

**AUTHORITY for CALIFORNIA CITIES EXCESS LIABILITY
R.E. POWERS & Company, LLC- CLAIMS CONSULTING & AUDITING SERVICES
AGREEMENT**

CONTRACT AMENDMENT

This **CONTRACT AMENDMENT** is made this 19 day of January 2023, by and between the Authority for California Cities Excess Liability hereinafter called "**ACCEL**" and R.E. Powers & Company LLC, hereinafter called "**R.E. Powers.**"

Recitals

WHEREAS,

- R.E. Powers has been providing claims auditing services to ACCEL pursuant to a contract dated March 2, 2021, incorporated herein by reference as the **ORIGINAL CONTRACT**.
- That contract was for two (2) years (2021, 2022) with an optional third year for 2023.
- ACCEL wishes to exercise that option for 2023.

NOW, WHEREFORE,

The parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE IV- TIME FOR PERFORMANCE is hereby **AMENDED** to include ACCEL's option to extend the **CONTRACT** for a third year (2023) as stated.

All other provisions, terms and conditions to remain the same as the **ORIGINAL CONTRACT**.

IN WITNESS WHEREOF, the parties to this agreement have set their hands to duplicate copies on the day and year herein above written with each copy to be considered original.

Executed this 19 day, of January 2023

Authority for California Cities Excess Liability

By: Tracey Matthews

Print Name Tracey Matthews

ACCEL Claims Committee Chair

R.E. Powers & Company, LLC

By: Robert E. Powers

Robert E. Powers
President/CEO

AUTHORITY for CALIFORNIA CITIES EXCESS LIABILITY
R.E. POWERS & Company, LLC- CLAIMS CONSULTING & AUDITING SERVICES
AGREEMENT

This agreement is made this 2nd day of March 2021, by and between the Authority for California Cities Excess Liability hereinafter called "ACCEL" and R.E. Powers & Company LLC, hereinafter called "**R.E. Powers.**"

Recitals

WHEREAS,

- R.E. Powers has been providing claims auditing services to ACCEL since June 18, 2018 via an assigned contract from Praxis Claims Consulting.
- R.E. Powers and ACCEL wish to incorporate terms and conditions from that contract into an entirely new contract which is contained herein.
- Prior amendments are fully incorporated into this entirely new contract.
- There are no fundamentally different or substantiative changes from the prior existing agreements.
- The parties will consider this agreement as encompassing the entirety of duties and responsibilities of R.E. Powers claims consulting auditing services.
- ACCEL's intent for auditing services is more fully explained in the January 2, 2018 Request for Proposal (RFP) and incorporated herein by reference.

NOW, WHEREFORE,

The parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I- SCOPE

R.E. Powers shall provide, and ACCEL shall be responsible for paying for the following described services: Liability Claims Auditing Services, as more fully described in hereinafter attached as **Exhibit A** for agreed **Scope of Work**.

R.E. Powers shall furnish all supervision, technical and professional personnel, labor, materials, machinery, tools, equipment and other services which may be necessary to perform completely all services, to be sold pursuant to this Agreement, all in accordance with the Agreement Documents.

All services to be sold pursuant to this agreement shall satisfy completely each and every specification appearing in the **RFP**, Exhibit A and all other requirements which may appear in this Agreement Document.

ARTICLE II- CONSIDERATION

A flat annual fee of **\$57,958.00** for the **TERM** of the contract, based upon the current Membership of thirteen Cities and one Third Party Administrator (TPA). The first payment shall be due once **R.E. Powers** has begun the scheduling of the Members' audits and completed at least 30% of the audits (**\$17,387.40**). The second payment would be due upon the completion of the remaining Members and TPA audits and receipt and acceptance of the final audit report(s) (**\$40,570.60**). All payments will be invoiced would be payable within 30 days of **ACCEL** receiving **R.E. Powers'** invoice.

ARTICLE III- AGREEMENT DOCUMENTS

The Agreement Documents shall consist of the following: all incorporated herein by reference and made part of this agreement:

- A. This agreement
- B. Exhibit A- Scope of Work

The above Agreement Documents form the entire agreement between the parties hereto, any oral understandings or agreements to the contrary notwithstanding.

