

**LIABILITY
SELF-INSURANCE CLAIMS
ADMINISTRATION AGREEMENT**

This AGREEMENT, entered into effective June 1, 2016 by and between **Authority for California Cities Excess Liability**, hereinafter called "ACCEL," and **Risk Management Services**, hereinafter called "RMS," is for certain services as outlined in connection with the duties and responsibilities of administering claims for a program of self-insurance.

WITNESSETH

WHEREAS, ACCEL has undertaken to self-insure and is in need of a qualified third party to whom to delegate the responsibilities and duties of administering claims for said self-insured municipal liability insurance program (the "Self-Insurance Program"), and

WHEREAS, RMS is engaged in the supervision and administration of claims for municipal liability self-insurance,

NOW, THEREFORE, ACCEL and RMS mutually understand and agree as follows:

1. TERM OF AGREEMENT

The term of the AGREEMENT shall commence on June 1, 2016 and continue for six months ending November 28, 2016, unless terminated earlier as provided in Sections 8 & 9 herein.

2. SCOPE OF WORK

- (a) The ACCEL hereby engages RMS to provide ACCEL the services described in detail in the Scope of Services attached hereto as **Exhibit A**.
- (b) Additional services may be requested and ordered through the issuance of a written amendment to this AGREEMENT. All written amendments for professional services must be completed and signed by both parties prior to proceeding with services.

3. KEY PERSONNEL

It is the intent of both parties to this AGREEMENT that RMS shall make available the professional services of Ken Maiolini (Litigation Manager) and his staff members shall administer all work under this AGREEMENT and shall coordinate directly with the members of ACCEL and its Board of Directors. Should such personnel become unavailable to perform services for ACCEL, RMS agrees to replace, as soon as practical, such personnel with personnel of comparable skills and experience as determined by ACCEL's evaluation and subject to ACCEL's right of refusal for any reason. RMS will notify ACCEL of any change in Key Personnel within 48 hours of the Key Personnel being unavailable to perform their duties for ACCEL. Any substitution of key personnel

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must be mutually agreed upon and made in writing by the parties. The AGREEMENT shall be amended to reflect any changes, subject to and contingent upon, the approval of the Board of Directors.

4. SETTLEMENT AUTHORITY

RMS only has the settlement authority granted on individual cases to them by the Claims Committee or ACCEL Board.

5. PRICING

ACCEL agrees to pay the following claim handling and service fees for RMS'S services:

- 1) **Semi-annual Fee** (*June 1, 2016 through November 28 2016*)
\$41,000 FLAT FEE, prepaid quarterly.
- 2) **Travel Budget** (*for Mediations and Member on-site Meetings*)
\$7,000 Maximum for expenses related to travel for Mediations and special Member requested Meetings, (subject to the terms of the ACCEL Travel and Reimbursement Policy).
- 3) **Data Transfer**
A \$2,500 Not-to-Exceed charge for RMS and vendor costs involving data transfer from Carl Warren & Company, including all costs associated with costs associated with delivery of hard copy files.
- 4) **Special Handling**
Certain claim files may not be considered part of the annual Service Fee. These will be files that the Claims Committee authorizes as Special Handling, and will be billed on a time and expense basis. Special Handling claims are those approved by the Claims Committee to have additional file charges applied due to above normal service necessary in the management of the claim. These additional expenses will be allocated to the claim file. If Special Handling is approved, RMS will propose a time and expense fee schedule which will require approval by the Claims Committee.

Charges for any other non-file related professional services performed at the specific request of ACCEL will be billed on an as quoted basis.

6. ACCEL'S RESPONSIBILITIES

ACCEL and its Member Agencies shall report all Liability claims and provide all information available in accordance with our Claims handling Policy & Procedures, and cooperate and assist in the investigation of claims as may be necessary to administer its claims. ACCEL agrees that RMS retains ownership of its programs, processes, forms and methods and will not use or disseminate them without written consent of RMS.

