

# ORIGINAL

## AGREEMENT FOR SERVICES #264-S1411 AMENDMENT I

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This Amendment I to that Agreement for Services #264-S1411, made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and York Risk Services Group, Inc., a New York Corporation, duly qualified to conduct business in the State of California, whose principal place of business is 99 Cherry Hill Road, Suite 102, Parsippany, NJ 07054, and whose Agent for Service of Process is *CSC – Lawyers Incorporating Service, 2710 Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833*; (hereinafter referred to as "Consultant");

### RECITALS

**WHEREAS**, Consultant has been engaged by County to provide workers' compensation claims third-party administration (TPA) services including administration, investigation, adjustment, utilization review, bill review, and case management, in accordance with Agreement for Services #264-S1411, dated November 5, 2013, incorporated herein and made by reference a part hereof; and

**WHEREAS**, the parties hereto have mutually agreed to amend the Trust Fund terms, hereby amending **ARTICLE I – Scope of Services**; and

**NOW THEREFORE**, the parties do hereby agree that Agreement for Services #264-S1411 shall be amended a first time as follows:

**ARTICLE I** shall be amended in its entirety to read as follows:

#### **ARTICLE I**

**Scope of Services:** Consultant agrees to furnish the personnel and equipment necessary to provide workers' compensation claims third-party administration (TPA) services including administration, investigation, adjustment, utilization review, bill review, and case management.

Consultant will administer County's workers' compensation claims in accordance with Exhibit "A" to the original Agreement.

Consultant shall diligently and expeditiously perform all necessary services to fulfill the County's obligations under the workers' compensation laws, policies, regulations, and procedures of the State of California, including but not limited to the services listed below.

## **COMMUNICATIONS**

1. Personal contact on non-litigated indemnity cases will be maintained with the injured employee on a periodic, ongoing basis to facilitate progress and timely return to work. Initial contact must be made within two (2) working days of receipt of Employer's First Report and follow-up contact every thirty (30) days thereafter until return to work or the file must clearly reflect the reason contact should not continue at that frequency.
2. Confer on a regular basis with all persons associated with County's organization (such as Risk Management, County Counsel, accountants, consultants) involved in the processing of industrial claims.
3. Promptly return calls to injured employees and County personnel.

## **PROGRAM MANAGEMENT**

1. Meet with County personnel on an ongoing basis to develop procedures, forms, instructions, schedules, and protocols to maintain required Consultant services. County will be informed of changes in the workers' compensation laws and procedures pertinent to County's self-insured program.
2. Assist County personnel in the development of directives, notices and other program communications to employees with an emphasis on procedures utilized for coordination of return to work efforts, Qualified Injured Worker determinations, and evaluation of modified/alternate employment.
3. Provide claim forms, employer's report forms and required notices for distribution by County to its employees.
4. Establish and maintain standardized procedures acceptable to the County for the prompt reporting, recording, investigation and treatment of all industrial injuries and diseases. Provide instructional meetings as requested by County to review and explain instructions and procedures.
5. Division of Workers' Compensation (DWC) benefit notices shall be issued timely in compliance with DWC requirements where confusion may exist. Consultant will telephone or forward a personal letter to injured employee explaining DWC benefit notices or forms.
6. Within ten (10) days of receipt, County to be notified electronically on the following:
  - a. All correspondence from Consultant to employee.
  - b. All legal correspondence from applicant or defense attorney.
  - c. Reports from rehabilitation counselor.
  - d. Formal investigation reports.
  - e. Med-Legal reports.
  - f. Any medical report containing work status information.
7. Consultant shall meet quarterly with County to review any claims which are reported to excess insurance during the quarter and additional claims upon notice from County.

8. At all reasonable times during the term of this contract, County, or any designated representative, shall have access to Consultant premises, and records related to work under this contract. Consultant shall make such records available for inspection, audit and copying by County or its designated representative at County's expense. In addition to any other records required by this agreement, Consultant shall maintain all books, papers, records, documents, and other materials related to work performed under this contract confidential; in the same manner as County is required by law to do. Upon termination of contract all such records, books, papers, documents and other evidence obtained from County or related to work performed under this contract shall be forthwith returned to County.
9. Consultant will work with County to implement a strategic plan that will enable County and Consultant to work efficiently and define expectations for both parties as defined in Exhibit "B" to the original Agreement.

