

AN ORDINANCE TO AUTHORIZE AND APPROVE A CONTRACT BETWEEN THE CITY OF WILMINGTON AND PMA MANAGEMENT CORP. FOR THIRD PARTY CLAIM ADMINISTRATIVE SERVICES

#0055

Sponsor:

Council
Member
Johnson

WHEREAS, pursuant to Section 2-308 and Section 8-200 of the City Charter, the City of Wilmington ("City") is authorized to enter into contracts for the supply of personal property or the rendering of services for a period of more than one year if approved by City Council by ordinance; and

WHEREAS, the City is authorized by the State of Delaware to self-insure its workers' compensation, commercial automobile, general liability, professional liability and property exposures; and

WHEREAS, PMA Management Corp. ("PMA") is a duly authorized provider of third-party administrator ("TPA") services in the State of Delaware, and has been selected by the City to provide TPA services as described in the Contract attached as Exhibit 1 to this Ordinance; and

WHEREAS, the term of the proposed Contract is for a period of one (1) year, with three (3) available extensions of one (1) year each by mutual consent of PMA and the City; and

WHEREAS, the City proposes to pay PMA a fee of Two Hundred Six Thousand Two Hundred Fifty Dollars (\$206,250), allocated and billed separately as Ninety Thousand Seven Hundred Fifty Dollars (\$90,750) for workers' compensation, and One Hundred Fifteen Thousand Five Hundred Dollars (\$115,500) for claims other than workers' compensation, for the first year of the Contract attached as Exhibit 1. For the second through fourth years of the Contract attached as Exhibit 1, if extensions occur, the City will pay PMA a fee of Two Hundred Twelve Thousand Thirty-Five Dollars (\$212,035), allocated and billed separately as

Ninety-Three Thousand Four Hundred Seventy-Five Dollars (\$93,475) for workers' compensation claims, and One Hundred Eighteen Thousand Five Hundred Sixty Dollars (\$118,560) for claims other than workers' compensation; and

WHEREAS, it is the recommendation of the Human Resources Department of the City that City Council authorize the City to enter into the Contract attached as Exhibit 1 to this Ordinance.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:

SECTION 1. The Contract between the City and PMA, a copy of which Contract, in substantial form, is attached hereto as Exhibit "1," for the period from July 1, 2021 through June 30, 2022, at an estimated price of Two Hundred Six Thousand Two Hundred Fifty Dollars (\$206,250) (allocated and billed separately as Ninety Thousand Seven Hundred Fifty Dollars (\$90,750) for workers' compensation, and One Hundred Fifteen Thousand Five Hundred Dollars (\$115,500) for claims other than workers' compensation), with the possibility of three (3) one-year extensions by mutual consent of the parties at an estimated annual price of Two Hundred Twelve Thousand Thirty-Five Dollars (\$212,035) (allocated and billed separately as Ninety-Three Thousand Four Hundred Seventy-Five Dollars (\$93,475) for workers' compensation claims, and One Hundred Eighteen Thousand Five Hundred Sixty Dollars (\$118,560) for claims other than workers' compensation), is hereby approved, and the Mayor, or his designee, is hereby authorized to execute as many copies of the Contract, as well as to take all additional undertakings related thereto, as may be necessary.

SECTION 2. This Ordinance shall become effective upon its passage by the City Council and approval by the Mayor.

First Reading.....April 15, 2021
Second Reading.....April 15, 2021
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2021.

Mayor

SYNOPSIS AND FISCAL IMPACT STATEMENT: This Ordinance authorizes the execution of an Agreement between the City of Wilmington and PMA Management Corporation (“PMA”). PMA will provide third party claim administrative services to the City for a period of one (1) year, with three available extensions of one year each by mutual consent of the parties. The City will pay PMA a fee of \$206,250, allocated and billed separately as \$90,750 for workers’ compensation, and \$115,500 for claims other than workers’ compensation, for the first year of this Agreement. For the second through fourth years, if extensions occur, the City will pay PMA a fee of \$212,035, allocated and billed separately as \$93,475 for workers’ compensation claims, and \$118,560 for claims other than workers’ compensation.

W0113833

EXHIBIT 1

**AGREEMENT FOR THIRD PARTY
CLAIM ADMINISTRATIVE
SERVICES**

THIS IS AN AGREEMENT for third party claim administrative services (“**TPA services**”) made as of the 1st day of July, 2021, by and between PMA Management Corp. (“**PMA**”), a corporation duly incorporated under the laws of the Commonwealth of Pennsylvania, whose principal offices are located at 380 Sentry Parkway, Blue Bell, Pennsylvania 19422 and City of Wilmington (“**Client**”), a political subdivision of the State of Delaware, whose principal place of business is located at 800 N. French Street, 4th Floor, Wilmington, DE 19801.

RECITALS

CLIENT is authorized by the State of Delaware to self-insure its workers’ compensation, commercial automobile, general liability, professional liability and property exposures;

PMA, a duly authorized provider of third party administrator (“**TPA**”) services in the State of Delaware, hereby agrees to provide Client TPA and other services which are more fully described herein; and

CLIENT, having selected PMA to provide TPA and other services, desires to enter into an agreement with PMA on the terms and conditions set forth herein.