ACCEL shall provide RMS with copies of all relevant documents upon request.

7. CONFLICT OF INTEREST

In the event a claim or incident is reported to RMS by ACCEL and it is determined that the actual or potential claimants therein are also ACCELs of RMS, then RMS shall immediately notify ACCEL of such potential conflict of interest so ACCEL may have the option to choose an independent investigator and adjuster.

8. TERMINATION OF AGREEMENT

- a. Voluntary Termination. This AGREEMENT may be terminated at any time by either party, without cause, by giving the other party not less than sixty (60) days prior written notice of such termination.
- b. Termination for Cause. This AGREEMENT shall terminate at the election of ACCEL or RMS if the other party breaches any material provision of this AGREEMENT and fails to cure such breach within ten (10) business days after written notice thereof is given to the party, or in the event the breach is not capable of being cured within such ten (10) business day period, the breaching party has not commenced good faith efforts to cure such default within ten (10) business days and continued thereafter in good faith to diligently pursue the completion of such cure. Failure of ACCEL to comply with Section 6 - ACCEL'S RESPONSIBILITIES shall qualify as cause under this Section.
- c. Termination by RMS. RMS may also terminate this AGREEMENT pursuant to Section 14 (f).
- d. In the event of termination or expiration of this AGREEMENT, RMS will assist ACCEL in arranging a smooth transition to another third party claims administrator, including, but not limited to, providing ACCEL with copies of all products, files, records, computations, claims files, studies and other data prepared or obtained in connection with this AGREEMENT, which copies shall become the permanent property of ACCEL. Except for this transition assistance, RMS's obligation to provide services to ACCEL will cease at 12:01 a.m. upon the effective date of termination or expiration.

9. DISPOSITION OF FILES ON TERMINATION OF AGREEMENT

- a. All files on each claim shall be property of ACCEL.
- b. In the event of expiration of the AGREEMENT, non-renewal thereof, or cancellation, RMS shall bill ACCEL, subject to the rates quoted in Section 12 herein above, for work completed by RMS on each claim. Upon receipt of payment of outstanding invoices, RMS shall promptly forward all completed and pending claim files to ACCEL unless ACCEL requests RMS to continue to process any files on a time and expense basis as provided for in the RMS's standard rate schedule at the time such services are rendered.

10. HOLD HARMLESS

RMS agrees to indemnify, hold harmless, reimburse and defend ACCEL at all times against any claim, costs, expense, liability, obligation, loss or damage (including reasonable legal fees) of any nature, incurred by or imposed upon ACCEL and based upon the work or operations performed by, or any errors or omissions of, RMS, its agents or employees, with respect to the services provided by RMS under this AGREEMENT; except to the extent the error or omission arises from RMS's reliance on information provided by ACCEL or from RMS's following instructions from ACCEL. In the event that ACCEL tenders its defense in any such claim, etc., to RMS, and RMS accepts such tender, the defense of ACCEL shall be conducted by counsel selected and paid by RMS.

11. INSURANCE

During the performance of service hereunder, RMS shall maintain at least the following insurance coverage:

- a. Personal Injury, Bodily Injury and Property Damage Liability Insurance including coverage for General Liability, Contractual Liability and Auto Liability including owned automobiles and non-owned automobiles with at least a Two Million Dollar (\$2,000,000) limit of liability per occurrence.
- b. Workers' Compensation Insurance as required by applicable state laws for all employees engaged in service under this AGREEMENT.
- c. Errors and Omissions Insurance in the amount of not less than Two Million Dollars (\$2,000,000).

These policies of Insurance:

- a. May contain a deductible amount not to exceed Fifty Thousand Dollars (\$50,000) per claim.
- b. Evidence of Coverage will be provided to ACCEL annually.

12. RELEASE OF INFORMATION

RMS shall not make public information releases or otherwise publish any information obtained or produced by it as a result of, or in connection with, the performance of services under this AGREEMENT without the prior written authorization from the ACCEL.