#### **PERSONNEL REQUIREMENT**

1. This section is delineated separately to emphasize the importance the County places on the qualifications and experience of the actual personnel who will be working with the County on a daily basis. The County requires participation in the selection of all personnel providing services. County's continuing approval will be required each time a change in personnel is anticipated.
2. The adjuster(s) dedicated to handling County claims will handle a caseload not to exceed 150 files.
3. The adjuster(s) dedicated to handling County claims will have a minimum of five (5) years workers' compensation experience.

#### **CLAIMS HANDLING**

1. All new claims will be created, reserved, and entered into the computer within five (5) working days following Consultant receipt of the Employer's First Report. The basis for the initial reserves, and subsequent reserve revisions, will be clearly explained in the file.
2. A diary system will be established in order that each active case is reviewed at least every thirty (30) days. By prior consent of County, inactive cases may be placed on a diary not to exceed ninety (90) days.
3. The diary schedule will be contained in the file.
4. A specific plan of action outlining direction on the investigation and handling of all indemnity cases will be established within ten (10) working days of receipt of the Employer's First Report and clearly evidenced in the file. Each open indemnity claim file shall include a plan for implementation of appropriate case activity and resolution, and such plan shall be revised as appropriate while the claim remains open. The plan should be accessible on-line bearing the name of the person who established the plan and the date written.

5. All phone conversations, discussions, and meetings held on the case will be clearly documented in each file.
6. Within three (3) working days of notice of injury, Consultant will contact County in order to determine if compensability is to be acknowledged or questioned when not self-evident on initial report from County. On all questionable claims, Consultant will complete an initial evaluation of compensability (accept claim, deny claim, or delay acceptance pending results of additional investigation) and advise County and injured employee of the process to be undertaken in investigation of the claim.
7. Recommend determinations on eligibility for temporary disability compensation, permanent disability compensation, medical benefits, vocational rehabilitation benefits and all other workers' compensation benefits in accordance with the State Workers' Compensation laws and the internal benefit programs of County.
8. All correspondence will be clearly stamped with the date of receipt.
9. Authorize prompt payment of benefits in accordance with medical advice, defense counsel, advisory ratings, awards, or settlement agreements.
10. Negotiate settlements on behalf of County. Consultant has authority for purpose of compromising and/or resolving any claim against the County being handled by Consultant. Approval to settle any claim must be obtained from County Risk Management in writing. The Consultant will clearly document the criteria by which a settlement value is based. Settlement proposals directed to County shall be forwarded by Consultant or defense counsel in a concise and clear written form with a reasoned recommendation. Settlement authority shall not exceed \$25,000.00.
11. Consultant will make timely identification of all claims involving:
  - a. Subrogation/third party recovery potential
  - b. 2nd injury fund potential
  - c. Apportionment or other offsets
  - d. Reinsurance obligations

## **INVESTIGATION**

1. Perform investigation, as necessary and appropriate, pertaining to questionable cases and the status of injured employees in order to assist in the adjustment and litigation of cases. Report to County on all investigations, and advise County if additional investigation by outside investigators is warranted. Consultant may contract for specialized and professional investigation services of County's choice when such service is needed. All investigations will be coordinated with appropriate County personnel on a case-by-case basis. The County shall be kept informed on the scope and results of investigations.
2. When circumstances warrant, and upon prior approval by County, a field activity check/surveillance will be conducted on the injured employee in order to determine if there is any work capability.
3. Subrogation issues will be promptly identified and investigated. In all cases where a third party (other than a County employee or agent) is responsible for the injury of the employee,

the third party shall be contacted within 30 days with notification of County's right to subrogation and the recovery of certain claim expenses. In all cases, Consultant shall consult with County about the value of the subrogation claim and other considerations. With County consent, timely initiate litigation to effect collection of such claims on behalf of County, and assist counsel to pursue such claims. Upon County authorization, subrogation counsel shall be assigned to file a lien or Complaint in Intervention in the civil action.

