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AGENDA ITEM
REQUEST/JUSTIFICATION FORM
(To be completed by requesting Department)
Forward all requests to Sharon Bourke, LC2 Civic Center
DEADLINE SUBMITTAL IS 3:00 P.M. WEDNESDAY
BEFORE THE TUESDAY MEETING

Agenda item: Consent
(i.e. Consent/Recognition-Proclamation/Presentation/Public Hearing/Committee, etc.)

Date to be on agenda: August 2, 2016

Exact wording to be used for the agenda: Renewal of Claims Administration
Agreement with Corporate Claims Management, Inc.

Action requested: Approval

Amount requested: \$29,475 Object Code: _____

Is item in current year's budget? Yes X No _____

Does this item commit funds in future years? Yes _____ No X

If yes, explain: _____

If an agreement or contract, has the County Attorney reviewed and approved? Yes ___ No ___

Previous action taken on this item, if any: _____

Recommendations and rationale or action: _____

Will anyone speak on behalf of this item, if so who? _____

If this is a rush agenda item, please explain why: _____

Submitted by (Name & Dept.): Darrel Neely Ext. 7940

Date submitted: 7/27/2016

List Attachments: Resolution, Agreement

(Attach resolution and all pertinent documentation; i.e. contract, agreement, memorandums, etc.)

Certified resolutions can be obtained at the County Clerk's website:
<http://www.douglascountyclerk.org/county-board-records/search-for-resolutions>

<i>Completed by receiving office</i>
Received in Administrative Office: Date <u>7/27/16</u> Time _____

BOARD OF COUNTY COMMISSIONERS
DOUGLAS COUNTY, NEBRASKA

WHEREAS, Douglas County's Claims Administration Agreement with Corporate Claims Management Inc. to provide third party claim administration services for the County's liability claims expires August 2, 2016; and,

WHEREAS, Douglas County desires to renew that agreement for an additional one year period at a cost of \$29,475

NOW, THEREFORE, BE IT RESOLVED BY THIS BOARD OF COUNTY COMMISSIONERS, DOUGLAS COUNTY, NEBRASKA, that the attached renewal of the Claims Administration Agreement with Corporate Claims Management, Inc. is hereby approved and adopted and the Chair of this Board is authorized and directed to execute said Agreement of behalf of Douglas County.

DATED this 2nd day of August, 2016

CLAIMS ADMINISTRATION AGREEMENT

THIS AGREEMENT is made as of August 2, 2016, between Corporate Claims Management, Inc., a corporation organized and existing under the laws of the State of Delaware (hereinafter "Administrator") and Douglas County, Nebraska (hereinafter "Client").

WITNESSETH:

WHEREAS, Administrator is engaged in the business of the administration, investigation and resolution of Claims arising from workers' compensation and property/casualty insurance Programs for its Clients; and

WHEREAS, Client requires the services of an independent contractor to administer its property/casualty insurance Program up to its self-insured retention; and

WHEREAS, Client desires to retain Administrator for the provision of its services for Client's Claims for its property/casualty insurance program to the extent as set forth in the following articles of this Agreement;

NOW THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, as defined in Section 1, hereto, intending to be legally bound, hereby agree as follows:

1. Definitions

As used in this Agreement, the following Terms shall have the following meanings:

- (a) "Agreement" shall mean this Agreement, as originally executed and amended or supplemented from time to time.
- (b) "Allocated Loss Adjustment Expense" shall mean such of the following items of expense incurred or authorized by Administrator on behalf of Client as may be reasonable and necessary in connection with Administrator's rendition of services in accordance with this Agreement:
 - i. Medical examinations of Claimants, including the reasonable and necessary transportation expenses of Claimants.
 - ii. Reports from attending or examining physicians.
 - iii. Attorneys' fees and disbursements.
 - iv. Court reporter services and transcripts.
 - v. Stenographic services and transcripts.