13. AUDITS

The RMS's files shall be made available for audits at any time upon reasonable notice. Reasonable notice shall be defined as thirty (30) days or as otherwise agreed by the parties. If special retrieval or shipment of the requested files is necessary, ACCEL shall reimburse RMS at cost. The RMS

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reserves the right to reject an auditor proposed by ACCEL if the proposed auditor may gain an unfair competitive advantage over RMS by conducting such an audit.

14. MISCELLANEOUS

- a. Governing Law. This AGREEMENT shall be construed and enforced in accordance with and governed by the laws of the State of California.
- b. Amendments. Neither this AGREEMENT nor any of the terms hereof may be amended, changed, waived, discharged or terminated except by an instrument in writing signed by both of the parties hereto.
- c. No Waiver. No delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any waiver on the part of any party hereto of any such right, power or privilege, or any single or partial exercise of any such right, power or privilege, preclude any further exercise thereof or the exercise of any other right, power or privilege.
- d. Severability. If any part of this AGREEMENT is contrary to, prohibited by or deemed invalid under, any applicable law of any jurisdiction, then such provision shall, as to such jurisdiction, be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, without invalidating the remainder hereof or affecting the validity or enforceability of such provision in any other jurisdiction.
- e. Independent Contractor. At all times during the term of this AGREEMENT, RMS shall be deemed to be an independent Contractor to ACCEL acting in the capacity as ACCEL'S agent subject to the limited authority granted herein. Nothing contained in this AGREEMENT shall be deemed to create the relationship of employer and employee, partners, or joint ventures between ACCEL and RMS. RMS shall not act as an insurer, nor shall it be ultimately financially responsible for payment or satisfaction of Claims or causes of action against ACCEL.
- f. Current Law & Regulation. This AGREEMENT is entered into with the understanding that existing Federal, State or other jurisdictional regulations will remain in effect for the duration of this AGREEMENT. ACCEL agrees that should administrative or other costs of service provided hereunder be substantially increased as a result of modifications in existing law, enactment of new legislation, or promulgation of new administrative guidelines, RMS service fees may be renegotiated during the AGREEMENT term. If revised fee agreements cannot be reached, RMS may terminate this AGREEMENT, at its option, after sixty (60) days written notice to ACCEL.
- g. Counterparts. This AGREEMENT may be executed simultaneously in two counterparts, each of which when so executed and delivered shall be deemed an original, but both of which together shall constitute one and the same instrument, and all signatures need not appear on any one counterpart. A facsimile, telecopy or other reproduction of this AGREEMENT may be executed by any party and delivered by such party by facsimile or other electronic transmission (including e-mail), and such execution and delivery shall be

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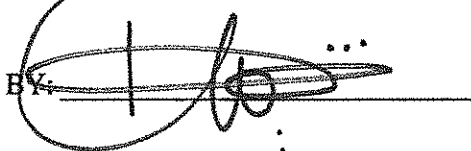
considered valid, binding and effective for all purposes.

- h. Change in Control and Ownership. RMS shall notify ACCEL and ACCEL's Program Administrator, in writing, of any change in ownership or control of RMS's firm. Change of ownership or control of RMS's firm constitutes a material change in circumstances, and the Authority may, on thirty (30) days written notice, terminate this AGREEMENT. An election by Authority to continue the AGREEMENT will require amendment to the AGREEMENT, upon such terms as the parties may agree.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be signed by their duly authorized representatives as of the day and year first written above.

RISK MANAGEMENT SERVICES (RMS)

**AUTHORITY FOR CALIFORNIA
CITIES EXCESS LIABILITY(ACCEL)**

BY: 

BY: Judith Blanch

TITLE: President

TITLE: VICE - PRESIDENT

DATE: 7-7-16

DATE: 6/17/16

ANY ALTERATIONS TO THIS CONTRACT WILL RENDER THE CONTRACT NULL AND VOID. THE PRICING QUOTED IN THIS CONTRACT WILL REMAIN EFFECTIVE FOR THIRTY (30) DAYS FROM THE INCEPTION DATE LISTED ON THIS CONTRACT AFTER WHICH TIME THE CONTRACT WILL BE RECINDED.

