

## THIRD PARTY ADMINISTRATOR AGREEMENT

This agreement, made and entered into as of this \_\_\_\_\_ day of October, 2008~~2009~~, by and between the City of Overland Park, Kansas, with principle offices at 8500 Santa Fe Drive, Overland Park, Kansas, 66212, organized and existing under the laws of the State of Kansas, hereinafter referred to as City, and Thomas McGee, L.C. with principal offices at 920 Main, Suite 1700, Kansas City, Missouri 64105, hereinafter referred to as "McGee".

WHEREAS, City has established a self-funded program to cover Workers' Compensation insurance for City; and

WHEREAS, City desires to contract for a claims management program, hereinafter referred to as the "program".

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

### ARTICLE I. MCGEE ADMINISTRATION

McGee agrees to assign competent personnel to perform all tasks necessary to provide the service specified in this contract. McGee will advise City of the identity of all professional personnel providing direct services to City.

### ARTICLE II. SERVICES PROVIDED BY MCGEE

A. McGee agrees to act as the Service Provider for the City program and to provide the following administrative services:

1. File and assist in the filing of reports as required by any applicable state or federal law or regulation.

2. File all of the necessary reports and documents in compliance with the Medicare Secondary Payer Mandatory Reporting Provision of Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007.

23. Provide assistance and advice to legal, accounting, actuarial, or other personnel as reasonably requested by City.

34. Maintain complete records of all City business for which McGee is responsible hereunder during the term of this Agreement and, following termination of the Agreement return such files to City.

B. McGee will provide the following claims management services:

1. Report, investigate, adjust and otherwise administer all claims, including medical case management and the management of the defense for litigated claims as directed by City and in accordance with McGee's professional judgment. McGee may engage the use of outside services when deemed to

be the most cost effective, or special expertise is necessary upon the direction and approval of City. These services are to be considered allocated loss expenses.

2. Determine what claim payment, if any, should be paid on behalf of City in light of the nature of the claim and any applicable law. McGee will seek City approval before offering any sum in settlement of any permanent disability claim. McGee will follow the procedures set forth in Appendix "A".
3. Determine with the concurrence of City, what allocated loss expenses (as hereinafter defined) shall be incurred with respect to any claim.
4. Maintain a claim file on each reported claim. The claim files will be property of City and will be available for inspection by City upon reasonable notice.
5. Provide statistical and loss experience reports concerning claims status, claim reserves and claims payments, with a frequency no less than monthly.
6. Advise City of all significant developments arising from any investigation, adjustment or settlement that affects any claim with a reserve of \$10,000 and over or would raise any lesser-reserved claim to \$10,000 or over.
7. Administer, investigate and adjust all reported claims during the term of and according to the terms and conditions of this Agreement.
8. "Allocated loss expenses" as used in this Agreement means any cost or expenses incurred by City or by McGee on behalf of City as a result of McGee or City engaging the services of a firm or person outside of the McGee organization for work in connection with the investigation, adjustment, settlement or defense of a claim. Allocated loss expenses include, but are not limited to, the following: subrogation; rehabilitation; all court costs, fees and expenses; fees for service of process; fees to attorneys; the cost of services for investigation or adjustment of claims in areas removed from reasonable access to McGee salaried employees; the cost of employing experts for the purpose of analysis, or for expert advice or opinions; the cost of obtaining copies of any public records; the cost of depositions and court reporters or recorded statements; medical case management, hospital audits and drug audits. Allocated loss expenses are not included within McGee's fees. Fees paid to McGee for the adjudication of medical bill reviews outside of the State of Kansas shall be expensed as allocated loss adjustment expenses. The payment of these fees is outlined in Article III.
9. McGee shall use its professional judgment to set adequate and reasonable reserves for all claims filed. On any claim reserved in excess of \$10,000 a quarterly review will be performed and submitted to City.
10. Provide a claim manual and training of its use to City.
11. Complete annual renewal application as required by the Kansas Insurance Department, Division of Workers' Compensation.

12. Provide all services and placement of excess insurance, including seeking alternative proposals as requested by the City. McGee shall submit the appropriate certificate of excess insurance to the State as required.
13. Forward loss information to the excess insurer as required by the insurer.
14. Complete State "Form 92" (or equivalent) and forward such to the City for review and signature.
15. Submit all necessary 1099's, workers' compensation CPT4 information and any additional forms or filings as required by the Division of Workers' Compensation.
16. Accept the procedures set forth in Appendix "A".

### ARTICLE III. FEES FOR MCGEE SERVICES

The following service fee structure has been agreed upon.

