

RESOLUTION NO.: R-2012-057

ORIGINAL  
STAMPED IN RED

*Authorizing the City Manager to execute a contract between the City of Columbia and Companion Third Party Administrators for administration of the City's self-insured Workers' Compensation Program*

BE IT RESOLVED by the Mayor and City Manager this 26th day of June, 2012, that the City Manager is authorized to execute the attached contract with Companion Third Party Administrators, LLC (Companion) for third party administration and adjustment services of the City's self-insured workers' compensation program for a two (2) year term with an option to renew for an additional two (2) year period for a per claim fee of One Hundred Thirty-five and No/100 (\$135.00) Dollars for each medical only; and Nine Hundred and No/100 (\$900.00) Dollars for each lost time claim, with a minimum annual fee of Ninety Thousand and No/100 (\$90,000.00) Dollars; and the medical savings incentive capped at One Hundred Eighty-five Thousand and No/100 (\$185,000.00) Dollars.

Requested by:

Dana M. Thye  
Senior Assistant City Attorney

  
City Manager

Approved as to form:

  
City Attorney

  
Mayor

ATTEST:

  
City Clerk

Introduced: 6/26/2012  
Final Reading: 6/26/2012

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

**CONTRACT**  
(July 1, 2012 - June 30, 2014)

This contract made this \_\_\_\_\_ day of \_\_\_\_\_, 2012 and between the City of Columbia, hereinafter City, and Companion Third Party Administrators, LLC, hereinafter Companion.

For and in consideration of the mutual promises and undertakings hereinafter described, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**A. PERFORMANCE STANDARDS**

Companion will, during the term of this contract, professionally administer and adjust claims arising under the City's self-insured workers' compensation program by qualified administrators and adjusters.

Companion will, during the term of this contract, ensure that the City's workers' compensation program fully complies with the South Carolina Workers' Compensation Act and all rules, regulations and policies of the South Carolina Workers' Compensation Commission.

**B. SCOPE OF SERVICES FOR THIRD PARTY ADMINISTRATION OF WORKERS' COMPENSATION**

Companion will provide the following services, which include, but are not limited to the following:

1. Act as an advisor and representative of the City in all matters pertaining to any and all obligations required at the City by the South Carolina Workers' Compensation Act and Regulations;
2. Compile and file notices, reports and any forms required of the City by the South Carolina Workers' Compensation Act and Regulations;
3. Make investigations to determine the validity and compensability of any accidents or injuries claimed by City employees to be a workers' compensation claim and to accept or deny such claims on behalf of the City;
4. Determine all benefits due to City employees on all compensable cases and to make payment of all benefits due through use of City funds in such a manner to be directed by the City;
5. Unless otherwise directed by the City, to direct choice of medical care for all City employees entitled to receive medical care under the South Carolina Workers' Compensation Act and Regulations and to make payment therefore using fee schedules as established by the South Carolina Workers' Compensation Commission if possible or necessary, through use of City funds in such a manner to be directed by the City;
6. Utilize external bill review services for the review of charges for medical services, if

deemed prudent;

7. Maintain any records necessary for the City to fulfill its obligations under the South Carolina Workers' Compensation Act and Regulations;
8. Negotiate and/or compromise workers' compensation claims submitted or filed by City employees, including attending informal conferences;
9. Furnish and provide the City with monthly reports of all claims detailing the following:
  - a. Claims received;
  - b. Claims pending;
  - c. All payments made on behalf of the City;
  - d. Estimates for all reserves for actual, anticipated or potential benefits or expenses; and,
  - e. All other pertinent data regarding claims and claim payments.
10. Assist in the completion of the self-insurance tax return and Second Injury Fund assessment form and assist in the compilation of all information necessary to calculate premiums for excess insurance coverage. Obtain quotes for excess insurance coverage. The City has the responsibility for payment of self-insurance taxes, Second Injury Fund assessment and excess insurance premiums and for filing of all forms.
11. Provide all required reporting of settlements, judgments or awards, where medical expenses are paid to a Medicare-eligible claimant to the Centers for Medicare and Medicaid Services (CMS) in compliance with the Medicare Secondary-Payer Mandatory-Reporting Requirements.
12. Provide toll-free telephone access for City employees to report claims or otherwise contact Companion's personnel;
13. Assign a primary adjuster with a minimum of five years workers' compensation experience to oversee the City's claims and provide a direct contact for the City's Management and Legal Department by establishing a dedicated telephone line to the primary adjuster;
14. Protect and/or pursue the City's rights to subrogation in third party and Second Injury Fund reimbursements. Companion acknowledges and agrees that current contracts with Reimbursement Consultants, Inc. (RCI) will remain in place and Companion will not be entitled to collect any incentives on any RCI contract.
15. Comply with the City's Workers' Compensation Claims Guidelines.