- vi. Witness attendance fees.
 - vii. Court costs.
 - viii. Appeal bonds.
 - ix. Printing costs related to trials and appeals.
 - x. Testimony, opinions, appraisals, reports, surveys, and analyses of professionals and experts.
 - xi. Automobile and Property appraisals.
 - xii. Trial and hearing attendance fees.
 - xiii. Reports from government agencies or branches.
 - xiv. Credit bureau reports.
 - xv. Private investigators.
 - xvi. Photographs.
 - xvii. Medical cost containment services including but not limited to hospital bill audit, provider bill audit, and medical case management incurred with the consent of Client.
 - xviii. Extraordinary Claim investigation and/or travel expense incurred with the consent of Client.
 - xix. Fees for services provided by any investigation or adjusting firm other than Administrator related to the investigation and defense of a particular Claim.
 - xx. Any similar service related to the investigation and defense of a particular Claim, or the protection of and collection of the subrogation rights of the Client, for which Client shall have given prior approval.
 - xxi. Costs, fees and expenses incurred by Administrator for services above and beyond those covered by this agreement.
- (c) "Claim" shall mean any occurrence from which injury, damage, or expenses are sustained or asserted or from which liability under the civil laws of any various state is alleged.
- (d) "Claimant" shall mean any person alleging or having a right to file a Claim against the Client for damages as a result of Client's duty or breach of duty under any various civil laws.

- (e) "Client Program" or the "Program" shall mean the Client's property/casualty insurance Program as respects its General Liability, Public Officials Liability, Law Enforcement Liability, Automobile Liability and Property loss exposures.
- (f) "Claim" and "Claims" shall mean Tort Claims as defined by the Political Subdivision Tort Claims Act, set out in Nebraska Revised Statute 13-901, et seq.
- (g) "Allocated Loss Adjustment Account" shall mean a bank account to be established by Administrator for the sole benefit of the Client, to be funded by Client as set forth in Section 6(e) of this Agreement, and from which Administrator may draw funds to pay Allocated Loss Adjustment Expenses as required in the administration of Client's Program.
- (h) "Party" shall mean Client or Administrator as the context requires, and the Term "Parties" shall mean both Client and Administrator.
- (i) "Loss Run" shall mean a computer generated listing of Claims that have been posted to Administrator's Claims Administration Information System.
- (j) "Loss Payment Accounting Record" means a computer generated listing of accounting activity in the "Allocated Loss Adjustment Account", as described below, during the preceding month that has posted to the Administrator's Claims Administration Information System.

2. Term

Administrator agrees to provide all services set forth herein to Client in connection with its Claims exposures occurring or reported during the period commencing August 1, 2016, and ending July 31, 2017, unless earlier terminated pursuant to Section 3 hereof.

3. Termination

Unless explicitly renewed by the Parties in writing, this Agreement shall terminate on July 31, 2017. Any continuation or renewal of this Agreement shall be the subject of further negotiation between Client and Administrator. Notwithstanding the foregoing, this Agreement may be terminated at any time with or without cause by either Party giving the other Party written notice of termination ninety (90) days prior to the effective date of such Termination.

If this Agreement is terminated before July 31, 2017, Client shall exercise one of the following options:

- (a) Client may require Administrator to conclude the handling of all Claims occurring during the Term of this Agreement whether reported before or after the term of this Agreement, subject, however, to the terms, conditions and limitations of this Agreement.

Administrator shall be entitled to further compensation for its handling of Claims reported prior to the Termination of this Agreement to their conclusion at the rate of \$65.00 per hour plus expenses incurred.

- (b) Client may require Administrator to return all open and/or finalized files to the Client. Such return of open and/or finalized files shall not result in a reduction in fees for all Claims referred to Administrator but not finalized prior to the effective date of termination.

4. Compensation

Client shall pay Administrator fees as follows as compensation for the administrative services Administrator herein agrees to perform:

Administrator shall provide all Claims administration services as detailed in this Agreement for an annual fee of twenty-nine thousand four hundred seventy-five dollars (\$29,475), to be paid by Client in equal monthly installments during the term of this Agreement.

Fees equal to 1/12 of the Annual Claims Administration Services Fee (\$2,456.25) shall be billed on the first of each month during the Term of this agreement, and such billings will be paid by Client within thirty (30) days of such billing.

5. Services to Be Performed

Administrator shall adjust, supervise and administer fully the Client's Program in a manner so that such Program is at all times in compliance with all current and future applicable laws, rules and regulations governing such self-insured Programs; and, in fulfilling the foregoing obligations, Administrator will act as the independent contractor and/or representative of Client in all matters related to the administration of the Program.

In addition to the foregoing obligations, Administrator hereby agrees to perform fully all of the following duties:

- (a) To review all Claim and/or loss reports with Claim and/or dates incurred during the Term of this Agreement for all losses involving the hereinabove stated exposures to the Client.
- (b) To establish a file with respect to each Claim.
- (c) To investigate, to the extent deemed necessary in the mutual judgment of the Parties, all reported Claims as defined in Section 1 above, and to make recommendations to the Client regarding disposition of those Claims.
- (d) To provide each Claim file with a written chronology of all actions taken with respect to the underlying Claim.

