

INTER

OFFICE

MEMO

To: HARRISBURG CITY COUNCIL
From: Kirk Petroski, City Clerk
LEGISLATIVE APPROVAL FORM

Date:

LEGISLATIVE APPROVAL FORM/CERTIFICATE OF ACCEPTANCE

BILL NO. -2020 RESOLUTION NO. -2020

THE ABOVE LISTED ITEM WAS WRITTEN AND PREPARED FOR FINAL INTRODUCTION AT THE HARRISBURG CITY SOLICITOR'S OFFICE ON:


Deputy City Solicitor

10-9-20
Date

Requested by Department/Bureau: Administration + Solicitor

Department/Bureau Contact Person: M. Woolley

For Action on or before:

The attached was received in the Office of the City Clerk for introduction on

Received by: _____

Date: _____

RESOLUTION NO. _____ - 2020

Moved by: _____

A Resolution ratifying an agreement between the City of Harrisburg and Inservco Insurance Services, Incorporated, for the provision of third party administrator services relating to general liability and related claims.

WHEREAS, the City of Harrisburg (the "City") retains a Third Party Administrator ("TPA") to service its self-insurance general liability claims and related matters that are subject to a Self-Insured Retention (SIR) program; and

WHEREAS, the City, after a review of competitive proposals, determined that Inservco Insurance Services, Incorporated ("Inservco") can best provide the required TPA services at prices beneficial to the City; and

WHEREAS, the TPA services provided by Inservco will include but are not limited to the review, monitoring and investigation of new reports of claims; the monitoring of claim reserves; coordination with the City's specialty and excess carrier(s), as necessary; securing of experienced outside legal counsel; and the provision of the day-to-day management of the City's claims portfolio, from inception to final closeout, including related mediation or litigation of matters; and

WHEREAS, Inservco began providing TPA services to the City on October 1, 2020, which is the effective date of the agreement; and

WHEREAS, the agreement provides for the administration of only new claims made during the term of the contract, which shall operate for a three (3) year period and expire on September 30, 2023; and

WHEREAS, the agreement is attached hereto as "Exhibit A."

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE CITY OF HARRISBURG, that the Third Party Administrator agreement between the City of Harrisburg and Inservco Insurance Services, Incorporated is hereby ratified.

BE IT FURTHER RESOLVED that the Mayor, City Controller and other appropriate City officials are authorized and directed to take all steps necessary to further effectuate the purpose of this Resolution.

I second this resolution _____

EXHIBIT A

**SERVICE AGREEMENT FOR ADMINISTRATION OF
SELF-INSURANCE PROGRAM**

This Agreement, made and entered into this ____ day of _____ 2020, by and between INSERVCO INSURANCE SERVICES, INCORPORATED, a Pennsylvania corporation with its principal place of business in Harrisburg, Pennsylvania, Dauphin County, (the "Company") and CITY OF HARRISBURG, with principal offices located in Harrisburg, Pennsylvania, (the "Self-Insured").

In consideration of the mutual promises and agreements contained in this Service Agreement, and intending to be legally bound, the parties agree as follows:

A. DEFINITIONS.

The following definitions will apply to the words and phrases when used in this Agreement:

1. "Allocated Expenses" shall mean all items of expenses, including, but not limited to attorneys' fees, photographers' fees, expert witnesses', fees for medical examinations for claim evaluation purposes, court costs, travel expenses for witnesses, medical management, vocational rehabilitation, court reporters' fees, costs or expenses relating to the investigation, negotiation, settlement, or defense of any claim and as may be necessary for the handling of subrogation cases. Except for legal fees and capped attorney fees, such Allocated Expenses shall require specific prior written or verbal approval of Self-Insured.
2. "Catastrophic Loss" shall mean a claim involving multiple (10 or more) claimants resulting from the same occurrence, accident, etc. In the event of multiple claimants, each claimant, No. 10 and above, will be considered a separate claim and a \$250 per claim fee charged.
3. "Claims Administration Services" shall mean those services provided by the Company as further described in Section B (1) in this Agreement.
4. "Program" shall mean the Self-Insured's insurance program.
5. "Administrative Account" an account used to pay for expenses associated with the Program that are not able to be allocated to any particular claim file. An authorize representative of the Self-Insured shall direct all disbursements from this account.