**C. COMMENCEMENT OF SERVICES**

Companion shall commence providing the services on July 1, 2012, which shall be inclusive of all of the City's workers' compensation claims in progress.

**D. TERM OF CONTRACT**

The initial term of this Agreement will be for two (2) years and this Agreement shall

commence on July 1, 2012 at 12:00 AM Eastern Standard Time and terminate on June 30, 2014 at 11:59 PM Eastern Standard Time, unless this Agreement is extended or renewed before June 30, 2014 by written consent of both parties. The City shall, in its sole discretion, have the option to negotiate a renewal of this contract for an additional two-year term.

**E. CONTRACT AMOUNT AND TERMS OF PAYMENT**

Companion shall be paid the following amounts for providing the requested services:

- \$135 per Medical Only Claim
- \$900 per Lost Time (indemnity) Claim

Companion will be paid on a quarterly basis and at the beginning of each quarter as follows:

July 1, 2012	-	September 30, 2012	-	\$27,225.000
October 1, 2012	-	December 31, 2012	-	\$27,225.000
January 1, 2013	-	March 31, 2013	-	\$27,225.000
April 1, 2013	-	June 30, 2013	-	\$27,225.000
July 1, 2013	-	September 30, 2013	-	\$27,225.000
October 1, 2013	-	December 31, 2013	-	\$27,225.000
January 1, 2014	-	March 31, 2014	-	\$27,225.000
April 1, 2014	-	June 30, 2014	-	\$27,225.000

Companion will provide the City with an invoice for each payment due. Companion will provide the City with any documents as the City may request in order to submit the invoice for any payment or for any other reason.

The parties anticipate a total annual claim fee of \$108,900 based on a projected average of 260 medical only and 82 lost time claims per year. If the number of claims is less than the projected average, Companion will provide the City of Columbia with a pro-rata credit in the amount of the per claim fee listed above against the following year's fee. Notwithstanding the preceding, in no event will Companion's fee drop below \$90,000 per year. If the number of claims exceed the projected average, City of Columbia will pay the above costs for the number of claims by type exceeding the projected average.

The City also agrees:

To deposit such funds in a bank account or accounts established by Companion. The City shall arrange for Companion to write checks on the account or accounts for use in the payment of the City's qualified claims, losses and allocated loss adjustment expenses (ALAE). Such funds shall be provided at the inception of this Agreement in the amount of Fifty Thousand and 00/100 (\$50,000.00) Dollars and replenished promptly from time to time thereafter as needed upon notice by Companion to City.

**F. INCENTIVES**

The City also agrees to the following Incentive Fee Schedule:

1. **Medical Bill Review Fee:** The City agrees to pay Companion a medical bill review fee of fifteen (15%) percent of all medical cost savings for the first \$500,000.00 in medical savings; ten (10%) percent of all medical cost savings for any savings between \$500,000.00 and \$1,000,000.00; and five (5%) percent of all medical savings for any savings in excess of \$1,000,000.00 for each claim processed under this Agreement through any and all of Companion's Preferred Provider Organization (PPO) networks using the PPO price. Notwithstanding the scale listed above, the medical bill review fee due Companion will not exceed \$185,000.00 in each contract year.

For purposes of determining the medical savings fee to be charged, the medical cost savings are calculated by subtracting the PPO price from the billed charge and multiplying by the stated review fee percentage.

The City understands that the PPO hospital reimbursement schedules are established using some prospective negotiated arrangements that include, but are not limited to, per diem, Diagnosis Related Group (DRG) or a discount of medical charges, and professional reimbursement is based on fee schedule.

