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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: August 3, 2017

Re: Agreement with Key Insurance & Benefit Services, Inc.  
Workers' Compensation - Third Party Administration

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Kindly authorize the Supervisor to execute the necessary documents to enter the attached agreement with Key Insurance & Benefit Services, Inc. to provide the Town with services as a Third Party Administrator for Workers' Compensation Claims.

**THIS AGREEMENT** is entered into this 7th day of August, 2017, by and between **KEY INSURANCE & BENEFITS SERVICES, INC.**, an Ohio corporation, hereinafter referred to as “**KIB**”, and **Town of West Seneca** hereinafter referred to as “**CLIENT**”.

### **I. RECITALS**

- A. **CLIENT** wishes to retain the services of **KIB** to provide claims management services for its Self-Insured Workers’ Compensation risk and desires to have **KIB** provide specific services in connection with such claims program.
- B. **KIB** is willing to provide such services on the terms and conditions hereinafter stated.

### **II. TERM**

This Agreement shall be effective for a period of thirty six (36) months from August 23, 2017 through August 22, 2020 for new claims, and for a period of thirty three (33) months from November 21, 2017 through August 22, 2020 for claims already filed with the pre-existing third party administrator(s) as of November 20, 2017, and shall remain in full force and effect except as amended or terminated as hereinafter provided.

### **III. CANCELLATION**

Either Party shall have the right to terminate or renegotiate this Agreement by giving to the other Party at least ninety (90) days written notice at the address recited in Item IV, Section F. below of such termination or intent to renegotiate the terms, except that **KIB** shall be bound by the rates recited in Item IV, Section B.1. below. In the event timely notice of termination is given by either Party, the Agreement shall terminate upon the date stated in the notice, so long as it is at least ninety (90) days therefrom. In the event timely notice of intent to renegotiate is given by either Party, and renegotiated terms are not agreed to in writing by both Parties within the ninety (90) day period, the Agreement shall thereupon terminate. **CLIENT’S** failure to pay **KIB’S** service fee as provided in Item IV, Section H of this Agreement shall be construed as a breach of the Agreement, and, in the event, **KIB** shall have the right to terminate this Agreement by

giving the **CLIENT** ten (10) days written notice of its intention to terminate. Upon termination of this Agreement, neither Party shall have any further responsibility or obligation hereunder except as provided in Item IV, Section C of this Agreement.

#### **IV. AGREEMENT**

A. **Services to be Performed by KIB:** **KIB** agrees to perform the following services:

1. With regard to **CLAIMS ADMINISTRATION**, **KIB** shall:
  - a. Review all claim and loss reports submitted by **CLIENT** to **KIB** during the term of this Agreement and process each submitted claim or loss report in accordance with administrative notification requirements.
  - b. Conduct an investigation of each reported claim or loss under subparagraph “a” above (hereinafter referred to as a “qualified claim or loss”) to the extent deemed necessary by **KIB** in the performance of its obligations hereunder, or for those reasonable requests by **CLIENT**.
  - c. Maintain a file for each qualified claim or loss, which shall be available for review by the **CLIENT** at any reasonable time.
  - d. Perform reasonable and necessary administrative and clerical work in connection with each qualified claim or loss, including the preparation of checks or vouchers, Lump Sum/Section 32 Settlements and any other documents to finalize a claim.
  - e. Recommend claim reserves and provide a continuous review and updating of those to reflect changes.
  - f. If directed by **CLIENT**, **KIB** will open and maintain a checking account as agent for the **CLIENT** at Key Bank and will make timely payments of losses and expenses in accordance with Workers’ Compensation Board rules and procedures.
  - g. Notify **CLIENT**, **CLIENT’S** representatives and/or excess insurers, as determined by **CLIENT**, of all qualified claims or losses with respect to which potential losses may exceed **CLIENT’S** retention and, if requested,

provide such Parties with necessary information on the current status of those claims or losses.