B. OBLIGATIONS OF THE COMPANY.

1. With regard to Claims Administration Services, the Company agrees to:
 - a) Review all Self-Insured's Report of Claim forms submitted by the Self-Insured in which the dates of injury fall during the term of this Agreement and to conduct such investigation as the circumstances of each case dictate;
 - b) Establish and maintain estimated reserve figures for each claim file and to consult with the Self-Insured with respect to payment of any case that is over Company's discretionary settlement authority, which shall be established in writing;

- c) Furnish all claim forms necessary for proper claims administration;
- d) Maintain claim files for each reported claim throughout the life of the claim (in paper or imaged format), retain all closed files for a period of three (3) years following closing of the file, and, after three years, return the closed files to Self-Insured;
- e) As soon as reasonably practicable following the end of each month, furnish to the Self-Insured statistical information consisting essentially of the following details:
 - (i) The total number of claims reported to the Company during the preceding month;
 - (ii) The total amounts paid by the Company during the preceding month and a breakdown of said total on a "by line" basis;
 - (iii) The amounts paid by the Company during the preceding month on each individual case on a "by line" basis;
 - (iv) The amounts paid to date on each open claim or claim closed during the preceding month; and
 - (v) Outstanding reserves on each individual case on a "by line" basis;
- f) Transmit, weekly, to the Self-Insured a list of all payments and Allocated Expenses to be paid, the total of which represents the amount that the Self-Insured shall immediately make available in its account for payment of that week;
- g) Issue drafts or checks for payment of benefits and Allocated Expenses, said drafts or checks being paid from an account maintained by the Company at a bank of its choice with fees or charges in connection with the account being the responsibility of the Company;
- h) Upon any termination of this Agreement, renegotiate the amount of the funds to be made available by the Self-Insured to conclude cases under the provisions of Section F.5. herein and at the conclusion of all services under this Agreement to have a final reconciliation of the account and to leave any unused funds for use of the Self-Insured;
- i) Notify the Self-Insured and excess insurance carrier of any specific case that may involve the Self-Insured's excess insurance carrier for the Program being administered by the Company. The Company will comply with all claims reporting requirements of the excess carrier. The Client's failure to timely provide the excess insurance policies and any necessary information that is reasonably required to report such claims shall relieve the Company of its obligation to report to the Client's excess carrier;
- j) Provide all necessary subrogation services within claims management fee;
- k) Attend any regularly scheduled Self-Insured claims meetings to review claims;
- l) Notify the Self-Insured and seek approval for any claim requiring litigation as soon as reasonably practical;

- m) Safety management/loss control services will be billed at an hourly agreed upon rate, with such rate reduced to writing, if services so desired;
 - n) Maintain and supervise such personnel as may be necessary to perform Company's duties hereunder, with the hiring, assignment and termination of such personnel being at the sole discretion of the Company; and
 - o) Maintain professional liability insurance coverage to insure against any claim for damages arising out of or by reason of any acts or omissions directly or indirectly in connection with the Company's performance of its services under this Agreement, and provide proof of such insurance to Self-Insured at its request. Failure to maintain such insurance shall constitute a material breach of this agreement.
2. The Company acknowledges and agrees that if the Self-Insured has now, or creates in the future, an Administrative Account then Company will process the payment from the Administrative Account those expenses that are submitted by the Self-Insured that have been approved by at least one authorized representative of the Self-Insured. The Self-Insured shall designate in writing those individuals that are authorized to direct such payments. The Self-Insured designates [none] as authorized representative(s) for this purpose. The Self-Insured further acknowledges and agrees that the Company, its affiliates, or any of their respective officers, directors, employees, or representatives shall not be required to review for the authenticity, legitimacy or validity of the expenses to be paid from the Administrative Account. The Self-Insured's authorized representative(s) are solely responsible to review, approve and direct payments made from the Administrative Account. The Self-Insured shall indemnify for all expenses and hold harmless the Company for any negligent, reckless or willful misconduct by Self-Insured's authorized representative in reviewing, approving and directing payment from the Administrative Account.
3. It is understood and agreed that the Company will not perform, and the Self-Insured will not request the Company to perform, any services which may constitute the practice of law.

C. OBLIGATIONS OF THE SELF-INSURED.

1. The Self-Insured agrees to:
- a) Promptly report all claims to the Company;
 - b) Pay to the Company the service fees as set forth in this Paragraph F of this Agreement;
 - c) Make available immediately in its account a sum equal to the weekly list of payments and Allocated Expenses supplied by the Company;
 - d) Assume the cost of defense of any action on behalf of the Company, its agents or employees, if any of them are named as a defendant(s) in any action: (i) where the plaintiff's cause of action involves a claim hereunder; and (ii) where there are no allegations of errors, omissions, torts, intentional torts or other negligence on the part of the Company;
 - e) Select legal counsel from list supplied by the Company or provide its own counsel list, and after doing so, permit the Company to assign cases and/or to consult with such counsel as the Company may deem appropriate; and

- f) Provide the Company with such additional information with respect to matters incidental to the Company's performance of services under this Agreement as may be requested by the Company from time-to-time.
 - g) Provide copies of the excess insurance policies for the Program.
2. The Self-Insured shall be responsible at all times for the payment of all claims and Allocated Expenses covered by the claims administration services provided by the Company pursuant to this Agreement.
 3. The Self-Insured shall cooperate with the Company in the performance of its claims administration services hereunder. The Company shall not be liable for any breach of obligations under this Agreement caused in whole or in part by the lack of cooperation or breach of obligations by the Self-Insured.