<u>Indemnity and Medical claims over \$2,500:</u>	\$ 830 each
Medical Only Claims <u>under \$2,500</u> :	\$ 152 each
Medical Plus Claims (City Administered):	\$ 30 each
Record Only Claims (City Administered):	\$ 30 each
Administration Fee:	<u>\$6,915</u> , <u>7,915</u> annual

The \$7,915 annual Administration Fee will be due and payable at contract inception. Claim handling fees are to be paid in monthly installments of \$1,546 ~~51,408~~ TBD ~~in advance.~~ ~~Fees are payable in advance,~~ on the first day of each month, provided that ~~At~~ the conclusion of this agreement and six months thereafter, claim audits will determine any applicable refund to be paid to the City or additional fee to be paid to McGee.

McGee will not charge a fee for the adjudication of medical bills per the Kansas Fee Schedule. A charge of \$48 per claim will be made for re-pricing outside of the State of Kansas. The use of a managed care organization for these services will be managed by the City. Fees will be paid from the claims fund and will be allocated to each claim file as an allocated loss adjustment expense.

~~McGee guarantees the above fees will not increase more than 3% if the City elects to renew this agreement for the term effective January 1, 2010.~~

For the purpose of this Agreement only, a **Medical Only Claim** shall be defined as any claim submitted that principally utilizes an Administrative Assistant to process invoices and correspondence regarding the claim.

For the purpose of this Agreement only, a **Lost Time Claim** shall be defined as any claim submitted that due to the specific nature of the claim requires principally the use of a Senior Adjuster to oversee the management of the claim, whether for investigative,

medical management or other reason regardless if any indemnity or medical payments are ever made.

For the purpose of this Agreement only, a **Record Only Claim** shall be defined as any incident that has been submitted that has not turned into a claim.

For the purposes of this Agreement only, a **Med Plus Claim** shall be defined as a claim handled exclusively by the client and that has been closed and is being submitted to McGee upon conclusion for a single input into our database.

#### **ARTICLE IV. DUTIES OF CITY**

City will assist McGee in administration of this agreement, and shall properly and timely perform the following obligations:

- A. Refer all claims, which fall in the purview of this contract, to McGee.
- B. Pay McGee fees in accordance with the terms and conditions of this Agreement.
- C. City shall be required to cooperate fully and act expeditiously regarding request by McGee and any request made in connection with the management or administration of the program. City agrees that its consent or approval when and where required by this Agreement shall not unreasonably be withheld. McGee shall consider any consent or approval given by the Director, Human Resources, or his/her designee, as binding upon City unless expressly stated otherwise in this agreement.
- D. Use its best efforts to assure that all information furnished McGee by City shall be true, accurate and complete which McGee shall be entitled to rely upon.
- E. Representations, oral or written, made by any Officer, Director, Agent, or employee of the City to the third party shall in no way be the responsibility of or in any way obligate McGee.

#### **ARTICLE V. ACCESS TO AND OWNERSHIP OF RECORDS AND FILES**

All records and files pertaining to the operations of City are the property of City. Such records and files shall be maintained and protected by McGee, and shall be delivered to City immediately upon reasonable notice.

At all times during this Agreement, City or its designee shall have access to records and files maintained by McGee pertaining to City and its claims, provided reasonable notice is given.

City and McGee agree that they and their agents, employees, and members shall in no

manner make use of, disclose or otherwise benefit from any proprietary information that they learn about the other, its agents, partners, employees or its manner of operations or service or marketing strategy or techniques or any information about the other that it may learn through its contact with the other, if such information is not disclosed to the public by the other party.

McGee agrees that it shall not disclose the contents of City files or internal policies, procedures or operations to any third party, except as reasonably necessary for McGee to carry out its obligation to City under this Agreement or to comply with any requirement imposed by law, without the expressed written permission of City.

## **ARTICLE VI. LIABILITY**

McGee shall maintain Errors and Omissions Insurance with limits of liability of at least one million dollars (\$1,000,000) McGee will continue to maintain such insurance. McGee will advise City if such insurance is terminated for any reason and will provide City with a certificate of insurance.