- h. **KIB** will furnish to **CLIENT** a standard set of loss and information reports showing in detail and summary loss information, on a monthly basis.
  - i. Additional optional and ad hoc information and analysis reports and services can be provided on a time and expense basis, as mutually agreed upon by **KIB** and the **CLIENT**.
  - j. Provide narrative or analytical reports of major or litigated claims, if requested by the **CLIENT**.
  - k. Provide claim forms and other forms believed by **KIB** to be appropriate for the efficient administration of the **CLIENT'S** program.
  - l. Investigate and pursue all subrogation possibilities on behalf of the **CLIENT** in all states permitting subrogation. Funds received from all subrogation collections shall be considered revenue of the **CLIENT**.
  - m. Provide all personnel necessary to effectively perform the services agreed to herein.
  - n. Provide written reports on all Workers' Compensation Hearings regarding the **CLIENT'S** claims.
  - o. **KIB** shall prepare and file all forms required by New York State Department of Financial Services and Workers' Compensation Board.
2. With regard to **PROGRAM DEVELOPMENT**, **KIB** shall, to the extent appropriate:
- a. Consult with key personnel of the **CLIENT** on the establishment and coordination of necessary procedures and practices to meet any applicable state requirements and the needs of the **CLIENT**.
  - b. Participate in the orientation of the **CLIENT'S** personnel who are directly involved in the processing of qualified claims or losses.
  - c. Review the development of the **CLIENT'S** program periodically with representatives of the **CLIENT** in order to identify problems and recommend corrective action.

**B. Obligations of the CLIENT:**

1. **CLIENT** shall pay **KIB** for services rendered herein as follows:

<b>August 23, 2017 through August 22, 2018</b>	<b>\$19,500</b>
<b>August 23, 2018 through August 22, 2019</b>	<b>\$20,100</b>
<b>August 23, 2019 through August 22, 2020</b>	<b>\$20,700</b>

To be billed monthly (in advance) at the rate of 1/12 of the annual fee. At the end of this contract period, the annual compensation shall be subject to adjustment as mutually determined by the **CLIENT** and **KIB**. **KIB** agrees to notify the **CLIENT** in writing of any increase in service fees thirty (30) days prior to August 23 of each year.

**MEDICAL BILL REVIEW FEE:**

Our medical bill review fees would remain the same for the duration of the contract:

Review for compliance with State fee schedule:	<b>\$9.00 per bill</b>
Any savings beyond reduction to State fee schedule (such as PPO network access, DRG audits, professional negotiations, specialty nurse review, clinical bill audits, etc.):	<b>23% of savings</b>

**CONVERSION OF PRE-EXISTING CLAIM DATA INTO KIB SYSTEM:**

<b>August 23, 2017 through August 22, 2018</b>	<b>\$5,000</b>
<b>August 23, 2018 through August 22, 2019</b>	<b>\$5,000</b>
<b>August 23, 2019 through August 22, 2020</b>	<b>\$5,000</b>

**ACCESS TO CLAIMS INFORMATION SYSTEM (RMIS):**

\$1,800 one-time fee per user

**LOSS PREVENTION SERVICES, KIB** shall provide loss prevention services during the period August 23, 2017 through August 22, 2018 at a fee of **\$10,000.00**.

2. With reference to Workers' Compensation Hearings, the Contract **does not** include representation of the **CLIENT'S** interest at all Workers' Compensation Hearings. **KIB** would simply pass outside counsel's statement for services on for payments, once it is reviewed, with no additional charge. Workers' Compensation Hearings charges will be paid off the file.
3. **KIB** will have check writing authority against the **CLIENT'S** own bank account, **CLIENT** will deposit funds in its own bank account and replenish funds paid on a timely basis upon **KIB'S** submission of vouchers or check registers supporting payments made. **CLIENT** will receive and reconcile all bank statements.
4. It is expressly understood that **KIB** shall not be required to advance its own funds to pay losses, allocated loss expenses or banking charges hereunder, or to perform any service hereunder if **CLIENT** fails to provide adequate funds as herein set forth.