ARTICLE IV- TIME FOR PERFORMANCE

Each year, **R.E. Powers** shall fully perform all of its obligations, and without limitations, of all required services outlined in the RFP, Exhibit A during the period beginning from the signing date of this Agreement. The **TERM** for the contract will be for two (2) years with an option to extended by **ACCEL** only for an additional year:

- Year 2021
- Year 2022
- Year 2023 (Option Year)

ACCEL may use this option upon written notice by **ACCEL's** Program Administrators after Board of Directors' action. Either party may terminate the contract upon 60 days written notice.

ARTICLE V- CONFIDENTIALITY

During the term of this Agreement, **R.E. Powers** will have access to and will be acquainted with various processes and compilations of information, records and specifications, all of which are owned by **ACCEL** and or their members and are regularly used in the operation of **ACCEL's** or their member's business.

All information furnished by **ACCEL** to **R.E. Powers**, including, without limitation, business, technical, financial, operational, administrative, marketing, economic and other information and material (whether in written or oral form or in eye, machine or electronic readable form or any other format currently in existence or hereafter to be developed and whether prepared or presented by **ACCEL** or its authorized representatives) whether or not marked as confidential,

that come into **R.E Powers'** possession in any way, and whether or not they contain or constitute trade secrets owned by **ACCEL**, (collectively the "**Confidential Materials**") are and shall remain the exclusive property of **ACCEL**. **R.E. Powers** agrees to hold in confidence any **Confidential Materials** and not to disclose the same to others, without **ACCEL's** prior written consent.

Any **Confidential Materials** and any copies thereof that may be in **R.E. Powers'** possession must be destroyed/deleted within five working days of the termination of this Agreement and upon written request of **ACCEL**.

ARTICLE VI- INDEMNIFICATION

- a. Each Party shall indemnify, defend and hold harmless the other Party, and with respect to **ACCEL** and its constituent member municipalities, its officers, employees, directors, affiliated companies and agents from and against any and all third-party claims, actions demands and lawsuits (together "Claims") and all resulting costs, liabilities, damages and expenses including reasonable attorneys' fees (together "Liabilities") arising out of:
 - i. The indemnifying Party's breach of any material term or provision of this Agreement, or violation of any representation, warranty or covenant in this Agreement.
 - ii. Any act or omission by **R.E. Powers** related to the services performed for **ACCEL**; or
 - iii. Any act or omission by **ACCEL** related to the services performed by **R.E. Powers**.

- b. The indemnified Party shall give the indemnifying Party prompt written notice of any claim covered by this section and provide reasonable assistance and cooperation (at the indemnified Party's expense). The indemnifying Party shall have the right and duty to assume the control of the defense thereof. The Indemnified Party may take part in its defense at its own expense after the indemnifying Party assumes the control thereof.

ARTICLE VII- INSURANCE

- **Commercial General Liability:** \$1,000,000 per occurrence.
- **Automobile Liability:** \$1,000,000 per accident for bodily injury and property damage.
- **Workers' Compensation:** Workers' Compensation insurance as required by the State of California, with Statutory Limits and Employers' Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease
- **Professional Liability:** Insurance appropriate to the Consultant's profession with a limit of not less than \$1,000,000 per occurrence.

Details more fully explained in the January 2, 2018 Request for Proposal (RFP).

ARTICLE VIII- ASSIGNABILITY

This agreement may not be assigned to another provider without written agreement of both parties.

ARTICLE IX- CONFLICTS

Parties agree that any conflicts or potential conflicts will be disclosed as soon as possible upon becoming aware of the potential for conflicts.

No officer, member or employee of ACCEL and no member of its governing bodies shall have any financial interest, direct or indirect, in this contract or the proceeds thereof. No consultant or member of the consultant's family shall serve on a ACCEL board, committee, or hold any such position which either by rule, practice or action nominates, recommends, or supervises the consultant's operation or authorizes funding to the consultant.

IN WITNESS WHEREOF, the parties to this agreement have set their hands to duplicate copies on the day and year herein above written with each copy to be considered an original.

