all times during the term of this Agreement (unless a different time period is otherwise stated herein), at least the minimum insurance coverage designated in Exhibit C, Insurances, in accordance with the terms and conditions stated.

## ARTICLE 7 TERMINATION

- 7.1 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by City, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the City Manager upon such notice as the City Manager deems appropriate under the circumstances in the event the City Manager determines that termination is necessary to protect the public health, safety, or welfare. If City erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.
- 7.2 This Agreement may be terminated for cause for reasons including, but not limited to, Second Party's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work, or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement. The Agreement may also be terminated for cause if the Second Party is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or if the Second Party provides a false certification submitted pursuant to Section 287.135, Florida Statutes. This Agreement may also be terminated by the Board:
- 7.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the City Manager, which the City Manager deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.
- 7.4 In the event this Agreement is terminated for convenience, Second Party shall be paid for any services properly performed under the Agreement through the

termination date specified in the written notice of termination. Second Party acknowledges that it has received good, valuable and sufficient consideration from City, the receipt and adequacy of which are, hereby acknowledged by Second Party, for City's right to terminate this Agreement for convenience.

- 7.5 In the event this Agreement is terminated for any reason, any amounts due Second Party shall be withheld by City until all documents are provided to City pursuant to Section 9.1 of Article 9.

## ARTICLE 8 NON-DISCRIMINATION

- 8.1 No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Failure by Second Party to carry out any of these requirements shall constitute a material breach of this Agreement, which shall permit the City, to terminate this Agreement or to exercise any other remedy provided under this Agreement, or under the Delray Beach Code of Ordinances or under applicable law, with all of such remedies being cumulative.

Second Party shall include the foregoing or similar language in its contracts with any subcontractors or subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as City deems appropriate.

Second Party shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement and shall not otherwise unlawfully discriminate in violation of any State or Federal law. Second Party shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by City, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Second Party shall take affirmative steps to prevent discrimination in employment against disabled persons.

By execution of this Agreement, Second Party represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. City hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle City to

terminate this Agreement and recover from Second Party all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

## ARTICLE 9 MISCELLANEOUS

### 9.1 RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City, and, if a copyright is claimed, Second Party grants to City a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Second Party, whether finished or unfinished, shall become the property of City and shall be delivered by Second Party to the Contract Administrator within eight (8) days of termination of this Agreement by either party. Any compensation due to Second Party shall be withheld until all documents are received as provided herein.

### 9.2 PUBLIC RECORDS

**9.2.1 IF THE SECOND PARTY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SECOND PARTY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1<sup>ST</sup> AVE., DELRAY BEACH FLORIDA.**

9.2.2 Second Party shall comply with public records laws, specifically to:

- i. Keep and maintain public records required by the City to perform the service.
- ii. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statute or as otherwise provided by law.
- iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following



completion of the Agreement if the Second Party does not transfer the records to the City.

- iv. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Second Party or keep and maintain public records required by the City to perform the service. If the Second Party transfers all public records to the City upon completion of the Agreement, the Second Party shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Second Party keeps and maintains public records upon completion of the Agreement, the Second Party shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- v. If the Second Party does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

### 9.3 INSPECTOR GENERAL.

Second Party is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from Second Party and its sub licensees and lower tier sub licensees. Second Party understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Second Party or its sub licensee or lower tier sub licensees to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.

### 9.4 AUDIT RIGHTS, AND RETENTION OF RECORDS

City shall have the right to audit the books, records, and accounts of Second Party and its subcontractors that are related to this Project. Second Party and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of Second Party and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Second Party or its subcontractor, as applicable, shall make same available at no cost to City in written form.

Second Party and its subcontractors shall preserve and make available, at reasonable times for examination and audit by City, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.

Second Party shall ensure that the requirements of this Section 9.3 are included in all agreements with its subcontractor(s).

#### 9.5 TRUTH-IN-NEGOTIATION REPRESENTATION

Second Party's compensation under this Agreement is based upon representations supplied to City by Second Party, and Second Party certifies that the information supplied is accurate, complete, and current at the time of contracting. City shall be entitled to recover any damages it incurs to the extent such representation is untrue.

#### 9.6 PUBLIC ENTITY CRIME ACT

Second Party represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases of real property to City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with City, and may not transact any business with City in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

In addition to the foregoing, Second Party further represents that there has been no determination, based on an audit, that it committed an act defined by Section

287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Second Party has been placed on the convicted vendor list.