ACCORDINGLY, in consideration of the foregoing and the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

1. DEFINITIONS

- a) “**ALAE**” shall mean any cost or expense in connection with the administration, investigation, adjustment or defense of claims on behalf of Client.
- b) “**Claim File**” shall mean the file, either electronic or paper, for any open or closed claim which is provided to PMA at the inception of this Agreement or created during this Agreement.
- c) “**Discretionary Authority Limit**” shall mean the maximum amount PMA is authorized to pay on Client’s behalf on any Qualified Claim without first obtaining prior approval from Client.
- d) “**Indemnity Claim**” shall mean any reported workers’ compensation claim that is not a Medical Only Claim or Record Only Claim.
- e) “**Medical Manager**” shall mean a nurse who provides either on-site or telephonic medical management services in connection with workers’ compensation claims.
- f) “**Medical Only Claim**” shall mean any reported workers’ compensation claim meeting

all of the following criteria: (1) there is no (a) subrogation activity, (b) litigation activity and the claim is not otherwise contested, (c) indemnity paid, salary in lieu of indemnity paid or time lost from work beyond the state prescribed waiting period, (d) investigation or review regarding compensability, or (e) carrier report, excess reporting requirement, client meeting (other than a routine meeting where the claim is noted) or settlement authority approval; (2) the claim is open for less than 12 months from the date of injury or accident; and (3) total paid amount does not exceed \$3,500.

- g) **“Qualified Claim”** shall mean any commercial automobile, general liability, professional liability or property claim or any workers’ compensation Indemnity Claim, Medical Only Claim, or Record Only Claim occurring within the term of this Agreement. Multiple Qualified Claims may exist as a result of a single occurrence (e.g. both bodily injury and property damage claims can result from a single occurrence). Qualified Claim also includes any of the foregoing types of claims open and handled by PMA under a previous agreement with Client (“existing claims”) and every takeover claim PMA has agreed to administer under a previous agreement with Client.
- h) **“Record Only Claim”** shall mean any incident reported for statistical purposes only, with no
 - (a) reserve, (b) adjuster involvement, (c) subrogation activity, (d) litigation activity and the claim is not otherwise contested, (e) payment of any type required or time lost from work, (f) investigation or review regarding compensability, or (g) carrier report, excess reporting requirement, client meeting or settlement authority approval.
- i) **“Takeover Claim”** shall mean any open claim which has been: (1) administered by Client or Client’s third party administrator prior to the inception of this Agreement; and (2) subsequently transferred to PMA for servicing on or after the inception of this Agreement. Closed claims with accident dates prior to the Effective Date (as defined below) and subsequently reopened during the term of this Agreement will be considered Takeover Claims.

2. **TERM**

This Agreement is effective beginning July 1, 2021 (“**Effective Date**”) for a term of one year until June 30, 2022, with three available extensions of one year each by mutual consent of the parties.

3. **TPA SERVICES**

- a) PMA shall provide customary and appropriate commercial automobile, general liability, professional liability, property and workers’ compensation claim handling services for all Qualified Claims. Specifically, with regard to workers’ compensation:
 - i. Indemnity Claims - PMA will provide the services required to make a determination regarding compensability, make reserve recommendations to the Client, pay the appropriate level of indemnity benefits and medical bills and expenses as provided in this Agreement, and under appropriate circumstances,

attempt to resolve the claim.

- ii. Medical Only Claims - PMA services will consist of the payment of medical bills and expenses as provided in this Agreement and making reserve recommendations to the Client.
- iii. Record Only Claims - PMA services will consist only of making a record of the injury or accident.

PMA shall determine whether a claim is an Indemnity Claim, a Medical Only Claim or a Record Only Claim for all purposes under this Agreement.

- b) PMA shall provide claim handling services for new Qualified Claims from the date of first report of injury or first notice of claim for the term of this Agreement, and continue to provide such services for existing and takeover claims for the term of this Agreement.
- c) PMA shall file all required forms in the adjustment of Qualified Claims pursuant to the applicable workers' compensation statutory and regulatory scheme.
- d) PMA agrees to review and seek approval from Client with respect to a recommended course of action regarding a Qualified Claim valued in excess of the Discretionary Authority Limit.

4. EXCESS REPORTING SERVICES

- a) PMA will report to Client's excess insurance carrier or carriers ("**Carrier(s)**") all Qualified Claims serviced by PMA which meet Client's excess insurance reporting requirements, subject to the following requirements:
 - i. Client shall promptly provide PMA with copies of all applicable excess policies and contact information, as well as amended or modified policies, endorsements, and any excess claim reporting thresholds or standards agreed by the Client and Carrier(s).
 - ii. Client shall direct Carrier(s) to promptly provide PMA with copies of all claim notice confirmations, claim reports, and any similar reports provided by Carrier(s) to Client.
 - iii. Client shall promptly provide claim data for conversion to PMA's computer system for purposes of determining historical loss information.
 - iv. Client shall instruct its attorneys to advise PMA when in the attorney's professional opinion one of Client's claims meets the reporting thresholds or standards.
- b) Client's failure to meet the requirements set forth above shall relieve PMA of its obligation to report excess claims to Carrier(s). PMA shall not be obligated to report any claims not serviced by PMA.

- c) PMA will attempt to collect non-aggregate excess claim recoveries on behalf of the Client for a period of 60 days (from the date of the initial request), after which PMA will turn over pursuit of the outstanding balance to the Client for the reimbursable funds, and possess no further collection obligations or responsibilities for that outstanding balance.

5. MANAGED CARE SERVICES

- a) Client agrees to exclusively utilize the following PMA managed care services:
 - i. PMA's medical bill review and repricing services, which may include but are not limited to:
 - 1. reviewing medical documents for appropriateness, relatedness to the injury or accident, unbundling, and conformity to applicable fee schedule or usual and customary re-pricing; and
 - 2. utilizing PMA's complex bill review process to review certain medical bills for possible additional savings.
 - ii. PMA's managed care networks which include:
 - 1. traditional networks (e.g. physicians and medical facilities);
 - 2. specialty networks (e.g. providers of durable medical equipment, diagnostic testing, physical therapy, pain management, home health, and dental services);
 - 3. state specific networks (e.g. California Medical Provider Network, Texas HealthCare Network); and
 - 4. out-of-network services from PMA and third party vendors.
 - iii. PMA's pharmacy benefit management program (e.g. bill repricing, home-delivery, brand-to-generic conversion, customized formularies, narcotic management, drug utilization review).
 - iv. Utilization of telephonic or onsite nurse case management services when any of the following criteria are met:
 - 1. surgical procedure;
 - 2. spinal cord injury;
 - 3. occupational disease or a pandemic requiring medical treatment;
 - 4. third degree burns;
 - 5. multiple complex fractures;
 - 6. crush injuries requiring poor initial medical outcome;
 - 7. head injuries with cognitive impairment or loss of consciousness;
 - 8. immediate post-injury hospital admission;

9. multiple trauma; or
10. adjuster identified assignments.