2. **SC Second Injury Fund Recoveries:** The City agrees to pay Companion ten (10%) percent of all recoveries from the South Carolina Second Injury Fund by Companion.
3. **Subrogation Recoveries:** The City agrees to pay Companion ten (10%) percent of all recoveries made through subrogation to third parties by Companion.
4. **Payment of Incentive Fees:** Payment of the above savings or recoveries will be made by the City on a quarterly basis based on an invoice provided by Companion, and supported by appropriate detail.
5. **Costs of Recoveries:** Companion shall be responsible for all costs of South Carolina Second Injury Fund or subrogation recovery, including but not limited to, filing fees, attorney's fees, expert witness fees, deposition costs, which are listed by way of illustration and not limitation. These costs shall be paid by Companion from its ten (10%) percent incentive. Companion shall not be entitled to payment of the incentive on subrogation recoveries obtained by the employee's counsel.
6. **Pass-through Costs:** Index fees are fees charged for running claims through an Insurance Services Office (ISO) national database to determine if other claims that may have been made by the claimant and may indicate potential fraudulent claims. These fees will be charged at the prevailing rate by ISO (currently \$10.25 per claim).

CMS reporting fees are charged by CMS for submitting claims. These fees will be charged at the prevailing rate by CMS (currently \$6.05 per claim).

#### **G. NO FEE FOR EXISTING CLAIMS**

Other than as provided in the contract immediately preceding this Contract, Companion

shall receive no additional fees for handling the existing claims.

**H. PERSONNEL**

Companion will provide a sufficient number of qualified personnel who meet relevant State of South Carolina requirements and certifications regarding administration/adjustment of a self-insured workers' compensation program and/or loss control program. Companion shall have an office with local service representatives located within 20 miles of the corporate limits of the City of Columbia. The local representatives will be employed by Companion on a full time basis and not as subcontractors.

**I. NON-DISCRIMINATION**

To the extent legally feasible, Companion will take affirmative action in complying with all Federal, State and local requirements concerning fair employment and employment of the handicapped, and concerning the treatment of all employees, without regard or discrimination by reason of race, color, religion, sex, national origin or physical handicap.

**J. REPORTS**

Companion shall provide the City with reports regarding the administration/adjustment of its self-insured workers' compensation program or loss control as specified in the scope of services at no additional cost.

**K. RESERVATION OF RIGHT TO PROVIDE LEGAL SERVICES**

The City will provide in-house legal services for the litigation of workers' compensation claims to include, but not be limited to, denied or contested employee workers' compensation claims with the exception of third party subrogation and Second Injury Fund recoveries. For these recoveries, Companion shall provide legal counsel with the City's approval. Companion shall provide the City prompt and timely notice of matters that are to be litigated by City legal staff. The City will also prepare clincher agreements for all clinchered workers' compensation cases. Companion's personnel shall fully cooperate with the City's legal counsel with regard to any litigated matters.

**L. LICENSES, PERMITS, AND TAXES**

All costs for required permits, licenses and taxes shall be borne by Companion. Companion will procure a City of Columbia business license. City shall be responsible for payment of self-insurance taxes, Second Injury Fund assessments and premiums for excess insurance coverage.

**M. DUTY OF CONFIDENTIALITY**

Companion and Companion's employees, shall keep all information received and utilized by it in the performance of the required services confidential. Such information may be released only upon written approval by the City.

**N. CONTRACTOR SOLELY RESPONSIBLE FOR PERFORMANCE**

Companion shall be responsible for performance of the services required by the contract.

Companion is an independent contractor and does not act as the City's agent or employee.

**O. ASSIGNMENT AND SUBLETTING**

Companion will not assign or sublet its obligations to perform the requested services without written consent of the City. This provision does not apply to the use by Companion of approved experts in the course of adjusting workers' compensation claims or seeking subrogation or Second Injury Fund reimbursement, except as required under paragraph B.11. of this contract. Companion's authority to engage such experts will be determined by procedural agreement.

**P. OWNERSHIP OF DATA**

All data or other information generated by or used by Companion, in any form whatsoever, is the property of the City and shall not be used by Companion for any purpose whatsoever except to perform the requested services. Notwithstanding the preceding, Companion may use the City's data for Companion's internal purposes (such analysis, aggregation and summary purposes) provided that such data is de-identified and the confidentiality of such data is maintain by Companion.