Notwithstanding anything elsewhere in the Agreement expressed or implied to the contrary:

1. All outside parties shall be engaged by City, with or without the recommendation of McGee, and shall be the direct responsibility of City. McGee shall not be responsible for the performance or lack thereof or for the results of such performance by any person or party whose charges or cost are defined in the Agreement as an allocable loss expense, except as to McGee's responsibilities under this Agreement to administer, monitor, and advise City with respect to City programs hereunder.
2. McGee acts only as a technical consultant, advisor, manager and agent for the program, but all decisions regarding City operations including but not limited to settlement, declination, underwriting, additional outside service providers, coverage and limits rest exclusively with City. McGee shall not be held accountable for increased costs or expense to City because of any contention that any portion of this Agreement could have been handled in a different manner, except that McGee may be held accountable for its own negligence or any deliberate or willful failure to carry out the provisions of this agreement.
3. McGee agrees to hold and save the City harmless from any and all claims, settlements and judgments to include personal injury, bodily injury, property damage and/or death or any other claim arising out of McGee's or any of its agent's, servant's and/or employee's negligent acts and/or failures to act in the performance of this Agreement.

## **ARTICLE VII. TERM AND TERMINATION**

The term of this Agreement shall commence as of January 1, ~~2009~~2010, and shall continue in full force through December 31, ~~2009~~2010 unless terminated as provided herein. Either party may terminate this contract hereto as follows:

City may terminate this contract for cause by giving McGee 30 days written notice and specifying the reasons for such termination. Cause shall be defined as a breach of this Agreement or negligence in the performance of this Agreement.

City may terminate this agreement, without cause, by giving 60 days prior written notice.

Effective upon termination, all files and other materials of City will be delivered to City in accordance with the terms and provisions of this Agreement and City shall compensate McGee for work completed through the effective termination date.

McGee may terminate this contract for cause by giving City 30 days written notice and specifying the reasons for such termination. Cause shall be defined as a breach of this Agreement or negligence in the performance of this Agreement.

This agreement may terminate immediately upon mutual consent between both McGee and City. Upon termination of this agreement, by either party, McGee shall have no further duties under Article II of this agreement.

### **ARTICLE VIII. KANSAS ACT AGAINST DISCRIMINATION**

The contractor agrees that:

1. The contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin or ancestry;
2. in all solicitations or advertisements for employees, the contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the commission;
3. if the contractor fails to comply with the manner in which the contractor reports to the commission in accordance with the provision of K.S.A. 44-1031 and amendments thereto, the contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency;
4. if the contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the commission which has become final, the contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and
5. the contract shall include the provisions of subsections (a)(1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

### **ARTICLE IX. MISCELLANEOUS PROVISIONS**

This Agreement shall be construed under and in accordance with the laws of the State



CORPORATE ACKNOWLEDGMENT

STATE OF KANSAS                    )  
  ) ss.  
COUNTY OF JOHNSON

BE IT REMEMBERED, That on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came \_\_\_\_\_, General Manager of Thomas McGee, L.C., a corporation -duly organized, incorporated and existing under and by virtue of the laws of \_\_\_\_\_; and \_\_\_\_\_, Co-Owner of said corporation, who are personally known to me to be such officers and who are personally known to me to be the same persons who executed as such officers the within instrument on behalf of said Corporation, and such persons duly acknowledged the execution of the same to be the act and deed of said Corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

My Appointment Expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public  
Johnson County, Kansas



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**APPENDIX A**

**SERVICE INSTRUCTIONS**

**CITY OF OVERLAND PARK**

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Policy Period 01/01/~~1009~~ – 12/31/~~0910~~

1. These instructions apply to the following types of claims:

**Workers' Compensation**

**Index**

- I. General Information
- II. Assignment and Reporting of Claims
- III. Coverage
- IV. Reporting Procedures
- V. Procedures
- VI. Litigation/Settlement Procedures
- VII. Subrogation Recovery
- VIII. Record Only and Medical Plus Claims

**I. GENERAL INFORMATION**

City of Overland Park is a municipality comprised of several departments, all of which are covered through this policy.

**II. ASSIGNMENT AND REPORTING OF CLAIMS**

Injuries will be reported by mail, e-mail or by telephone for serious losses to McGee. Reports will be directed by the City's Human Resources Department.

**III. COVERAGE**

Any inquiry regarding claim coverage should be referred to:

Administrator, Safety & Loss Prevention  
The City of Overland Park  
8500 Santa Fe Drive  
Overland Park, Kansas 66212-2866

**IV. REPORTING PROCEDURE:**

1. Substance.
  - a. Verification regarding each lost time claim will be sent by photo copying, to Administrator, Safety & Loss Prevention, the standard benefit letter which is sent to the claimant.
  - b. Reporting to the Kansas Division of Workers' Compensation will be made by McGee when needed and in a timely manner as required by law.
  - c. A monthly report will be submitted to the City of Overland Park and Charlesworth & Associates, L.C. as soon after the 1st of the month as possible. These reports will list all claims whether open or closed.
  - d. Contact will be made as necessary with Administrator, Safety & Loss Prevention by telephone or e-mail to discuss any potential problems or issues requiring attention.
  - e. Representatives of the City and McGee will meet quarterly or as needed to address areas of concern. Such meetings will be held on or around the 15th of the month as practical.