Continued telephonic or onsite case management will proceed at the discretion of PMA.

- b) PMA shall also provide the Medicare related services set forth in Exhibit A to this Agreement.
- c) PMA's Medical Managers are authorized to provide PMA's Point of Sale Nurse Intervention Program on all claims at PMA's discretion to assist with seeking improved claim outcomes. The Program will review incoming claimant medications which are outside of Centers for Disease Control guidelines, and recommend an intervention strategy which may include potential weaning, drug testing, and peer reviews to attempt to mitigate long term dependency at the point of sale.
- d) PMA is authorized to employ utilization review services for evaluation of reasonableness, necessity, duration, and frequency of treatment or medication. These services may include, but are not limited to the following:
 - i. Prospective Review - a review prior to treatment or admission conducted by an experienced registered nurse to validate the necessity, frequency and duration of treatment.
 - ii. Concurrent Review - a review during the course of treatment conducted by an experienced registered nurse to evaluate treatment and planned procedures and establish target completion dates.
 - iii. Retrospective Utilization Review - a review after the completion of treatment conducted by an experienced registered nurse to identify inappropriate treatment utilization.
 - iv. Peer Review or Physician Advisor Review - physician-to-physician review and contact to resolve questions related to treatment and diagnosis.
- e) PMA is authorized to employ prospective and concurrent utilization review services may also include the use of physician advisor review such as for cases that are complicated and warrant physician review to resolve treatment or diagnosis questions.
- f) Upon Client request, PMA will utilize PMA Care24 point of injury nurse triage to assist with determining the direction of care when an injury is reported. This service may include but is not limited to a Medical Manager providing self-care recommendations to the claimant, first notice of loss reporting, direction of care into the network or to a panel provider, or a recommendation for use of emergency room care.
- g) PMA may retain third party vendors for the purpose of providing specific medical management services.

6. **RISK CONTROL SERVICES**

a) Upon request, PMA will:

- i. perform a risk management assessment;
- ii. at no additional charge, provide up to 100 hours of support services for Client's Citywide Safety Program Development & Safety Committee;
- iii. prepare a more detailed analysis of specific risk-related issues, or prepare custom risk control strategies and implementation plans;
- iv. provide the following risk control services: industrial hygiene assessment, ergonomic risk assessment, and consultation services (e.g. strategic risk control plan facilitation, and employee communication initiatives, as well as management, supervisor and employee development programs and occupational health service programs);
- v. create and administer a specific risk control service project mutually agreed upon with Client.

b) Any risk control services provided are solely to assist Client in reducing Client's exposure to risk of loss. Evaluations concern only such conditions and practices as may be evident at the time of PMA's visits. **THE SERVICES PERFORMED UNDER THIS AGREEMENT BY PMA SHALL NOT BE CONSTRUED AS APPROVAL BY PMA OF CLIENT'S OPERATIONS, PROCESSES, SERVICES, PRODUCT DESIGN OR PRODUCT FUNCTION. THE PARTIES AGREE THAT, WHILE PMA WILL PERFORM RISK CONTROL SERVICES WITHIN INDUSTRY STANDARDS, NO GUARANTEES OR OTHER SIMILAR ASSURANCES CAN BE MADE BY PMA THAT IT HAS DISCOVERED ALL OF CLIENT'S PAST, CURRENT, OR FUTURE RISKS OR HAZARDS. THE PARTIES FURTHER AGREE THAT BY PROVIDING THE SERVICES SPECIFIED HEREUNDER, PMA IS NOT MAKING ANY WARRANTY, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OR FITNESS OF CLIENT'S PRODUCTS OR PROCESSES FOR A PARTICULAR PURPOSE, COMPLIANCE WITH ANY LAW OR REGULATION, OR ANY OTHER WARRANTY, AND ANY LIABILITY OF PMA, ITS AFFILIATES OR AGENTS, FOR DIRECT, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, FROM ANY CAUSE WHATSOEVER, IS EXPRESSLY DISCLAIMED, EVEN IF PMA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION OF THE AGREEMENT SHALL SURVIVE THE TERMINATION OF THE AGREEMENT.**

7. **RISK MANAGEMENT INFORMATION SYSTEM ("RMIS")**

a) PMA will provide the following RMIS services:

