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TOWN OF WEST SENECA

TOWN SUPERVISOR
SHEILA M. MEEGAN
TOWN COUNCIL
EUGENE P. HART
WILLIAM P. HANLEY, JR.

To: The Honorable Town Board

From: John J. Fenz, Esq.
Town Attorney

Date: July 20, 2016

Re: WNY Insurance Agency, LLC
Professional Services Agreement

Kindly authorize the Supervisor to execute the necessary documents to enter into the above-referenced Agreement with WNY Insurance Agency, LLC.

Pursuant to the Agreement WNY will provide professional and technical skills to the Town by providing services to plan, organize, coordinate and implement a program to close certain workers' compensation claims.

The Town shall pay WNY \$2,500.00 to commence its work and 10% of annual savings attributable to each claim closed as a result of their review and program implementation.

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, entered into this ____ day of July, 2016, by and between the Town of West Seneca, New York (the "Town"), a municipal corporation organized and existing under the laws of the State of New York, with offices located at 1250 Union Road, West Seneca, New York, and WNY Insurance Agency, LLC ("WNY") a limited liability company organized and existing under the laws of the New York, with offices located at 93 Diane Drive, West Seneca, New York.

WHEREAS, the Town in its continued daily efforts to achieve savings for its taxpayers has recognized that reviewing its open workers' compensation claims provides an opportunity for savings; and

WHEREAS, the Town recognizes that it requires professional services to perform a comprehensive review of its open workers' compensation claims ; and

WHEREAS, WNY possesses a variety of professional and technical skills to provide support to the Town by providing services to plan, organize, coordinate and implement a program to review all open workers' compensation claims.

NOW THEREFORE, the Town and WNY, for and in consideration of the mutual promises and undertakings herein set forth, agree as follows:

1. SERVICES TO BE RENDERED; FIXED COST & INCENTIVE BASED

- 1.1 Services of WNY: WNY agrees to review the Town's open workers' compensation claims and implement a program to relieve the Town of any and all claims subject to closure.
- 1.2 Mobilization Cost: A portion of compensation under this Agreement is a one-time mobilization payment of TWO THOUSAND FIVE HUNDRED (\$ 2,500.00).
- 1.3 Incentive Based Compensation: WNY shall be entitled to compensation in the amount of 10% of annual savings attributable to each claim closed out as a result of their review and program implementation.
- 1.4 Monthly Reports: WNY shall provide the Town with a monthly report of its services, and at the request of the Town, shall meet with its representatives to review ongoing initiatives and progress. WNY shall also provide invoices monthly setting for its basis for compensation set forth in paragraph 1.3.

2. COMMENCEMENT; TERM

- 2.1 Commencement Date: Performance of Services shall begin on August 1, 2016.
- 2.2 Term: The Term of this Agreement shall be from August 1, 2016 through July 31, 2017. It shall renew automatically thereafter for one (1) year, unless it is terminated by written notice by either party at least thirty (30) days prior to end of the term.

3. PERSONNEL

- 3.1 Personnel: WNY represents that it has, or will secure at its own expense, all professionally qualified personnel required to perform the services outlined in this Agreement.
- 3.2 Status as Independent Contractor: WNY and its personnel shall not be employees of the Town for any purpose. WNY shall have sole responsibility to employ, supervise and pay such employees, professionals, subcontractors and subconsultants as are necessary for the efficient performance of this Agreement. Under no circumstances shall the Town be responsible for any employee, professional, principal, subcontractor or subconsultant of WNY for the payment of wages, fees, taxes, withholding, workmen's compensation, unemployment insurance, or any other form of remuneration that would signify an employer/employee relationship between the Town and WNY or any employee, professional, principal, subcontractor or subconsultant of WNY.

4. TERMINATION FOR CAUSE

- 4.1 Events of Default: Any one or more of the following acts or omissions by WNY shall constitute an event of default hereunder (hereinafter referred to as "Events of Default"):
 - a. Failure to maintain the records required hereunder or to permit access thereto;
 - b. Failure in the performance of any of its remaining obligations hereunder or a default in any of the other covenants and conditions of this Agreement;
- 4.2 Termination: Upon the occurrence of any Event of Default, the Town shall thereupon have the right to terminate this Agreement by giving written notice to WNY of such termination and specifying the effective date thereof at least fourteen (14) days before the effective date of such termination

5. RECORDS AND AUDITS

WNY shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Agreement. These

records shall be made available for inspection and audit purposes to the Town. WNY shall preserve all such records for three years after the expiration of this Agreement.

6. AMENDMENTS

The Town may request changes in the services to be performed hereunder by WNY. Such changes shall be mutually agreed upon by and between the Town and WNY, shall be incorporated in written amendments to this Agreement.

7. ASSIGNABILITY

WNY shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or notation), without the prior written consent of the Town.

8. WAIVER OF BREACH

No Waiver by the Town of its right to enforce any provisions hereof after any default on the part of WNY shall be deemed a waiver of its right to enforce each and all of the provisions hereof upon any further or other default on the part of the Consultant.

9. PAYMENT

Payment under Section 1.2 of this Agreement shall be made to WNY by the Town upon execution of this Agreement by both parties.

10. INDEMNIFICATION

WNY will defend, indemnify, save harmless and exempt the Town and its subcommittees and elected officials, its staff and all their officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorney's fees incident to any work done in the performance of this Agreement arising out of a willful or negligent act or omission of WNY, its officers, agents, subconsultants, servants, or employees: provided however, that WNY shall not be liable for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorney's fees arising out of a willful or negligent act or omission of WNY, its offices, agents, servants and employees, or third parties.

11. SEVERABILITY

Should any provision in any section of this Agreement be found to be illegal or otherwise unenforceable, all other provisions and sections of this Agreement shall remain in full force and effect.

TOWN OF WEST SENECA

By: _____

Title: _____

WNY INSURANCE AGENCY, LLC

By: _____

Title: _____