- (e) To furnish all Claim forms necessary for proper Claims administration.
- (f) To assist in all litigation or other proceedings involving any Claim as directed by Client or its excess insurer.
- (g) To retain electronically all Claim files for a period of two (2) years after the applicable statute of limitations has expired. After this period, files will be returned to the Client or destroyed as Client requests.
- (h) To recommend adequate reserves and provide to Client a continuous review of such reserves and any required changes to such reserves.
- (i) To monitor all treatment Programs recommended to a Claimant by any care provider.
- (j) To furnish to Client and/or its designees on a monthly basis, a Loss Run and Loss Payment Accounting Record Report. Administrator shall also furnish to Client and/or designees on an as requested basis ad-hoc reports as may be available within its Claims administration system.
- (k) To issue, from the "Allocated Loss Adjustment Account", all payments required to be made in the administration of Client's Program and provide to Client a monthly record of all such payments.

Such "Allocated Loss Adjustment Account" is to be used solely for the purpose of the payment by the Administrator of Allocated Loss Adjustment Expenses, as defined in this Agreement, associated with Claims for which the Administrator is providing Claims adjusting services hereunder, and for the deposit of recovery amounts, including, without limitation, subrogation, salvage and adjustment reimbursements from Allocated Loss Adjustment Expense amounts previously paid from such Loss Fund account ("Recoveries"). Such funds shall not be co-mingled with any other funds including, but not limited to, funds from other carriers and the Administrator's general operating funds. Funding of the "Allocated Loss Adjustment Account" is the responsibility of Client, to be made available to Administrator as detailed in Section 6 (e) and Section 6 (f) of this Agreement.

- (l) To prepare and file all reports required by any current or future applicable law, rule or regulation.
- (m) To the extent required, prepare and file all reports required by any contract of insurance in effect during the Term of this Agreement.
- (n) To provide Client with access to and utilization of its Corporate Systems Risk Management Information System.

6. Covenants and Agreements of Client

Client covenants and agrees as follows:

- (a) Client appoints Administrator as its Claims management company, as its agent and authorized Administrator pursuant to the terms of this Agreement.
- (b) To pay to Administrator the fees prescribed in Section 4. If Client fails to pay Administrator the fees prescribed in Section 4 and/or in accordance with the time frames set forth therein, Administrator may terminate this Agreement immediately, notwithstanding the ninety (90) day's prior written notice set forth in Section 3. In the event of such immediate Agreement Termination, the options upon Termination as set forth in Section 3 shall not be available to Client, but instead Administrator shall return to Client all Claims and/or losses pending on the date of such Termination for the Client to handle to a conclusion, and such handling shall not result in any expense or reduction of fees to Administrator.
- (c) To pay all Allocated Loss Adjustment Expense, as defined herein, in addition to the fees to be paid to Administrator as prescribed in Section 4 hereof.
- (d) To indemnify, protect, save, defend and hold Administrator and Administrator's directors, officers, attorneys, employees, shareholders, agents and other representatives wholly harmless from and against any and all loss, cost, damage or expense (including attorney's fees and costs incurred by Administrator in connection therewith) arising out of the Administrator's handling of any Claims by reason of any negligent, grossly negligent or willful act or omission of Client or of Client's directors, officers, shareholders, attorneys, employees, agents or other representatives, taken or omitted to be taken pursuant to this Agreement, including, without limitation, any such loss, costs, damage or expense incurred by reason of the following:
 - i. Any act or omission of Administrator or any of Administrator's directors, officers, attorneys, employees, agents or other representatives taken or omitted to be taken at the direction of Client or any of Client's directors, officers, shareholders, agents, or other representatives;
 - ii. Administrator being named in litigation as the insurer of record or other capacity based upon its present or past relationship with Client;
 - iii. The failure of Administrator or Administrator's directors, officers, attorneys, shareholders, employees, agents or other representatives to settle a Claim that could have been settled within Administrator's Authority Limit (so long as such failure to-settle does not result from a negligent, grossly negligent, or willful act, error or omission by Administrator or by any of Administrator's directors, officers, shareholders, attorneys, employees, agents or other representative); or
 - iv. The failure of Administrator or Administrator's directors, officers, shareholders, attorneys, employees, agents or other representative to pay any Claim or

Allocated Loss Adjustment Expense on a timely basis due to the failure of Client or Client's directors, officers, shareholders, attorneys, employees, agents or other representatives to comply with Section 6, subparagraphs (e), (f), and/or (g) hereunder.