- i. upon request, a conversion of Client's existing claims data into PMA's claim system. A standard conversion shall be from one electronic source and a customized conversions shall be from two or more sources;
 - ii. access to PMA's RMIS for up to three users, provided Client agrees to the terms and conditions of the License Agreement when first accessing PMA's RMIS;
 - iii. standard reports available through PMA's RMIS;
 - iv. customized reporting reasonably acceptable to PMA, subject to additional terms, conditions and fees as may be agreed upon by the parties. PMA will provide a reasonable estimate of the costs of preparation of any such reports to Client in advance.
- b) PMA warrants PMA's RMIS against malfunctions, errors, or loss of data which are due solely to errors on its part. If Client notifies PMA in writing and furnishes adequate documentation of any such malfunction, error or loss of data, then:
 - i. in the event of a malfunction, error or loss of data, upon notice from Client within 20 days of the event, PMA will recreate the reports designated by Client without an additional fee, using data as of the recreation date.
 - ii. the maximum and only liability of PMA for such malfunction, error or loss of data shall be its obligation to recreate reports or regenerate data as described above.
- c) **THE WARRANTIES STATED IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL PMA BE LIABLE FOR ANY LOSS OR DAMAGE TO REVENUES, PROFITS, OR GOODWILL OR OTHER DIRECT, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND RESULTING FROM ITS PERFORMANCE OR FAILURE TO PERFORM UNDER THIS SECTION, INCLUDING WITHOUT LIMITATION ANY INTERRUPTION OF BUSINESS, EVEN IF PMA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THIS SECTION OF THE AGREEMENT SHALL SURVIVE THE TERMINATION OF THE AGREEMENT.**
- d) Obligations of Client regarding use of PMA's RMIS:
 - i. Client shall adhere to state and federal law with regard to protecting the privacy of any claimant whose information may appear in PMA's RMIS. Client agrees to use all available security features and to notify PMA promptly of all potential and actual breaches of the system.
 - ii. Client agrees that no information in PMA's RMIS will be used as a pretext for

retaliatory or other illegal or unfair discriminatory employment practices in violation of any federal or state statute or regulation.

e) General Provisions regarding PMA'S RMIS:

- i. Client agrees to limit access to PMA's RMIS to those persons who perform the essential functions of claim and risk management, including protecting security access passwords and communications, except that this provision is not intended to limit Client from generating and using reports and statistics for legitimate business purposes.
- ii. Unless otherwise stated, Client's access to PMA's RMIS will end upon termination of the Agreement.

8. LITIGATION SUPPORT SERVICES

- a) In the event a Qualified Claim managed by PMA pursuant to this Agreement: (x) enters into litigation; or (y) is scheduled for a workers' compensation hearing; or (z) involves a potential third-party (subrogation) claim (collectively, (x), (y) and (z), "**Disputed Claim**"), PMA will:
 - i. make recommendations to Client regarding legal matters;
 - ii. assist Client in the retention and appointment of counsel selected by Client to represent Client in and regarding such legal matters, and assist Client in the selection of expert witnesses and vendors;
 - iii. pursue all appropriate subrogation claims as directed by Client.
- b) If requested by Client, PMA will manage Disputed Claims in accordance with PMA's Defense Counsel Guidelines.
- c) PMA will make settlement recommendations to Client, but the final decision regarding the disposition of any Disputed Claim will be made solely by Client.

9. SECTION 111 REPORTING

- a) Client understands and acknowledges that it is a Responsible Reporting Entity ("**RRE**") as defined by the Centers for Medicare and Medicaid Services ("**CMS**"), and is responsible for the reporting requirements as set forth in Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007.
- b) Client authorizes PMA to undertake Client's Section 111 reporting requirements as Client's Account Manager/Reporting Agent as it relates to Client's Qualified Claims. Client further agrees to fully cooperate with PMA, including the execution of any documents necessary for such authorization.

- i. PMA shall not provide any Section 111 reporting services for Client's Record Only Claims.
 - ii. PMA shall not undertake Section 111 reporting activities for Client's claims which were converted from Client's prior TPA to PMA but were never serviced by PMA.
- c) Client acknowledges and agrees to provide PMA with complete, accurate, and timely data, as well as completed CMS documentation, for Section 111 reporting purposes.
 - d) Upon receipt of complete, accurate claim data, PMA shall commence reporting of Client's data to CMS, and shall continue for as long as PMA provides claims handling services for Client's Qualified Claims.
 - e) PMA shall have no liability for any failure of (i) Client to register as a RRE; (ii) Client to execute any documents necessary to authorize PMA as its Account Manager/Reporting Agent; or (iii) Client or its prior TPA to report Client's claims when they were first required to do so.

10. FUNDING of CLAIMS and EXPENSES

PMA will establish a non-interest bearing checking account in PMA's name ("**Payment Account**") with PMA's bank, which is to be funded by Client but which PMA will administer for the purpose of paying Qualified Claims and ALAE, in accordance with the procedures set forth in this Section. PMA will provide Client with a monthly schedule ("**Payment Register**") outlining all claim payments, ALAE, and correction items funded by PMA and will contain the name of the payee, date of payment, amount of payment, and claim number for all transactions occurring during the prior month.

- a) PMA will automatically withdraw funds from Client's account at Client's bank through the Automated Clearing House System ("**ACH Debit**") for deposit to the Payment Account. ACH Debit activities will occur on a monthly basis. Client acknowledges that it has signed an Authorization to Access Account Form prior to the inception of PMA's services. The Payment Account will initially be funded by Client in an amount equal to one and one half months of estimated claims payments and ALAE which amount may be revised at PMA's discretion at any time based upon actual claims and expense payment history. If at any time the Payment Account balance is depleted by 75% or more, PMA will automatically withdraw funds sufficient to replenish the Payment Account.
- b) Should Client fail at any time to maintain the required funding after receiving notification from PMA, PMA will stop providing services, including ceasing to pay claims and expenses, until such funding has been restored and any related PMA bank charges, fees, or penalties have been paid by Client.
- c) PMA is not obligated to pay any claims or expenses on behalf of Client unless the required funds are made available by Client to PMA to do so. Should PMA advance funding on the part of Client, then Client shall immediately reimburse PMA or PMA will stop providing

services, including ceasing to pay claims and expenses, until full reimbursement has been received and any related PMA bank charges, fees, or penalties have been paid by Client.

d) This Section of the Agreement shall survive the termination of the Agreement.