**C. Terms of Agreement and Cancellation**

In the event of cancellation of this Agreement, **KIB** will continue to manage all pending claims and claims occurring but not reported prior to cancellation to a conclusion at a fee to be determined by mutual agreement with the **CLIENT**. The fee is to be based on actual claims administration costs at the time of cancellation. If the fee cannot be agreed upon, the files will be returned to the **CLIENT** in an orderly manner.

1. **KIB** will treat as confidential all data furnished by the **CLIENT** or generated as a result of the processing services performed under this Agreement and any other information so designated in writing by the **CLIENT**, and **KIB** will make the same effort to safeguard such information as it does in protecting its own confidential data.
2. **KIB** reserves the right to gather and utilize, as it sees fit, statistical information from the data base; provided, however, that **CLIENT'S** name and proprietary and/or confidential data are adequately protected and not disclosed.

**D. Practice of Law**

It is understood and agreed that **KIB** will not perform, and **CLIENT** will not request performance of, any services which may constitute the unauthorized practice

of law. No legal service to be provided by outside counsel without the prior approval of CLIENT.

E. **Indemnification**

KIB agrees to defend, indemnify, protect, save and keep harmless CLIENT from any and all losses, cost of defense, expense, damage or exposure arising from the negligent acts or omissions of KIB.

CLIENT agrees to defend, indemnify, protect, save and keep harmless KIB from any and all loss, cost of defense, expense, damage or exposure arising from the negligent acts or omissions of CLIENT.

F. **Notice**

Any notice to be given under this Agreement shall be sent by Certified Mail to the following in the case of KIB:

Gian P. Giandomenico, Vice President  
Key Insurance & Benefits Services, Inc.  
239 Van Rensselaer Street – 1<sup>st</sup> Floor  
Buffalo, New York 14210

And to the following in the case of CLIENT:

Town of West Seneca Town Hall  
1250 Union Road  
West Seneca, New York 14224

G. **Successors**

This Agreement shall be binding upon and shall inure to the benefit of all assigns, transferees and successors in the interest of the Parties hereto. This Agreement may not be assigned without the prior written consent of the CLIENT.

H. **Termination**

Should CLIENT not pay KIB for services rendered within thirty (30) days of receipt of statement for services rendered KIB shall have the right to consider that a breach of this contract and terminate same.

I. **Entire Agreement and Modification or Amendment**

This Agreement represents the entire and exclusive statement of the Agreement of the Parties and, except as otherwise provided in Item IV, Section C, may be modified or amended only by a written statement signed by both Parties. Such modification or amendment shall be attached to, and shall thereupon become part of, this Agreement.

J. **Headings**

Headings herein are for convenience or reference only and shall not be considered in any interpretation of this Agreement.

K. **Independent Contractor**

It is understood and agreed that KIB is engaged to perform services under this Agreement as an independent contractor and not as an agent of the CLIENT, except with respect to the payment of claims. The Parties hereto agree that neither Party has any relationship with, or contractual liability to, the other with respect to the subject matter of this Agreement, other than as set forth herein. KIB employees shall be bonded in an amount sufficient to cover any loss of CLIENT funds related to the administration of CLIENT'S Self-Insured Workers' Compensation claims.

L. **Changes in Rules and/or Regulations**

In the event that there are changes in the law and/or regulations which impose additional work on KIB and/or its representative not contemplated at the onset of this **Agreement**, it is understood and agreed that such additional work shall be outside the **Agreement** and as such, shall be billed to the self-insured in addition to the fee stated in the Contract on a time and expense basis at the then prevailing rates.



M. Insurance

KIB agrees to procure and maintain at its own expense professional liability insurance with minimum limits of \$1,000,000 and a \$3,000,000 annual aggregate and shall provide the CLIENT with a certificate of insurance or other proof showing compliance with this paragraph.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the day and date first above written.

**TOWN OF WEST SENECA**

**KEY INSURANCE & BENEFITS SERVICES, INC.**

**BY:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**Gian P. Giandomenico**

**Title:** \_\_\_\_\_

**Title:** Vice President

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_