In the event Administrator or any of its directors, officers, shareholders, attorneys, employees, agents or other representatives, is named as a defendant in, or is otherwise obligated to defend, any such action asserting any Claim indemnified hereunder, Client will assume, at Client's expense, the defense of such actions on behalf of Administrator and its directors, officers, shareholders, attorneys, employees, agents or other representatives, as the case may be. Client shall have the sole discretion to select the attorneys who will defend any such action, provided, however, that Client shall exercise such discretion reasonably. Notwithstanding the foregoing, nothing herein shall waive any rights of any Party hereto to contributory negligence Claims or defenses with respect to any indemnity provided herein, including sovereign immunity. This indemnity shall survive Termination of this Agreement.

- (e) To provide sufficient funds to the "Allocated Loss Adjustment Account" to enable Administrator at all times to pay Allocated Loss Adjustment Expenses in accordance with the terms and conditions contained herein. Client shall provide Administrator with an initial security deposit, which Administrator shall use to issue payments as may be required in compliance with the terms and conditions of this Agreement. At the end of each monthly period, Administrator shall provide Client with an invoice and detail listing of all payments issued during the month. Client shall reimburse the "Allocated Loss Adjustment for all payments issued during the previous monthly period within seven (7) days of receipt of such information so that Administrator may continue to make timely payments.

Client shall, at all times, have the right to perform random audits of payments issued, provided however, Client must provide at least 5 business days' notice to Administrator prior to such audit. These audits may take place at the Administrator's regular place of business and shall be performed at Client's sole cost, or at such other location as may be convenient to the parties. If a disagreement as to the amount of payment reimbursement arises, Client shall immediately notify Administrator of the nature of the dispute and the dollar amount associated with such dispute. The Parties agree to endeavor to resolve such dispute in a timely manner. Notwithstanding the foregoing, Client agrees to make timely reimbursement of all non-disputed amounts in accordance with the timeframes provided in this Section.

- (f) Client hereby extends authority to Administrator to draw funds from the "Allocated Loss Adjustment Account" as may be necessary to pay Allocated Loss Adjustment Expenses on Client's behalf, without the express authorization of Client. Client agrees that payment of all Claims and Allocated Loss Adjustment Expenses are the responsibility of the Client, and that Administrator shall have no responsibility for payment or funding of Claims or Allocated Loss Adjustment Expenses whatsoever.

7. Covenants and Agreements of Administrator

Administrator covenants and agrees as follows:

- (a) To Client's right to assume the control and handling of any Claim at any time, and Administrator agrees to deliver promptly any Claim file to Client which it may request, but without any off-set or deduction from any of the fees or charges paid or payable by Client to Administrator under Section 4 above. The Parties agree that at all times prior to and after the cancellation of this Agreement, all Claim files are owned by and are the property of Client. Claim files are subject to review by Client and its employees and authorized agents during Administrator's regular business hours, with at least 5 business days' prior written notice.
- (b) To exercise reasonable efforts to manage the services provided hereunder in such a way and in such manner as to insure that every adjuster, Claims investigator, and/or employee used by the Administrator or subcontracted to by the Administrator will adjust and/or investigate every alleged Claim or matter covered by this Agreement in accordance with this Agreement and any Claim handling instructions as implemented from time to time.
- (c) To provide to Client, upon written request, certificate of insurance evidencing adequate General Liability Insurance, Automobile Liability Insurance, Workers' Compensation Insurance, Fidelity Coverage (Bond) and Errors and Omissions Insurance (Professional Liability Coverage).
- (d) To provide all necessary personnel to perform the services agreed upon herein.
- (e) To indemnify, protect, save, defend and hold Client and Client's directors, officers, shareholders, attorneys, employees, agents and other representatives wholly harmless from any and all loss, cost, damage or expense arising out of the administration or handling of any Claims by reason of any negligent, grossly negligent or willful act or omission of Administrator or of Administrator's directors, officers, shareholders, attorneys, employees, agents or other representatives, taken or omitted to be taken pursuant to this Agreement; provided, however, that Administrator shall have no obligation to indemnify anyone pursuant hereto with respect to the following:
 - i. Any act or omission of Administrator or any of Administrator's directors, officers, shareholders, attorneys, employees, agents or other representatives taken or omitted to be taken at the direction of Client or any of Client's directors, officers, shareholders, attorneys, employees, agents or other representatives;
 - ii. Administrator being named in litigation as the insurer of record; or
 - iii. The failure of Administrator or Administrator's directors, officers, shareholders, attorneys, employees, agents or other representatives to pay any Allocated Loss Adjustment Expense, on a timely basis due to the failure of Client, Client's

directors, officers, attorneys, employees, agents or other representatives to comply with Section 6, subparagraphs (e) and (f) of this Agreement.