11. CLAIM HANDLING SERVICE FEE

a) For claim handling services to be rendered under this Agreement for Year One, Client agrees to pay PMA a fee of \$206,250, allocated and billed separately as \$90,750 for workers compensation, and \$115,500 for other than workers compensation to be paid in 12 equal installments of \$17,188, allocated and billed separately as \$7,563 for workers compensation and \$9,625 for other than workers compensation. For Year Two, Three, and Four, if extensions occur, Client agrees to pay PMA a fee of \$212,035, allocated and billed separately as \$93,475 for workers compensation, and \$118,560 for other than workers compensation to be paid in 12 equal installments of \$17,670, allocated and billed separately as \$7,790 for workers compensation and \$9,880 for other than workers compensation. Client further agrees to pay the initial installment at the inception of this Agreement and subsequent installments monthly thereafter. If during any contract year of this Agreement Client exceeds 200 loss lines in the aggregate across the commercial auto, general liability, professional liability and property lines, then the following additional claim handling fees above and beyond the annual fee shall apply, commencing with the 201th loss line and every loss line thereafter:

- i. \$783 for each Automobile Liability Bodily Injury Claim;
- ii. \$438 for each Automobile Liability Property Damage Claim;
- iii. \$335 for Automobile Physical Damage Claim;
- iv. \$783 for each General Liability Bodily Injury Claim;
- v. \$438 for each General Liability Property Damage Claim;
- vi. \$592 for each Property Claim;
- vii. \$783 for each Professional Liability Claim; and
- viii. \$50 for each General Liability-Record Only Claim.

If during the term of this Agreement, Client submits more than 10 workers' compensation claims that PMA determines arise out of, result from or are otherwise related to any event, occurrence, disease, happening or condition or any series or group of related or like events, occurrences, disease, happenings or conditions, then the following additional claim handling fees shall apply:

- i. \$850 for each Indemnity Claim;
- ii. \$125 for each Medical Only Claim; and
- iii. \$40 for each Record Only Claim.

If PMA determines that additional claim handling fees apply, then PMA may bill such additional claim handling fees as they are incurred or in any other reasonable manner

as PMA shall determine.

12. OTHER FEES

As compensation for the TPA services provided in this Agreement, Client agrees to pay PMA the fees identified in the Fee Schedule attached to this Agreement as Exhibit A and incorporated into this Agreement by reference as an integral part of this Agreement. Payment shall be due as set forth on Exhibit A. The fees set forth in Exhibit A may be subject to change if new arrangements are made by PMA and its third party vendors.

13. PAYMENT of FEES

PMA will bill Client for fees when due. If the bills are not paid within 30 days after receipt, PMA reserves the right to charge Client interest at an annual rate of 12% on all overdue payments, and to stop providing services, including ceasing to pay claims and expenses, until such bills and interest have been paid in full.

14. CONFIDENTIALITY

- a) The parties acknowledge and agree that information emanating from either party's business in any form may be confidential and proprietary in nature. Each party will use its reasonable best efforts during and after the termination of this Agreement to preclude the duplication, use or disclosure of any such confidential and proprietary information to any third party, unless such duplication or disclosure is specifically authorized under this Agreement or otherwise by the party claiming ownership. In addition, the parties agree that information contained in a Claim File or PMA's RMIS or otherwise provided in the context of this relationship shall be considered confidential and proprietary, and may constitute privileged and/or attorney work product protected from discovery by law and/or rules of court. Therefore, neither party will release any such information unless:
 - i. compelled by an order of a court of competent jurisdiction;
 - ii. mandated by an insurance code, claim practices act, workers' compensation law, or other applicable law or regulation to provide information to the claimant or other person; or
 - iii. mandated by applicable court discovery rules.
- b) If there is an obligation to release part but not all of the information, the part deemed not responsive will be withheld, but nothing in this Agreement is intended to abrogate the duty of either party to comply in good faith with such discovery requests.
- c) Each party agrees that the information contained within PMA's RMIS must be treated in a confidential manner by all users who may gain authorized access to PMA's RMIS.
- d) Client agrees PMA (or its representative) may de-identify and thereafter utilize Client's information for benchmarking and related purposes.

- e) PMA processes on behalf of Client personal information disclosed to it by Client and personal information that Client has asked PMA to collect as part of the services provided under this Agreement. PMA shall not retain, use or disclose personal information relating to Client's injured workers for any purpose other than for the purpose of providing the services contemplated by this Agreement or as permitted by applicable law.
- f) This Section of the Agreement shall survive the termination of the Agreement.

15. NATURE of RELATIONSHIP

- a) PMA agrees to perform the services described in this Agreement as an independent contractor and not as an agent or employee of Client. Client retains no control or direction over PMA, its employees or agents, or over the detail, manner or methods of the performance of the services described herein.
- b) PMA may, in its sole discretion, retain third party vendors to provide any or all services. All vendors may be required to meet requirements determined by PMA, including but not limited to, appropriate licensure, adequate insurance coverage (including cybersecurity), and meeting standards for protecting confidential information. Client shall indemnify, defend, and hold PMA harmless from utilization of third party vendors as instructed by Client, which do not meet requirements determined by PMA. PMA may charge a fee to Client for utilizing third party vendors that is different than the itemized charge to PMA.

16. TERMINATION

- a) This Agreement may be terminated upon 90 days advance written notice by either party with or without cause.
- b) This Agreement may be terminated:
 - i. by mutual agreement of the parties;
 - ii. by PMA if Client is in default in payment of any fees or expenses due hereunder or fails to maintain the requisite claim funding levels as required herein and PMA has given Client prior written notice of such default five days prior to the date set for termination;
 - iii. by the non-breaching party if the other party breaches (other than a monetary breach) under any of the terms, covenants and conditions hereunder and the non-breaching party has given the breaching party prior written notice of such breach 20 days prior to the date set for termination and the breaching party has failed to cure such breach prior to the termination date;
 - iv. by one party if the other party becomes insolvent or bankrupt, is placed into

receivership, makes an assignment for the benefit of creditors, or is levied upon or sold by Sheriff's sale;