## **LITIGATION MANAGEMENT**

1. Promptly respond to claims filed with the Workers' Compensation Appeals Board, and cooperate with attorneys for County in hearings before the Board. Consultant shall assist and coordinate with legal counsel in preparation of litigated cases and attend WCAB pre-trial conferences and trials whenever appropriate.
2. Consultant may employ legal counsel to advise concerning the legality and advisability of rejecting, settling, compromising and paying claims against County, or to represent County in litigation arising from said claims. Within three (3) working days of referral of the case to defense counsel, a letter will be directed to the attorney, with a copy to County, outlining the case status, issues, and requested work to be done by outside counsel. Use of outside counsel is subject to general supervision of County Counsel and Risk Management.
3. All bills for legal fees and legally related costs shall be gathered and reviewed by Consultant. Consultant shall pay all appropriate legal bills from the trust fund in accordance with the County standard practices. The retention of outside legal counsel by Consultant shall be subject to approval by County and shall be subject to such practices and policies as may be established by County.
4. For all claims handled by outside counsel involving liability issues (i.e., any claim or potential claim other than for workers' compensation benefits), Consultant will ensure that outside counsel will advise County of potential third party liability claims.

## **MEDICAL CONTROL**

1. The treating physician (facility) will be contacted prior to making the initial indemnity payment to establish the extent of injury, length of disability, and causal relationship of the injury to the job or alleged work-related incident.
2. Maintain close liaison with medical service providers to insure maximum efficiency in the management of claims and compliance with State law regarding provision of job descriptions to determine return to work possibilities.
3. Provide County with all medical reports containing work restrictions or information regarding the injured employee's anticipated return to work or potential vocational rehabilitation.
4. Where medical issues are questioned, a medical examination will be scheduled with a qualified physician, as allowed under applicable Labor Code. Consultant will send written correspondence summarizing the status of the specific case and outlining issues to be addressed by the evaluating physician. Consultant will provide to the physician any

relevant medical and job information that will assist the physician in making an objective evaluation.

5. Utilize medical service providers as the County may direct from time to time, including any MPN designated by the County.
6. Review all medical bills for appropriate payment. Any medical bill received will be reviewed with regard to causal relationship to the accident/work-related injury. Medical bill review pricing will be completed by Consultant or agreed upon consultant. Medical billings and expense billings shall be reviewed and processed for payment as appropriate within sixty (60) days of receipt, or written denial or request for further explanation or documentation was sent within sixty (60) days of receipt.
7. Utilization review services will be completed through a consultant agreed upon by County.

## **REHABILITATION**

1. Identify and advise County within 5 days of medical information received involving potential permanent work restrictions.
2. Where needed, rehabilitation and/or retraining will be recommended and the progress will be closely monitored and controlled. The first evaluation as to the appropriateness of rehabilitation will take place according to workers' compensation state requirements.
3. Within 5 days of receipt of permanent work restrictions, Consultant will confer with County to discuss potential for modified/alternate employment, appropriate notices to be issued and potential assignment of a rehabilitation counselor.
4. Assist in selection of competent rehabilitation counselor, and in the development of appropriate rehabilitation plan.
5. Keep County advised as to status of any ongoing rehabilitation cases, as well as direct, supervise and monitor the work and charges related to all rehabilitation cases.
6. Consultant to attend and participate in informal and formal rehabilitation conferences whenever possible.

## **REPORTING & RECORDKEEPING**

1. In accordance with law and the requirements of various State agencies, record and file the Employer's Report of Occupational Injury and other detailed statistical records of all claims and disbursements.
2. Assume all responsibility for notification to the excess carrier on behalf of the County in accordance with the specific requirements of the excess carrier. Ongoing reporting of all necessary information on the current status of claims as required by the excess carrier. Consultant shall pay any costs, damages, or penalties incurred for lack of proper reporting.
3. Monthly loss runs shall be provided to County Risk Management within 15 days after month end.
4. Report to Index Bureau on each claim. Submit updates as necessary.