2. Procedure.

Reports will be directed as follows:

Administrator, Safety & Loss Prevention  
City of Overland Park  
8500 Santa Fe Drive  
Overland Park, Kansas 66212

James Charlesworth, ARM  
Charlesworth & Associates, L.C.  
P.O. Box 23588  
Overland Park, Kansas 66283

**V. PROCEDURES:**

1. All claims will be initially investigated according to McGee's standards and procedures.
2. Bills.
  - a. On bills totaling \$250.00 or less, payment will be made within thirty (30) days of receipt of the bill by McGee, without regard to receipt of supporting documentation. Each bill will be carefully reviewed prior to payment for relatedness and accuracy. If a question exists the Administrator, Safety & Loss Prevention will be contacted for discussion.
  - b. Bills received which are more than \$250.00 will be held for receipt of records.
3. Temporary Total Disability Payments
  - a. The Administrator, Safety & Loss Prevention will notify Thomas McGee of any City employee(s) unable to return to work and eligible for temporary total disability. This information will be furnished to McGee at noon on each Monday following the end of a payroll period.
  - b. All temporary total disability checks are to be sent to the Administrator, Safety & Loss Prevention by Tuesday morning following each Payroll Period.
  - c. Temporary total disability checks are then given to the Payroll Division, where checks will be adjusted according to established procedures. On regularly scheduled paydays, any employee on temporary total disability will report to the Human Resources Department to receive his/her check and sign an acknowledgment.
  - d. No checks for temporary total disability will be mailed directly from

McGee to the employee's residence unless instructed by the Administrator, Safety & Loss Prevention.

4. In cases where malingering or fraud may exist, McGee will discuss and determine the appropriate course of action with the City.
5. Account Maintenance
  - a. McGee will be responsible for opening and maintaining a bank account, which will be used solely for the purpose of paying claims filed against the City's workers' compensation fund.
  - b. Once a week (Wednesday by noon), a check register will be posted on the Thomas McGee website ([www.thomasmcgee.com](http://www.thomasmcgee.com)) itemizing the checks produced that week and the amount of money that needs to be deposited to cover the checks.
  - c. The appropriate funds will be deposited as soon as administratively possible after the web posting is made to the City. The City will transfer an amount equal to the amount indicated on the check register via Automatic ClearingHouse (ACH). In the event additional funds over and above the amount requested by the weekly check register are needed, McGee will contact the Administrator, Safety & Loss Prevention.
  - d. In the event a refund is received by McGee, these funds will be deposited in the account described in 5a above. Refunds are not to be used as credits to the weekly check registers.
  - e. Voids should occur on an infrequent basis and will be recorded on a Void Check Register. The total of voided checks will be subtracted from the Weekly Check Register. The number of a voided check shall not be reused
  - f. Although McGee maintains the bank account, detailed copies of bank statements are to be provided to the City at intervals no less than monthly. These statements can be delivered by the bank or by McGee, but they must be original or exact copies of original bank statements. Delivery of these statements will be made to the Administrator, Safety & Loss Prevention, and the Human Resources Assistant, Sr.

The bank statements will be accompanied by a Monthly Check Register, which will be posted on the web page and will include the employee's date of injury.

## **VI. LITIGATION & SETTLEMENT PROCEDURES:**

1. Applications for Hearings received by McGee will be reviewed and sent to the Administrator, Safety & Loss Prevention if prior notification cannot be verified.