- v. by PMA or Client if PMA fails to obtain any required state or federal licensing for providing services hereunder; or
 - vi. by PMA or Client if any state regulatory entity fails to approve or subsequently disapproves or revokes the self-insured status of Client. PMA or Client may choose to suspend all or part of PMA's obligations under this Agreement or terminate this Agreement with respect to a state or states where Client loses its self-insured status.
- c) This Agreement shall be deemed terminated upon its normal expiration.
- d) Upon termination of this Agreement, PMA will provide a final accounting of any amounts due either party. Client shall be responsible for payment of all fees incurred by PMA up to and including the date of termination. Upon final closing of the account, PMA shall return the Claim Files to Client in electronic form. PMA may at its option keep a copy of the Claim Files for PMA's records.
- e) Client and PMA acknowledge that certain approved indemnity, medical and expense payments may still be in process of payment upon the date of termination. Therefore Client agrees that Client will remain responsible for payment of any and all indemnity, medical and expense payments which may be processed by PMA for a Qualified Claim, which shall include, at a minimum, the maintenance of a claim funding mechanism for at least 45 days after the Agreement terminates. In addition, PMA shall return to Client any outstanding checks remaining unpaid after termination. PMA shall not be responsible for Client's escheat obligations with regard to issued but un-presented checks either before or after the termination of this Agreement.
- f) PMA may utilize the Payment Account for any outstanding amounts owed by Client to PMA prior to returning unallocated funding to Client.
- g) This Section of the Agreement shall survive the termination of this Agreement. Nothing in this Section of the Agreement shall limit any other remedy that may be available to PMA.

17. INDEMNIFICATION, HOLD HARMLESS, and LIMITATION OF LIABILITY

- a) To the fullest extent permitted by law, Client shall indemnify, defend and hold harmless PMA, and its parents, affiliates, officers, directors, employees, and agents, from and against all claims, losses, damages, costs, liability or expenses, including attorneys' fees, caused by or resulting from
 - (i) claims from third parties alleging negligence or willful misconduct of Client, its officers, directors, employees or agents; or
 - (ii) a disclosure of confidential or proprietary information by Client to any third party.
- b) To the fullest extent permitted by law, PMA shall indemnify, defend and hold harmless

Client, its affiliates, officers, directors, employees, and agents, from and against all claims, losses, damages, costs, liability or expenses, including attorneys' fees, caused by or resulting from claims from third parties alleging negligence or willful misconduct of PMA, its officers, directors, employees or agents. However the parties agree that PMA, its directors, officers, agents or employees, will not be liable to Client or any third party for claims arising from PMA's performance under this Agreement in those cases where PMA acted at the request of or with the consent of Client.

- c) Client agrees that it will not hold PMA liable for, or reduce the compensation of PMA with respect to, any failure of PMA to deliver any services resulting from (i) any failure to cooperate on the part of Client or the prior administrator, or (ii) ~~any~~ ~~claims~~ for Takeover Claims which have not been properly maintained or are not delivered to PMA in good order.
- d) Promptly after the receipt by any party seeking indemnification under this section ("Indemnitee") of notice of the commencement of any action or the assertion of any claim against such Indemnitee by a third party, such Indemnitee shall give such indemnifying party written notice thereof and the indemnifying party shall have the right to undertake the defense of such action or claim. If the indemnifying party fails to defend or, after undertaking such defense, fails to prosecute or withdraws from such defense, the Indemnitee shall have the right to undertake the defense and settlement thereof at the indemnifying party's expense. If the indemnifying party is defending such action or claim, the Indemnitee may retain separate counsel at its sole cost and expense and may participate in the defense of such action or claim. An indemnifying party may only settle an action or claim with the consent of the Indemnitee, which consent shall not be unreasonably withheld or delayed. If the Indemnitee does not consent to a settlement proposed by the indemnifying party that includes a full release of Indemnitee from all claims at issue, the Indemnitee shall be responsible for any settlement, award, judgment or damages incurred above the settlement amount proposed by the indemnifying party, as well as all costs and expenses, including attorneys' fees, incurred in the defense of the claims from the date of the proposal
- e) The indemnification provided in this section represents the sole remedy for actions or claims brought by third parties
- f) Neither party shall be liable to the other party for punitive or consequential damages.
- g) Client agrees that PMA's total liability to Client under this Agreement (whether in contract, tort, or otherwise) shall not exceed the amount of claim handling fees billed and collected by PMA during the 12 month period immediately preceding the date Client first notifies PMA in writing of any potential action or claim.
- h) Any claim under this Agreement must be brought by the party within one year of the event forming the basis of the claim
- i) This Section of the Agreement shall survive the termination of the Agreement.

18. NOTICES

All notices required to be given by one party to the other under this Agreement will be in writing and will be sent by first class US mail, postage prepaid, or by nationally recognized overnight carrier and will be addressed as set forth below or to such other address as may be designated in writing by either party in accordance with the provisions of this Agreement and will be effective upon receipt.

For Client: Charlotte B. Barnes
Department of Human
Resources City of Wilmington
800 N. French
Street 4th Floor
Wilmington, DE 19801

For PMA: President
PMA Management
Corp. 380 Sentry
Parkway
Blue Bell, PA 19422

With a copy to: General Counsel
PMA Management
Corp. 380 Sentry
Parkway Blue Bell,
PA 19422

19. NON SOLICITATION of PMA'S EMPLOYEES

Client agrees not to directly solicit for employment, either as an employee or an independent contractor, employees of PMA during the term of this Agreement or for a period of one year following its termination. The parties acknowledge the difficulty in determining a specific damage amount for breach of this section, therefore, as liquidated damages and not as a penalty, if Client breaches the terms of this section, Client shall pay PMA an amount equal to one year's base salary of each employee hired. This section of the Agreement shall survive the termination of the Agreement.

20. ASSIGNMENT

This Agreement will be binding upon the parties, their successors and assigns.