**Q. DUTIES UPON TERMINATION**

Third Party Administration and claims adjusting services will end at the termination of the contract term, except Companion will provide services to ensure an effective transition to its successor who shall be responsible for the conclusion of any and all workers' compensation claims in progress. At termination, Companion shall immediately provide the City, or its designee, with all records and data in any format Companion is capable of producing and at no cost to the City, which were generated, created or received by Companion in performance of the contract by Companion or as the City may deem necessary to perform the requested services by the City or Companion's successor. All records shall be free from licenses or any proprietary claims or interest.

Companion agrees to fully cooperate with the City and any successor in order to continuously provide the requested services.

**R. TERMINATION**

This contract may be terminated by the City at any time upon any of the following grounds:

1. Failure by the City of Columbia to appropriate funds for the administration of the City's self-insured workers' compensation program;
2. Companion fails to perform any of the services required in the contract and does not correct such deficiency within 15 days after having been notified by the City of such deficiency;
3. Upon 30 days written notice by the City of its intent to no longer be self-insured under the workers' compensation law. If after providing such 30 day notice, additional time is required to facilitate the transition away from a self-insured program, the City will pay Companion for such additional days on a per diem

basis, based on the contract fee;

4. Force majeure;
5. Upon expiration of the initial two-year term of the contract with no renewal option exercised; and,
6. By mutual agreement.

**S. WHOLE AGREEMENT**

This Contract contains the entire agreement between the City and Companion. In order to be binding, any modification hereof shall be in writing and signed by the City and Companion.

**T. CONTRACT INTERPRETATION**

In the event that there are any disagreements between the City and Companion with regard to any of the requirements, specifications or interpretations of this contract, Companion agrees to defer to the reasonable interpretations of the City as, from time to time may be made by the City. Ambiguities in the terms of the contract, if any, shall not be construed against the City.

**U. STATE LAW APPLICABLE**

The contract shall be construed in accordance with the laws of the State of South Carolina. Companion agrees to subject itself to the jurisdiction and venue of the Circuit Courts of Richland County, State of South Carolina as to all matters and disputes arising or to arise under the contract and the performance thereof. The City may seek attorney's fees and Companion agrees to pay such fees as awarded by the Court or other body. No attorney's fees may be sought by, nor will be paid to, Companion.

**V. NOTICE**

Written notice to the City shall be made by placing such notice in the United States Mail, certified, postage prepaid and addressed to: City Manager, Post Office Box 147, Columbia, South Carolina 29217. A copy of any written notice shall also be mailed to City Attorney, Post Office Box 667, Columbia, South Carolina 29202.

Written notice to Companion shall be made by placing such notice in the United States Mail, certified, postage prepaid and addressed to Companion Third Party Administrators, LLC, Attn: Robert C. Rhodes, Vice-President and Chief Operating Officer, Post Office Box 100165, Columbia, South Carolina 29202-3165.

**W. BREACH/WAIVER**

The failure of either Companion or the City to insist upon the strict performance of any provision of this contract shall not be deemed to be a waiver of the right to insist upon strict performance of such provision or of any other provision of this contract at any time. Waiver of any breach of the contract by Companion or City shall not constitute waiver of a subsequent breach.



X. SEVERABILITY

In the event any provision of this contract is determined to be void or unenforceable, all other provisions shall remain in full force and effect.

Y. SUCCESSORSHIP

The contract is binding upon Companion, its successors and assigns. This contract is binding upon the City in accordance with its terms and conditions.

IN WITNESS HEREOF, the parties hereto have executed this contract the day and year first above written.

*[Signature]*  
*Erika D. How*

CITY OF COLUMBIA

*[Signature]* 6.28.11  
By: Steven A. Gantt  
Its: City Manager

COMPANION THIRD PARTY  
ADMINISTRATORS, LLC

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
By: Robert C. Rhodes  
Its: Vice President & Chief Operating Officer

APPROVED BY  
CITY OF COLUMBIA  
LEGAL DEPT.  
*[Signature]*