In the event Client or any of its directors, officers, attorneys, employees, agents or other representatives, is named as a defendant in, or is otherwise obligated to defend, any such action asserting any Claim indemnified hereunder, Administrator will assume, at Administrator's expense, the defense of such actions on behalf of Client and its directors, officers, attorneys, employees, agents or other representatives, as the case may be. Administrator has sole discretion to select the attorneys who will defend any such action, provided, however, that Administrator shall exercise such discretion reasonably. Notwithstanding the foregoing, nothing herein shall waive any rights of any Party hereto to contributory negligence Claims or defenses with respect to any indemnity provided herein.

- (f) **Drug-Free Policy.** Administrator shall maintain a drug-free workplace policy.
- (g) **Non-Discrimination.** Administrator shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions, or privileges of employment because of race, color, religion, sex, disability, or national origin of the employee or applicant.
- (h) **Conflicts of Interest.** In the performance of this Agreement, Administrator will avoid all actual and apparent conflicts of interest. Administrator will report any conflict of interest it discovers immediately to Client.

8. Miscellaneous

- (a) This Agreement shall be governed and constructed in accordance with the laws of the State of Nebraska. All legal proceedings arising out of this agreement shall be brought forth in the appropriate state or federal court located within Douglas County, Nebraska.
- (b) If any provision of this Agreement is held illegal or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and, provided that the fundamental terms and conditions of this remain legal and enforceable, the remainder of this Agreement shall remain operative and binding on the parties.
- (c) No waiver or modification of this Agreement or of any covenant, condition or limitation contained shall be valid unless in writing and duly executed by the Parties.
- (d) The failure of either Party to insist, in any one or more instances, upon performance of the terms or conditions of this Agreement shall not be construed as a waiver or a relinquishment of any right granted hereunder or of the future performance of any such term, covenant, or condition.
- (e) This Agreement is personal to the Parties and may not be assigned by either Party in whole or in part without prior written consent of the other Party.

- (f) Administrator shall comply with all applicable federal and state laws, including those that are designated to protect the confidentiality of protected health information, and particularly all applicable requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). To this end, the Parties shall execute a Business Associate Agreement within thirty (30) days after the signing of this Agreement. Said Business Associate Agreement, once executed by both Parties, shall become part of this Agreement.
- (g) Each Party agrees that it shall not, directly or indirectly, divulge to any person any trade secret or other information concerning the business of the other which may be learned as a consequence of entering into this Agreement without the written permission of the other Party, except as required by law.
- (h) Any notice to be given hereunder shall be deemed sufficient if in writing and delivered either personally or by certified mail, return receipt requested, to the following:

If to Administrator: Michael D. Greco, President
 Corporate Claims Management, Inc.
 782 Spirit 40 Park
 Chesterfield, Missouri 63005

If to Client: Patrick Bloomingdale, CAO
 Douglas County Board of Commissioners
 1819 Farnam Street, Suite LC2
 Omaha, Nebraska 68183

- (i) The headings of this Agreement are intended solely for convenience of reference and shall have no effect on the construction or interpretation of this Agreement.
- (j) This Agreement shall be binding upon and inure to the benefit of each Party hereto and their respective permitted successors and permitted assigns.
- (k) New Employee Work Eligibility Status. The Contractor shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.
- (l) Unavailability of Funding. Due to possible future reductions in State and/or Federal appropriations, the County cannot guarantee the continued availability of funding for this Agreement notwithstanding the consideration stated above. In the event funds to finance this Agreement become unavailable either in full or in part due to such reductions in appropriations, the County will notify Contractor in writing giving at least 30 days' notice. Said notice shall be delivered by certified mail return receipt requested or in person with proof of delivery. Such written notification will also serve as the County's notice of termination. Per this provision, this Agreement will automatically terminate as of the date specified for fund reduction in the written notification. If the Parties desire

that this Agreement continue, a written amendment must be duly executed as provided herein on or before the date specified for fund reduction/auto-termination. The County shall be the final authority as to the availability of funds.

IN WITNESS WHEREOF, the Parties by their authorized agents have caused this Agreement to be executed as of the date first written above.

Douglas County, Nebraska

Corporate Claims Management, Inc.

BY: _____
County Board Chair

BY:  _____
Michael D. Greco, President

Approved as to Form

Deputy County Attorney