21. COOPERATION

- a) Client and its agents, representatives and employees will promptly report to PMA all notices of injuries, losses or claims for which Client may be liable under its self-insurance program, and to provide all necessary documents and materials to PMA, including but

not limited to excess policies, which are necessary to provide the services hereunder.

- b) Each party and its agents will cooperate fully with the other party in connection with its obligations hereunder and upon reasonable request, assist in the investigation, litigation, settlement and/or defense of a particular Qualified Claim. Upon prior notice from Client, all Claim Files will be open to Client's inspection at reasonable times, at the office of PMA. PMA may, at its own option within five business days of such request provide Client or Client's representative with limited access to PMA's RMIS for the purposes of reviewing Claim Files electronically.
- c) This Section of the Agreement shall survive the termination of the Agreement.

22. WARRANTIES and REPRESENTATIONS

- a) By affixing its authorized signature below, Client warrants that it has been duly authorized and/or otherwise possesses all requisite authority and may lawfully enter into this Agreement.
- b) By affixing its authorized signature below, PMA warrants that it has been duly authorized and/or otherwise possesses all requisite authority and may lawfully enter into this Agreement.

23. MODIFICATION

PMA may seek to modify fees if: (i) PMA's fees and charges were based upon inaccurate or erroneous data, or Client's business changes materially in the nature or volume of business or claims from what was originally contemplated at the inception of the Agreement; or (ii) during the term of this Agreement, legislative and/or regulatory changes materially impact or change the scope of PMA's services or responsibilities. If the parties are unable to reach an agreement with regard to

the modification, then either party may terminate this Agreement with 60 days written notice to the other party, with the current fee structure remaining in effect. PMA will continue to provide services for the 60 day notice period, after which PMA will return all Claim Files to Client and submit a final billing to Client.

24. MISCELLANEOUS

- a) **Governing Law; Jury Trial Waiver.** This Agreement and all disputes relating in any way to this Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to its principles of conflicts of laws. Both parties agree to waive any right to have a jury participate in the resolution of any dispute or claim between the parties arising under the Agreement. All disputes in connection with this Agreement shall be resolved by the courts of New Castle County, Delaware.
- b) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof, and supersedes all prior written or oral agreements, representations, warranties, negotiations, or understandings. The parties

further represent and warrant that they have not relied on any representations, warranties or statements as an inducement to entering this Agreement other than what is expressly written herein. Addendum I Wilmington General Terms and Conditions attached hereto are also part of this Agreement and will supersede any contrary terms set forth in this Agreement.

- c) **No Waiver.** No delay or omission on the part of any party in exercising any right hereunder will operate as a waiver of such right or of any other right under this Agreement. A waiver on any one occasion will not be construed as a bar to or waiver of any right or remedy on any other occasion.
- d) **Standard of Care.** PMA shall discharge its obligations under this Agreement with commercially reasonable care, skill, prudence and diligence.
- e) **Force Majeure.** The obligations of either PMA or the Client under this Agreement will be suspended for the duration of any force majeure applicable to that party. The term “force majeure” means any cause not reasonably within the control of the party claiming suspension, including without limitation, an act of God, industrial disturbance, war, riot, weather related disaster, earthquake, and/or governmental action. Client’s obligation to fund its claims and expenses shall continue uninterrupted during this Agreement and shall not be subject to a force majeure event. The party claiming suspension pursuant to this section of the Agreement shall take all commercially reasonable steps to resume performance as soon as possible without incurring unreasonably excessive costs.
- f) **Severability.** The provisions of this Agreement are to be deemed severable, and the invalidity or unenforceability of any provision will, unless material and going to the essence of the Agreement as a whole, not affect or impair the remaining provisions which will continue in full force and effect.
- g) **Counterparts; Electronic Signature.** This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall constitute a single instrument. The intentional action in electronically signing this Agreement shall be evidence of consent to be legally bound by this Agreement. Further, the parties agree that this Agreement may be signed and/or transmitted by electronic mail of a .PDF document or electronic signature (e.g., DocuSign or similar electronic signature technology) and thereafter maintained in electronic form, and that such electronic record shall be valid and effective to bind the party so signing as a paper copy bearing such party’s hand-written signature. The parties further consent and agree that the electronic signatures appearing on this Agreement shall be treated, for purpose of validity, enforceability and admissibility, the same as hand-written signatures. Each party agrees not to contest the admissibility or enforceability of the electronically signed copy of this Agreement in any proceeding arising out of this Agreement.
- h) **Captions.** The captions and headings to the various Sections of this Agreement have been inserted for convenience of reference only, and shall not have the effect of amending or changing the express terms or provisions of this Agreement.

- i) **Ambiguities.** The parties agree that the terms and language of this Agreement are the result of detailed negotiations between the parties and, as a result, there shall be no presumption that any ambiguities in this Agreement shall be resolved against either party. Any controversy over the construction of this Agreement shall be decided in light of its business purposes, without regard to events of authorship or negotiation. In the event of any inconsistency or conflict between the terms or provisions of this Agreement and the terms or provisions of any other pre-existing or contemporaneous document or agreement as to the subject matter of this Agreement, the terms and provisions of this Agreement shall control and shall supersede the terms or provisions of such other document or agreement.

- j) **Calculation of Time.** All references herein to days shall be to calendar days, unless an express reference is made to business days. In the event the last day for compliance falls on a Saturday, Sunday, or Holiday, the period for compliance shall be deemed to include the following business day.

- k) **Amendment.** Except as otherwise set forth in this Agreement, this Agreement will not be amended except as mutually agreed in a writing signed by both parties.

- l) **Use of Client Name and/or Logo.** During the term of this Agreement, Client authorizes PMA to utilize Client's name and/or logo in promotional or marketing efforts.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on the day and year first written above.

PMA MANAGEMENT CORP.