Authority for California Cities Excess Liability

R.E. Powers & Company, LLC

DocuSigned by:
Oles Gordeev
AC5667003509407...
By: _____

Oles Gordeev
ACCEL Claims Committee Chair

Robert Powers
By: _____

Robert Powers
President

Exhibit A

Scope of Services from ACCEL RFP Liability Claims Auditing Services Dated January 2, 2018

Scope of Services

The consultant will annually audit the Claims Administrator and all thirteen Member Cities in accordance with the following work plan:

- ❖ Claims Administrator:
 - Audit all open claims, and all claims closed in the past 12 months with a total incurred of more than \$1 million for compliance with ACCEL's claims administration contract requirements (See Section VII -- RFP Attachments for copy) which address: Claim Set Up and Documentation, Coverage Determinations, Investigations and Reserving, Excess Reporting, Litigation Management, and Reporting to ACCEL Board of Directors; document findings;
 - Review staffing qualifications and caseloads and note any concerns;
 - Monitor and reconcile claims in which ACCEL's Claims Administrator has placed an ACCEL reserve, against each Members' loss run to be sure there is an appropriate Member reserve;
 - Conduct an exit interview at conclusion of audit, and document any follow-up items/Claim Administrator concerns, and forward to Alliant;
 - Summarize keys findings and recommendations in an annual written report due to ACCEL on December 15 of each year; and
 - Present key findings and recommendations to the ACCEL Board in January of each year.

- ❖ Member Cities: Anaheim, Bakersfield, Burbank, Modesto, Monterey, Mountain View and Santa Monica:
 - Audit 50% of each Member City's open claim files up to a maximum of 50 focusing on claim files with large reserves, and claim files with descriptions involving potentially costly losses (e.g., excessive force claims, employment claims, etc.);
 - Document findings for each claim file relative to investigation, reserving, litigation management, liability/damage evaluation, file management, timely negotiations, and excess reporting practices using ACCEL's audit form (See Attachment B).
 - Review staffing qualifications and caseloads and note any concerns;
 - Confer with Member City's legal staff to discuss reserving and/or litigation strategy, as appropriate;
 - Reconcile Member Cities loss data with loss data provided to Alliant and note any

- discrepancies;
 - Conduct an exit interview at conclusion of audit, and document any follow-up items/Member City concerns, and forward to Alliant;
 - Summarize keys findings and recommendations in an annual written report due to ACCEL on December 15 of each year; and
 - Present key findings and recommendations to the ACCEL Board in January of each year.
- ❖ Member Cities: Ontario, Palo Alto, Salinas, Santa Barbara, Santa Cruz, and Visalia:
- Audit 35% of each Member City’s open claim files up to a maximum of 35 focusing on claim files with large reserves, and claim files with descriptions involving potentially costly losses (e.g., excessive force claims, employment claims, etc.);
 - Document findings for each claim file relative to investigation, reserving, litigation management, liability/damage evaluation, file management, timely negotiations, and excess reporting practices using ACCEL’s audit form (See Attachment B).
 - Review staffing qualifications and caseloads and note any concerns;
 - Confer with Member City’s legal staff to discuss reserving and/or litigation strategy, as appropriate;
 - Reconcile Member Cities loss data with loss data provided to Alliant and note any discrepancies;
 - Conduct an exit interview at conclusion of audit, and document any follow-up items/Member City concerns, and forward to Alliant;
 - Summarize keys findings and recommendations in an annual written report due to ACCEL on December 15 of each year; and
 - Present key findings and recommendations to the ACCEL Board in January of each year.

The Audit does not include reviewing defense attorney files, the review is intended to be the “Claim File” maintained by the Claims Administrator and or Risk Management.

Further, R.E. Powers agrees to review and provide input on, where appropriate:

Claims handling manuals, file notes, reserve practices, payments/settlements, claims supervision, quality of investigation, litigation management, diaries, internal controls relating to adjuster authority levels, documentation, cost containment programs, excess or reinsurance reporting procedures, third party recovery, settlement practices, and subrogation practices.