

AGREEMENT FOR SERVICES #3360

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**THIS AGREEMENT** made and entered 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 One Upper Pond Road, Building F, Fourth Floor, 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**, effective September 1, 2018, County has entered into a Primary Workers' Compensation (PWC) program wherein no new claims will be submitted to York Risk Services Group, Inc. for claims management.

**WHEREAS**, County has determined that it is necessary to obtain a Consultant to provide workers' compensation claims third-party administration (TPA) services including administration, investigation, adjustment, utilization review, bill review, and case management for tail claims; and

**WHEREAS**, Consultant has represented to County that it is specially trained, experienced, expert and competent to perform the special services required hereunder and County has determined to rely upon such representations; and

**WHEREAS**, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws; and

**WHEREAS**, County has determined that the provision of these services provided by Consultant is in the public's best interest, and that these services are more economically and feasibly performed by outside independent Consultants as well as authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

**NOW, THEREFORE**, County and Consultant mutually agree 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 for tail claims.

Consultant will administer County's workers' compensation tail claims in accordance with Exhibit "A," marked "Workers' Compensation Claims Administration Guidelines," incorporated herein and made by reference a part hereof, as they may be updated periodically.

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 open claims.
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.

#### **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. 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.
2. The diary schedule will be contained in the file.
3. 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.

4. All phone conversations, discussions, and meetings held on the case will be clearly documented in each file.
5. 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.
6. All correspondence will be clearly stamped with the date of receipt.
7. Authorize prompt payment of benefits in accordance with medical advice, defense counsel, advisory ratings, awards, or settlement agreements.
8. 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.
9. 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. Consultant shall perform investigations, 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, including York Risk Services Group's internal investigation division and other outside vendors, when such services are 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, investigations, 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 may adjust the prefund amount with seven (7) days notice to Consultant.
- 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.

## **ARTICLE II**

**Term:** This Agreement shall become effective upon final execution by both parties hereto and shall begin November 1, 2018. This Agreement shall automatically renew for successive one (1) year terms unless terminated earlier as set forth herein below in **ARTICLE XI – Default, Termination, and Cancellation.**

## **ARTICLE III**

**Compensation for Services:** For services provided herein, County agrees to pay Consultant \$17,352.75 per month, in advance. Monthly cost after year one (1) to be determined in accordance with good faith negotiations described herein below.

In addition, Consultant will provide medical bill review services as consultant deems appropriate. The cost for these services may be charged to the Trust Account, provided that a copy of the itemized invoice of medical review charges is forwarded monthly to County, and provided that the rates charged to County do not exceed amounts specified in Exhibit “B,” marked “York Risk Services Updated Fee Proposal for County of El Dorado,” incorporated herein and made by reference a part hereof.

In addition, the cost for Optional Services – York Workers’ Compensation Investigation Fees, as outlined in Exhibit “B,” may be charged to the Trust Account.

Total amount of this Agreement for each one (1) year term, inclusive of optional services, shall not exceed \$ 208,233.00.

The parties shall negotiate the monthly fee for the following year, in good faith at least sixty (60) days prior to the expiration of the then-current term. The Parties shall negotiate the monthly fee for the following year of the Agreement based on the total number of open tail claims remaining.

**ARTICLE IV**

**Taxes:** Consultant certifies that as of today’s date, it is not in default on any unsecured property taxes or other taxes or fees owed by Consultant to County.

**ARTICLE V**

**Changes to Agreement:** This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

**ARTICLE VI**

**Consultant to County:** It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Consultant shall act as Consultant only to County and shall not act as Consultant to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Consultant's responsibilities to County during term hereof.

**ARTICLE VII**

**Assignment and Delegation:** Consultant is engaged by County for its unique qualifications and skills as well as those of its personnel. Consultant shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

**ARTICLE VIII**

**Independent Consultant/Liability:** Consultant is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, associates, and subConsultants, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Consultant shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Consultant or its employees.

**ARTICLE IX**

**Fiscal Considerations:** The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County



business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

#### **ARTICLE X**

**Audit by California State Auditor:** Consultant acknowledges that if total compensation under this agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code §8546.7. In order to facilitate these potential examinations and audits, Consultant shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the contract, all books, records and documentation necessary to demonstrate performance under the Agreement.

#### **ARTICLE XI**

##### **Default, Termination, and Cancellation:**

- A. Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

- B. Bankruptcy: This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. Ceasing Performance: County may terminate this Agreement in the event Consultant ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement in whole or in part upon seven (7) calendar days written notice by County without cause. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Consultant, and for such other services, which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise.