CITY OF WILMINGTON

BY: _____

BY: _____

TITLE: _____

TITLE: _____

Exhibit A – Other Services Fee Schedule

<u>Service Type</u>	<u>Amount</u>	<u>Billed</u>
<u>Managed Care:</u>		
Bill review and repricing	8.50 per bill, plus 35% of savings over and above fee schedule and/or usual and customary	Monthly
Utilization review	\$105 per review	Monthly
Medical management services	\$98.00 per hour	Monthly
Medical consultant review	\$235 per review	Monthly
PMA Care 24	\$98.00 per call	Monthly
Point of Sale Pharmacy Program	\$35.00 per review	Monthly
Medical Director	\$250 per hour	Monthly
<u>Medicare Solutions</u>		
Section 111 Reporting	\$6.00 per claim queried	Monthly
Medicare Set-Aside Allocation	\$2,100 each	Monthly
CMS Submissions	\$600 each	Monthly
Medicare Conditional Payment Research	\$125 each	Monthly
Medicare Conditional Payment Appeal or Dispute	\$250 each	Monthly
Medicare Conditional Payment Research Final Demand	\$50 each	Monthly
Medical Cost Projections	\$1,800 each	Monthly
Evidenced Based MSA	\$2,100 each	Monthly
Life Care Plan	\$175 per hour	Monthly
Legal Nurse Review	\$1,800 per review	Monthly
Update (of prior MSA report)	\$750 per report	Monthly

Resolution Services	\$125 per hour	Monthly
Medicare/Social Security Verification	\$195 each	Monthly
Medicaid Conditional Payment Research	\$250 each	Monthly
Medicare Advantage Plan Conditional Payment Negotiation	\$500 each	Monthly
Provider Relations Specialist	\$98 per hour	Monthly

<u>Information Systems:</u>		
RMIS fee	\$5,000 for up to 3 users \$500 each addt'l user	Annually until contract is terminated
Customized Reporting	\$95.00 per hour	Monthly
<u>Risk Control:</u>		
General	\$135 per hour	Monthly
Industrial hygiene services	\$140 per hour	Monthly
Special Projects	To be determined	As incurred
<u>Claim Adjustment:</u>		
Vocational Rehabilitation	\$98.00 per hour	Monthly
Claim Indexing	\$7.90 - \$13.10 per query depending upon search method and services	Monthly
<u>Other:</u>		
Administrative	\$Included	Annually until contract is terminated
Subrogation specialist	15% of gross recovery	As recovered
Recover to Work	\$98.00 per hour	Monthly
Standard Data Extract (upon termination)	\$2,500	As incurred

**ADDENDUM 1
CITY OF WILMINGTON GENERAL TERMS AND
CONDITIONS**

(the Agreement as supplemented by these General Terms and Conditions shall hereinafter be referred to collectively as the “Agreement”)

1. Insurance Coverage. PMA Management Corp. (the “Contractor”) shall obtain and provide insurance coverage for itself and all of its employees, if any, used in connection with the Agreement as follows: workers’ compensation as required by law; comprehensive general liability coverage for personal injury, including death, and property damage in the minimum amount of one million dollars (\$1,000,000); and professional liability insurance with limits of at least \$1,000,000 per occurrence and \$3,000,000 annual aggregate. All insurance required hereby except workers’ compensation, employer’s liability, and professional liability shall be provided on a policy(s) that specifically names the City of Wilmington, its officials and employees as additional insureds. Such policies shall be issued by a Delaware-admitted financially sound carrier and/or carriers. Contractor shall provide the City with a certificate of insurance evidencing the above stated coverage and naming the City as an additional insured.

2. Use of Subcontractors. Contractor may use qualified consultants, subconsultants, or subcontractors to perform the services required under this Agreement upon the written approval of the City.

3. Discrimination and Harassment. In the performance of this Agreement, the parties agree that they shall not discriminate or harass, or permit discrimination or harassment, against any person because of age, sex, marital status, race, religion, color, national origin or sexual orientation.

4. Records. Contractor shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to this Agreement and such other records as may be deemed necessary by the City to assure proper accounting for all project funds. Such records shall be made available for audit purposes to the City or its authorized representatives upon thirty (30) days written request.

5. Reports and Information. Contractor, at such time and in such form as the City may require, shall furnish the City such reports as the City may request pertaining to the work or services undertaken pursuant to this Agreement.

6. Business License. Contractor shall obtain and/or maintain an appropriate business license from the City of Wilmington Department of Finance.

7. **Taxes.** Contractor shall withhold, if applicable, City of Wilmington wage taxes from the compensation of its officers, agents and employees as required by the City of Wilmington wage tax law.

8. **Notices.** Any notice which is required or may be given in connection with this Agreement shall be addressed to the parties as follows:

The City:

Charlotte B. Barnes, Director
City of Wilmington
Department of Human Resources
800 N. French Street, 4th Floor
Wilmington, DE 19801

Contractor:
President
PMA Management Corp.
380 Sentry Parkway
Blue Bell, PA 19422

9. **Oral Modifications.** This Agreement may not be changed orally, but only by an agreement in writing and signed by both parties.

10. **Conflict Between Provisions.** To the extent that there is any conflict between these General Terms and Conditions and other portions of the Agreement or the Contractor's terms and conditions, the terms set forth in these General Terms and Conditions shall govern.

11. **Successors and Assigns.** This Agreement, and all the terms and provisions hereof, shall be binding upon and shall inure to the benefit of the City and Contractor, and their respective legal representatives, successors, and assigns.

12. **Severability.** The Agreement is intended to be performed in accordance with and only to the extent permitted by all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

13. **Payment.** Payment shall be made by the City to the Contractor as provided in this Agreement after the satisfactory completion of the work specified in this Agreement and upon proper, undisputed invoice to the City.