#### 9.7 INDEPENDENT CONTRACTOR

Second Party is an independent contractor under this Agreement. Services provided by Second Party pursuant to this Agreement shall be subject to the supervision of Second Party. In providing such services, neither Second Party nor its agents shall act as officers, employees, or agents of City. No partnership, joint venture, or other joint relationship is created hereby. City does not extend to Second Party or Second Party's agents any authority of any kind to bind City in any respect whatsoever.

#### 9.8 THIRD PARTY BENEFICIARIES

Neither Second Party nor City intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

#### 9.9 NOTICES

Whenever either Party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

For City:

City Manager  
City Hall  
100 N.W. 1<sup>st</sup> Avenue  
Delray Beach, Florida 33444

For Second Party:

Preferred Governmental Claim Solutions (PGCS)  
615 Crescent Executive Court Suite 600

#### 9.10 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party. In addition, Second Party shall not subcontract any portion of the work required by this Agreement, except as may specifically provided for herein. Notwithstanding the Termination provision of this Agreement, City may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by Second Party of this Agreement or any right or interest herein without City's written consent.

Second Party represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

Second Party shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of Second Party's performance and all interim and final product(s) provided to or on behalf of City shall be comparable to the best local and national standards.

#### 9.11 CONFLICTS

Neither Second Party nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Second Party's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

None of Second Party's officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he, she, or Second Party is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Second Party or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event Second Party is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Second Party shall require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Second Party.

#### 9.12 MATERIALITY AND WAIVER OF BREACH

Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is, therefore, a material term hereof.

City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

#### 9.13 COMPLIANCE WITH LAWS

Second Party shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

#### 9.14 SEVERANCE

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless City or Second Party elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days of final court action, including all available appeals.

#### 9.15 JOINT PREPARATION

The Parties and their counsel have participated fully in the drafting of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

#### 9.16 INTERPRETATION

The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter," refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

#### 9.17 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 9 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 9 shall prevail and be given effect.

#### 9.18 LAW, JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All Parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Fifteenth Judicial Circuit in Palm Beach County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. BY ENTERING INTO THIS AGREEMENT, SECOND PARTY AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

#### 9.19 AMENDMENTS

The Parties may amend this Agreement to conform to changes in federal, state, or local laws, regulations, directives, and objectives. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and Second Party or others delegated authority to or otherwise authorized to execute same on their behalf.

#### 9.20 PRIOR AGREEMENTS

This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

#### 9.21 PAYABLE INTEREST

9.21.1 Payment of Interest. Except as required by the Prompt Payment laws, City shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Second Party waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

9.21.2 Rate of Interest. In any instance where the prohibition or limitations of Section 9.21.1 are determined to be invalid or unenforceable, the annual rate of interest payable by City under this Agreement, whether as prejudgment interest or for any other purpose, shall be .025 percent simple interest (uncompounded).

#### 9.22 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the Parties. All Exhibits are incorporated into and made a part of this Agreement.

#### 9.23 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

#### 9.25 MULTIPLE ORIGINALS

Multiple copies of this Agreement may be executed by all Parties, each of which, bearing original signatures, shall have the force and effect of an original document.

#### ARTICLE 10 ORDER OF PRECEDENCE

The documents listed below are a part of this Agreement and are hereby incorporated by reference. In the event of inconsistency between the documents, unless otherwise provided herein, the terms of the following documents will govern in the following order of precedence:


- A. Terms and conditions as contained in this Agreement;
- B. RFP No. 2016-118, Property & Casualty Third- Party Claims Administrator, dated August 10, 2016, and all its addenda;
- C. Second Party's response to RFP No. 2016-118, Property & Casualty Third- Party Claims Administrator, and any subsequent information submitted by Second Party during the evaluation process.

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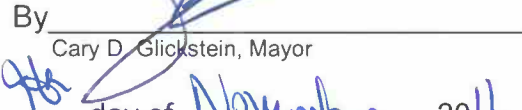


IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: City through its Board, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the 9<sup>th</sup> day of November, 2016 and Second Party, signing by and through its \_\_\_\_\_, duly authorized to execute same.

ATTEST:

  
\_\_\_\_\_  
City Clerk

CITY OF DELRAY BEACH, FLORIDA

By   
\_\_\_\_\_  
Cary D. Glickstein, Mayor  
9<sup>th</sup> day of November, 2016.