EXHIBIT A
SCOPE OF SERVICES

RMS will provide the following services to ACCEL and its Member Agencies:

1. Manage all occurrences/claims/lawsuits (hereinafter referred to as “claims”) reported to RMS by ACCEL Member Agencies in accordance with claims administration best practices and ACCEL’s Policies and Procedures, including, but not limited to:
 - a. Claim Set-Up/Documentation: RMS will maintain a properly documented claim file for each claim reported by ACCEL. The claim file is ACCEL property and will be available for ACCEL inspection.
 - b. Coverage Determinations: RMS will evaluate claim to determine whether coverage is available under ACCEL’s Memorandum of Coverage. All notifications involving rejection of coverage or reservation of rights of coverage will be handled in accordance with ACCEL’s Claims Reporting and Handling Policy.
 - c. Claim Investigation/Reserving: RMS will obtain and analyze all reports and documents pertinent to claim to assess liability and potential damages, and establish an appropriate reserve. RMS will reevaluate reserves as necessary, but no less than every ninety days until claim file is closed.
 - d. Reporting Claims to Excess Carriers: RMS will assess every claim for potential exposure to excess carriers upon receipt of claim and every ninety days until claim file is closed. RMS will notify the excess carriers of claims with exposure potential in accordance with excess carriers’ claims reporting and handling policies. Further, RMS will notify the Claims Committee Chair of all claims reported to excess carriers.
 - e. Litigation Management: ACCEL or Member Agency will assign defense counsel to all litigated reported claims and advise RMS of selection. RMS will serve as ACCEL’s point of contact for the duration of litigation and assume responsibility for the following:
 - i. Monitoring the work of Member Agency’s legal counsel to ensure sound defense strategies are employed;
 - ii. Identifying and reporting to ACCEL emerging issues with potential to adversely impact the ACCEL or Member Agency;
 - iii. Monitoring key dates (e.g., mediations, settlement conferences, trial dates, etc.) and providing timely notice to ACCEL when action by ACCEL is required (e.g., settlement decisions, litigation strategy decisions, etc.);
 - iv. Monitoring reserves to ensure adequacy;
 - v. Providing recommendations and advice to ACCEL on key matters impacting litigation (e.g., litigation strategies, settlement options, reserve levels, etc.);

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- vi. Attending mediations, settlement conferences, and all other hearings and court dates as necessary; and
 - vii. Reviewing Member Agency's litigation expenses (i.e., legal bills and expenses) and recommending payment to ACCEL.
- f. Reporting to ACCEL: RMS will provide the following reports to ACCEL:
- i. A quarterly Loss Run history that identifies all open and closed claims reported to RMS; and
 - ii. A "Watch List" of claims that, in the professional evaluation of RMS, have the greatest potential to penetrate the ACCEL's pool layer or greater. Further, RMS will prepare the "Watch List" in comparable and include the elements those identified attached in Appendix 1 for presentation at each Board of Director's meeting.
2. Provide support to the ACCEL's Board of Directors, Claims Committee Members, and Program Administrators, including, but not limited to the following:
- a. Attending all Board of Directors Meetings;
 - b. Attending Claims Committee Meetings as needed;
 - c. Providing professional advice and/or recommendations on claims and claims administration matters, loss and cost control measures, industry trends, and regulatory and legislative requirements; and
 - d. Hiring and overseeing the work of consultants such as defense counsel, coverage counsel and/or investigators after receiving approval from ACCEL.
3. Maintain an electronic risk management information system capable of providing ACCEL's Program Administrators with the following information upon request:
- a. RMS's claim number;
 - b. Status of all open claims reported to RMS;
 - c. Summary of incident;
 - d. Outstanding financial reserves; and
 - e. Details of claims and expense payments for each excess layer.

Attachments – Appendix 1