2. When a letter of representation is received, McGee will forward the necessary information to the Law Department of the City of Overland Park, for the handling of settlements. McGee will continue case handling according to the procedures set forth herein.
3. McGee will negotiate settlements when the employee is not represented; and the City's Workers' Compensation Attorney will negotiate settlements when the employee is represented however, final settlement authorization shall be obtained from the City Law Department.
4. Once the claimant reaches Maximum Medical Improvement (MMI) McGee and the City's Workers' Compensation Attorney will discuss settlement authority and verify calculations of settlement.
5. McGee will send a "Settlement Request" to the Administrator, Safety & Loss Prevention. The Assistant City Attorney, Sr. and the Human Resources Director will sign this document. A signed copy will be forwarded back to McGee by the Administrator, Safety & Loss Prevention.
6. McGee will obtain a verbal agreement with Claimant for settlement when the employee is not represented and the City's Workers' Compensation Attorney will obtain a verbal agreement with Claimant attorney for settlement when represented.
7. McGee and the City's Workers' Compensation Attorney will verify settlement.
8. The City's Workers' Compensation Attorney will set-up the Settlement Conference and send a letter and/or Form 12 "Worksheet for Settlement" to Administrator, Safety & Loss Prevention and Assistant City Attorney, Sr. requesting settlement check one (1) week in advance of Hearing.
9. The Administrator, Safety & Loss Prevention will prepare a check request with appropriate line item number and the Human Resources Director will sign. The settlement check will be mailed to the City's Workers' Compensation Attorney and a copy of the check will be forwarded to McGee for data entry into the Loss Run report. Settlements will be paid by check from the City's operating bank account and charged to the Workers' Compensation Fund.
10. The City's Workers' Compensation Attorney or Assistant City Attorney, Sr. will attend the Settlement Conference with the settlement check. The Claimant will sign for the settlement check and a copy of the signed receipt will be forwarded to the City and McGee.

## **VII. SUBROGATION/RECOVERY**

1. Charlesworth & Associates, L.C. will review all incident reports to determine if an identifiable third party is or may be responsible for the employee injury. If the claim has subrogation potential, it will be so noted and Charlesworth & Associates, L.C. will monitor all recovery activity.

2. For all claims submitted to McGee for handling, McGee will review and identify claims with subrogation potential, build the necessary casework to substantiate, contact the responsible party, and make every reasonable effort to collect amounts due. McGee will copy the Administrator, Safety & Loss Prevention and Risk Manager with their initial letter to the responsible party so to confirm McGee's involvement in the recovery activity. At the completion of subrogation efforts, a memo will be submitted to the Administrator, Safety & Loss Prevention, and copy to the Risk Manager, advising the status.
3. If McGee determines a claim to have subrogation potential but deems the claim unsuitable for subrogation due to type or limited recovery opportunities, Charlesworth & Associates, L.C. will review the claim and advise the City in writing if additional subrogation efforts are warranted. If the City elects to pursue the matter further, Charlesworth & Associates, L.C. will oversee all subrogation responsibilities. At the completion of subrogation efforts, a memo will be submitted to the Administrator, Safety & Loss Prevention, and copy to McGee, advising the status.
4. Charlesworth & Associates, L.C. will monitor and oversee all subrogation responsibilities in support of City Administered claims.
5. When a file with subrogation potential is closed, it will be so noted on the Loss Run report.

#### **VIII. RECORD ONLY AND MEDICAL PLUS CLAIMS (CITY ADMINISTERED)**

1. The City will self-administer selected "Record Only" and "Medical Plus" claims.
  - a. Claims that meet the threshold below will be forwarded to McGee for claims administration at set forth in Article II.
    - i. Total medical bill(s) exceed or reasonably expected to exceed \$1,000;
    - ii. Claim has not resolved in three (3) months;
    - iii. Claim develops into a Lost Time claim; or
    - iv. Injured employee has formally retained legal counsel.
2. The KS – First Report of Incident will be completed, filed and faxed or emailed within 28 days to the State of Kansas, McGee and Risk Manager to include a notation as to the type of claim [(Lost time, Medical Only (TPA Administered), Medical Plus (City Administered), or Record Only (City Administered)] for McGee billing purposes.
3. The following information will be emailed to the injured/ill employee per City policy and workers' compensation law.
  - a. So...You've been injured on the job...Now what?

- b. Ombudsman / Claims Advisory Section
  - c. Attention Important Information For Injured Employees
  - d. Claim For Workers' Compensation
    - i. For documentation purposes City employees should complete the bottom section of the "Claim For Workers' Compensation" form and forward to Human Resources who will in turn complete the top section and return to the City employee.
  - e. Table of Maximum Benefits
  - f. Stop Fraud
4. The Occupational Health Clinic and Pharmacy will forward all invoices to the City for review. The City will forward to the Managed Care Organization for re-pricing when appropriate. Re-Priced bills will be returned to the City for approval and payment.
  5. A \$1,000 reserve will be established for all "Medical Plus" claims.
  6. When a "Medical Plus" claim is closed, the City will send a letter to the employee and McGee signifying this status change and a report will be forwarded to McGee indicating all medical and prescription payments. McGee will charge a "Medical Plus" fee as set forth in Article III for recording basic loss information into the City's loss report.
  7. The City reserves the right to forward any and all claims, regardless of type, to McGee for claims administration as set forth in Article II.