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Janice Rustin Interim City Attorney

AGREEMENT BETWEEN DELRAY BEACH, FLORIDA  
AND  
PREFERRED GOVERNMENTAL CLAIMS SOLUTIONS (PGCS)

WITNESS:

Gail Stearman  
(Signature)

Gail Stearman  
(Printed Name)

WITNESS:

Cheryl Riley  
(Signature)

Cheryl Riley  
(Printed Name)

SECOND PARTY

By Kenneth Picton  
(Signature)

KENNETH PICTON, VP  
(Printed Name, Title)

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

(SEAL)

EXHIBIT A  
SCOPE OF SERVICES

1. **SCOPE OF SERVICES**

Second Party will provide services to include, but not be limited to the following:

- A. Administer property and casualty claims of the City at the direction of the Risk Manager, and in accordance with servicing parameters which effectively will allow the City final authority but within requirements which comply with internal Second Party insurer(s) and State protocol. Such requirements formally will be defined for the City by the Second Party
- B. Work in conjunction with City staff in determining the best strategy for each case, which includes the use of cost benefits analysis, benchmarking, and recent case history.
- C. Actively communicate with the Risk Manager, City Attorney, and City staff, and to provide status reports and evaluation performance metrics on regular basis.
- D. Administer all workers' compensation claims in compliance with Florida State workers' compensation law. All settlements and major complicating claim events will be discussed with Risk Manager and concurrence obtained prior to any action being taken.
- E. Administer liability claims, insured or otherwise, as presented by and with concurrence of City Attorney and/or Risk Manager.
- F. Administer property damage claims as presented by and with concurrence of City Attorney and/or Risk Manager.
- G. Assign one experienced adjuster to the City's account to administer the liability and property damage claims, and one to administer workers' compensation claims. If necessary, medical only (less complex) claims can be administered by another adjuster.
- H. Attend Workers Compensation claims meetings at a minimum of one time per quarter, as directed by the City.
- I. Attend liability - litigation claims meetings on an as-needed basis, as requested by the City Attorney's Office.
- J. Upon request by the City, provide claim investigations on a "time and expense" basis.

2. **Changes in the Scope of Work:** The Risk Manager may request changes in the Scope of Services to be performed. Such changes, including increase or decrease of work, will be mutually agreed upon by the Second Party and the City, and incorporated by written amendment to the Agreement.

3. **Account Service Team:** Second Party will make no change in the composition of the City's servicing team without the prior written approval of the Risk Manager.

**EXHIBIT B**  
**FEES**

**A. FEE PROPOSAL**

Second Party should use this form for submitting its Fee Proposal. The following fees are submitted as all-inclusive to provide TPA services in accordance with the requirements identified in the Scope of Services as set forth in this RFP document.

The Second Party fees for TPA of services shall remain as stated in the Fee Proposal submitted by Second Party. Any escalation in pricing for the renewal period will be negotiated at least 30 days prior to the termination of the Agreement.

NOTE: Incumbent TPA is paid on a flat per claim rate for general and auto liability, workers' compensation, property damage, and others. This fee includes miscellaneous services (e.g., claims review meetings, index bureau reports) and claims data management services. Field investigations on liability and property damage claims, are billed at a separate hourly rates. A similar compensation structure is preferred by the City. The cost of transitioning claims from the incumbent should be contemplated and related costs defined by the prospective TPA and included in the fees proposed.

Proposer must provide a detailed Fee Proposal by line item of costs for claims administrative services, claims data management, and the cost of transitioning all claims (open and closed) from the incumbent TPA.

NOTE: Evaluation and scoring for the Fee Proposal will be based on flat per claim rates for Year 1, 2 and 3.

**1. Per Claim Rate Year 1.**

1.	Flat per claim rate – W/C Lost Time	\$995
2.	Flat per claim rate - W/C Medical Only	\$175
3.	Flat per claim rate – Public Officials Employment	\$895
4.	Flat per claim rate - Practices & Law Enforcement	\$895
5.	Flat per claim rate - AL/GL Bodily Injury	\$650
6.	Flat per claim rate - AL/GL Property Damage	\$350
7.	Flat per claim rate - Auto Physical Damage	\$350
8.	Flat per claim rate - Property (other than CAT)	\$500
9.	Transitioning Claims from Incumbent – Year 1	N/A