## ARTICLE XII

**Notice to Parties:** All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be addressed as follows:

COUNTY OF EL DORADO  
Risk Management  
330 Fair Lane  
Placerville, CA 95667  
ATTN: Robert Schroeder, Risk Manager

or to such other location as the County directs.

with a carbon copy to

COUNTY OF EL DORADO  
Chief Administrative Office  
Procurement and Contracts Division  
330 Fair Lane  
Placerville, CA 95667  
ATTN: Purchasing Agent

Notices to Consultant shall be addressed as follows:

YORK RISK SERVICES GROUP, INC.  
P.O. Box 619079  
Roseville, CA 95661  
ATTN: Jody A. Moses, President, Public Entity

or to such other location as the Consultant directs.

### **ARTICLE XIII**

**Change of Address:** In the event of a change in address for Consultant's principal place of business, Consultant's Agent for Service of Process, or Notices to Consultant, Consultant shall notify County in writing pursuant to the provisions contained in this Agreement under the Article titled "Notice to Parties". Said notice shall become part of this Agreement upon acknowledgment in writing by the County Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

### **ARTICLE XIV**

**Indemnity:** The Consultant shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to arise out of the negligent, or intentionally wrongful, acts or omissions of Consultant arising out of Consultant's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, subConsultant(s) and employee(s) of any of these, except for the sole, or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty of Consultant to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

### **ARTICLE XV**

**Insurance:** Consultant shall provide proof of a policy of insurance satisfactory to the County of El Dorado Risk Manager and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.

- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Consultant in the performance of the Agreement.
- D. In the event Consultant is a licensed professional or professional consultant, and is performing professional services under this Agreement, professional liability is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E. Consultant shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G. Consultant agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Consultant agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Consultant agrees that no work or services shall be performed prior to the giving of such approval. In the event the Consultant fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event. Consultant will not permit such insurance policies to be canceled without prior written notice to County.
- H. The certificate of insurance must include the following provisions stating that:
  - 1. The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. The Consultant's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.

- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for protection of the County.

#### **ARTICLE XVI**

**Interest of Public Official:** No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Consultant under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

#### **ARTICLE XVII**

**Interest of Consultant:** Consultant covenants that Consultant presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed by Consultant.

#### **ARTICLE XVIII**

**Conflict of Interest:** The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. Consultant attests that it has no current business or financial relationship with any County employee(s) that would constitute a conflict of interest with provision of services under this contract and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. County represents that it is unaware of any financial or economic interest of any public officer or employee of Consultant relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in the Article in the Agreement titled, "Default, Termination and Cancellation".



#### **ARTICLE XIX**

**California Residency (Form 590):** If Consultant is a California resident, Consultant must file a State of California Form 590, certifying its California residency or, in the case of a corporation, certifying that it has a permanent place of business in California. The Consultant will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7) percent of each payment made to the Consultant during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

#### **ARTICLE XX**

**Nonresident Withholding:** If Consultant is not a California resident, Consultant shall provide documentation that the State of California has granted a withholding exemption or authorized reduced withholding prior to execution of this Agreement or County shall withhold seven (7%) percent of each payment made to the Consultant during term of the Agreement as required by law. This requirement applies to any agreement/contract exceeding \$1,500.00. Consultant shall indemnify and hold the County harmless for any action taken by the California Franchise Tax Board.

#### **ARTICLE XXI**

**Taxpayer Identification Number (Form W-9):** All independent Consultants or corporations providing services to the County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

#### **ARTICLE XXII**

**County Business License:** It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Code Section 5.08.070.

#### **ARTICLE XXIII**

**Administrator:** The County Officer or employee with responsibility for administering this Agreement is Robert Schroeder, Risk Manager, or successor.

#### **ARTICLE XXIV**

**Authorized Signatures:** The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

**ARTICLE XXV**

**Partial Invalidity:** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

**ARTICLE XXVI**

**Venue:** Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.


**ARTICLE XXVII**

**No Third Party Beneficiaries:** Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this agreement.


**ARTICLE XXVIII**

**Entire Agreement:** This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

**Requesting Contract Administrator Concurrence:**

By:  Dated: 11-7-18  
Robert Schroeder  
Risk Manager

**Requesting Department Head Concurrence:**

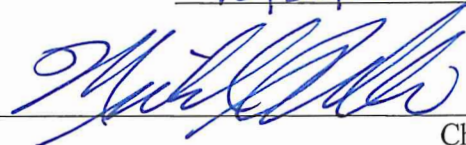
By:  Dated: 11/7/18  
Tameka Usher  
Human Resources Director

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

-- COUNTY OF EL DORADO --

Dated: 10/30/18

By:   
Chair  
Board of Supervisors  
"County"


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

By:   
Deputy Clerk

Dated: 10/30/18

-- CONSULTANT --

YORK RISK SERVICES GROUP, INC.  
A NEW YORK CORPORATION

By:   
Jody A. Moses  
President, Public Entity  
"Consultant"

Dated: 11/1/18

By:   
Michael Krawitz  
Corporate Secretary

Dated: 11/1/18