5. Provision of trust account management, including a reconciliation of bills paid and monthly check registers which include all disbursements made by Consultant on behalf of County.
6. Prepare Self-Insurer's Annual Report (Form A4-40) for County signature and submission to the State.
7. Prepare Federal Information Return (Form 1099-MED) for applicable payments made on behalf of County.
8. Provision of information needed for completion of the OSHA 300 logs.
9. Maintain all records and historical data on losses arising from employee injuries in accordance with the requirements of the State of California, including a file for each disability claim, a record of each denial, delay, litigated claim and make these files and records available for review by County upon request. Maintain closed claim inventory.
10. All original reports, documents and claims data of every kind or description that are prepared in whole or part for Consultant in connection with this agreement shall be County's property. Consultant shall not make available to any individual or organization any report, document or data which was given to, prepared by, or assembled by Consultant pursuant to this agreement unless prior consent is given by County. All such records shall be held in strictest confidence by Consultant. Claim information may be provided to defense counsel retained for the purpose of defending County against claim.
11. Provision of a comprehensive annual management report which:
  - a. Analyzes past and future projected fiscal year costs.
  - b. Interprets data on losses and trends.
  - c. Recommends program improvements to favorably impact costs and procedures.

## **PENALTIES**

Under California law, numerous administrative fines and penalties are required for payment of benefits or services that are overdue. The County will be advised within five (5) days of all penalty increases to benefits or bills paid along with an explanation for the cause of the penalty. If the delay is a result of Consultant receiving Employee's Claim Form in excess of 10 days from County's receipt, the increased cost will be paid by County. All other fines, penalties, and fees which result from unnecessary delay by the Consultant shall be paid by Consultant. These amounts will be reported to County and deducted from the upcoming monthly administration fee.

## **TRUST FUND**

Establish and maintain a trust account for the payment of proper charges against the County arising from industrial injuries, including payments of temporary and permanent disability compensation, medical expenses, allocated expenses, bill review, and other benefits. The Trust Account shall be maintained and established in compliance with Government Code 31000.8. Funds in the Trust Account shall not exceed the Board of Supervisors approved maximum (as evidenced by a Board Minute Order) at any one time. This amount will be a sum sufficient to provide for the settlement of claims for a 30 day period.

The Trust Fund shall be maintained as follows:

- The County will maintain the Trust Fund at \$200,000.00.
- The County will prefund payments of \$75,000.00 or greater in addition to the \$200,000.00.
- The County will fund the Trust Fund in accordance with the above no less than weekly up to daily provided the request is a minimum of (\$5,000.00) five thousand dollars.

Consultant shall notify County weekly, on Mondays, that the Trust Account needs to be replenished, and the amount necessary to be deposited. Consultant shall provide County with a monthly Check Register which includes all disbursements made by Consultant, and a monthly reconciliation of the trust account, and shall make other reports on the status of the Trust Account and disbursements therefrom as may be required by the County in addition to the foregoing check register. The Trust Account shall not be used for any payments to Consultant, with the exception of agreed-upon services specified in written authorization by County.

Except as herein amended, all other parts and sections of that Agreement #264-S1411 shall remain unchanged and in full force and effect.

**Requesting Contract Administrator and Department Head Concurrence:**

By: Kimberly A. Kerr  
Kimberly A. Kerr  
Assistant CAO  
Risk Management

Dated: 9/9/14

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IN WITNESS WHEREOF, the parties hereto have executed this first Amendment to that Agreement for Services #264-S1411 on the dates indicated below.

-- COUNTY OF EL DORADO --

Dated: 9-16-14

By:   
**Norma Santiago** Chair  
Board of Supervisors  
"County"


ATTEST:  
James S. Mitrison  
Clerk of the Board of Supervisors

By:   
Deputy Clerk

Dated: 9-16-14

-- CONSULTANT --

YORK RISK SERVICES GROUP, INC.  
A NEW YORK CORPORATION

By:   
Jody A. Gray  
Sr. Vice President  
"Consultant"

Dated: August 13 2014

By:   
Peter E. Lind  
Corporate Secretary

Dated: 8/15/2014