**2. Per Claim Rate Year 2.**

1.	Flat per claim rate – W/C Lost Time	\$995
2.	Flat per claim rate - W/C Medical Only	\$175
3.	Flat per claim rate – Public Officials Employment	\$895
4.	Flat per claim rate - Practices & Law Enforcement	\$650
5.	Flat per claim rate - AL/GL Bodily Injury	\$650
6.	Flat per claim rate - AL/GL Property Damage	\$350
7.	Flat per claim rate - Auto Physical Damage	\$350
8.	Flat per claim rate - Property (other than CAT)	\$500

**3. Per Claim Rate Year 3.**

1.	Flat per claim rate – W/C Lost Time	\$995
2.	Flat per claim rate - W/C Medical Only	\$175
3.	Flat per claim rate – Public Officials Employment	\$895
4.	Flat per claim rate - Practices & Law Enforcement	\$895
5.	Flat per claim rate - AL/GL Bodily Injury	\$650
6.	Flat per claim rate - AL/GL Property Damage	\$350
7.	Flat per claim rate - Auto Physical Damage	\$350
8.	Flat per claim rate - Property (other than CAT)	\$500

4. Confirm the Administrative Services included in the above per claim rates (insert additional pages if required).

	Description
1.	Administrative Services
2.	First Notice of Injury Services
3.	Claim Services
4.	Loss data services
5.	Banking Reconciliation Services

5. Detail any other services proposed and the fees that will apply (if none, enter N/A).

	Description	Unit Price
1.	Medical Bill review	\$6.25
2.	Network Access Fee 29% BFS	\$
3.		\$
4.		\$

6. Hourly Rate for Field Investigations on liability and property damage claims.

	Discipline	Hourly Rate
1.	Workers' Compensation	\$125
2.	Liability	\$125
3.		\$
4.		\$

EXHIBIT C  
INSURANCE REQUIREMENTS

The Second Party shall supply proof of insurance, detailing terms and provisions of coverage. Coverage must be received and approved by the City Risk Manager within 10 days of final execution of the Agreement.

Second Party shall carry the following minimum types of insurance:

- A. Part One - Workers' Compensation Insurance: with the statutory limits per Florida Statute Chapter 440.
- B. Part Two - Employers' Liability Insurance: with a limit of not less than five hundred thousand dollars (\$500,000) per each employee, per accident, five hundred thousand dollars (\$500,000) for occupational disease, and five hundred thousand dollars (\$500,000) aggregate per employee.
- C. Comprehensive General Liability Insurance: with a limit of not less than one million dollars (\$1,000,000) bodily injury, property damage, contractual liability (specifically to cover any "hold harmless" agreement of the Agreement) and personal injury with limits of not less than one million dollars (\$1,000,000) combined single limits per occurrence, and a two million dollars (\$2,000,000) annual aggregate.

The Comprehensive General Liability insurance policy must include coverage that is not more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Offices, and the policy must include coverage's for premises and/or operations, independent contractors, products and/or completed operations for contracts, contractual liability, broad form contractual coverage, broad form property damage, products, completed operations, and personal injury. Personal injury coverage shall include coverage that has the Employee and Contractual Exclusions removed.

- D. Automobile Liability Insurance: with a limit of not less than five hundred thousand dollars (\$500,000) combined single limits per occurrence for bodily injury and property liability damage for all owned, hired, leased and non-owned vehicles.
- E. Professional Liability (Errors & Omissions) Insurance: with a limit of not less than one million dollars (\$1,000,000) per occurrence.

Certificates of Insurance will be used to evidence the above insurance. The Certificates will state that thirty (30) days written notice by the Second Party will be given to the City before any cancellation of, non-renewal of, or change is made to any insurance policy. The Certificates for the Comprehensive General Liability and Umbrella Liability Insurance (if provided) will by endorsement name the City, its elected and appointed officials, employees and agents as additional insureds.

Claims-Made Liability insurance policies will be identified to the City by the Second Party. The Second Party will evidence that during the term of the Agreement the policy does not create "gaps" in coverage. If "tail" coverage becomes necessary, the Second Party will be required to maintain that "tail" coverage at the Second Party's own expense for period of time as required by the City.

All insurance policies shall be issued by companies that (a) are authorized to do business in the State of Florida; (b) have agents upon whom service of process may be made in Palm Beach County, Florida; and (c) have an A.M. Best & Company rating of no less than A ("Excellent") and VIII (financial size). All insurance policies shall name the City of Delray Beach as an additional insured. Second Party agrees to notify the City within five business days of coverage cancellation, lapse or material modification. All renewal or replacement certificates of insurance shall be forwarded to the City of Delray Beach, Risk Management Division located at 100 N.W. 1st Ave., Delray Beach, FL 33444.