D. INDEMNIFICATION.

1. The Company agrees to indemnify and hold Self-Insured, its employees, and owners harmless from any liability, loss, cost, damage, or expense, including attorney's fees, arising out of or incident to the Company's performance of the terms of this Agreement. The Company shall further indemnify, defend and hold harmless Self-Insured, its officers, directors, employees or agents from and against and in respect to any and all liability, loss, cost, damage or expense, including reasonable attorney's fees, that Self-Insured shall incur or suffer, which arises out of, respect from or relate to any negligent act or gross or willful misconduct in the performance of Company's obligation under this Agreement by its officers, directors, employees, or agents.
2. Self-Insured agrees and understands that if a claim for bad faith or a claim otherwise related to the handling of Self-Insured's claims is made against the Company and the complained of action or inaction was taken by the Company at the specific direction of the Self-Insured or in reliance upon statements made by the Self-Insured or was consistent with industry claims handling standards then the Self-Insured will indemnify and hold the Company harmless from any liability, loss, cost, damage, or expense, including attorney's fees.
3. The defense, including legal fees and costs together with the amount of any judgment, of any legal action against Self-Insured arising out of a claim for coverage under the Program, shall be the responsibility of the Self-Insured and shall not be an obligation of the Company.
4. The Company shall not, by entering into and performing services in accordance with the terms of this Agreement, become liable for any of the existing or future obligations, liabilities, or debts of the Self-Insured.
5. The indemnifications provided for by this section shall survive the termination of this Agreement.

E. LIMITATION OF LIABILITY.

THE COMPANY SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES. THE COMPANY'S LIABILITY FOR DAMAGES ARISING OUT OF, RELATING TO OR IN ANY WAY CONNECTED WITH THE RELATIONSHIP OF THE PARTIES, THIS AGREEMENT, ITS NEGOTIATION OR TERMINATION, DOCUMENTATION OR SERVICES WHETHER IN CONTRACT, TORT (EXCEPT FOR PHYSICAL INJURY OR PROPERTY DAMAGE) OR OTHERWISE, SHALL IN NO EVENT EXCEED TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00).

F. FEES, TERM & TERMINATION.

1. **Term.** Except as otherwise provided for in Paragraph F.3 below, the term of this Agreement shall be for three years beginning on 10/01/20 and ending on 09/30/23.
2. **Fees.** Fees for claims administration services under this Agreement and for the term specified in Paragraph F.1 above are as follows:
 - a) For the period 10/01/20 – 09/30/21 shall be an administrative flat fee of \$5,000.00 to handle the liability claims.
 - b) For the period 10/01/20 – 09/30/21 Fees per Claim are as follows:
 - (i) General Liability Bodily Injury: \$445.00
 - (ii) General Liability Property Damage: \$445.00
 - (iii) Auto Liability Bodily Injury: \$445.00
 - (iv) Auto Liability Property Damage: \$445.00
 - (v) Auto Physical Damage: \$280.00
 - (vi) Professional Liability (Police, Public Officials): \$595.00
 - (vii) Liability Incident Only: \$25.00
 - c) For the period 10/01/21 – 09/30/22 Fees per Claim are as follows:
 - (i) General Liability Bodily Injury: \$445.00
 - (ii) General Liability Property Damage: \$445.00
 - (iii) Auto Liability Bodily Injury: \$445.00
 - (iv) Auto Liability Property Damage: \$445.00
 - (v) Auto Physical Damage: \$280.00
 - (vi) Professional Liability (Police, Public Officials): \$595.00
 - (vii) Liability Incident Only: \$25.00
 - d) For the period 10/01/22 – 09/30/23 Fees per Claim are as follows:
 - (i) General Liability Bodily Injury: \$453.90
 - (ii) General Liability Property Damage: \$453.90
 - (iii) Auto Liability Bodily Injury: \$453.90
 - (iv) Auto Liability Property Damage: \$453.90
 - (v) Auto Physical Damage: \$285.60
 - (vi) Professional Liability (Police, Public Officials): \$606.90
 - (vii) Liability Incident Only: \$25.50

These fees are cradle to grave.

3. Termination.

- a) Either party may terminate this Agreement at any time, and for any reason, during the term of the contract by giving the other party sixty (60) days advance written notice.
 - b) Either party may terminate this Agreement immediately for cause by giving the other party written notice and that party has failed to cure the situation. Reasons to terminate “for cause” shall include, but not be limited to, the following circumstances:
 - (i) It is established that either party needs and has lost, has suspended or has not secured a license, governmental approval or exemption in accordance with applicable laws or regulations in order to enter into or perform this Agreement; or
 - (ii) Either party materially breaches this Agreement in any manner where such material breach is not cured within thirty (30) days after written notice of the breach is given to the breaching party; or
 - (iii) Either party shall apply for or consent to the appointment of a receiver, trustee or liquidator of Self-Insured or of all or a substantial part of its assets, file a voluntary petition in bankruptcy, make a general assignment for the benefit of creditors, file a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of any insolvency law, or if an order, judgment or decree shall be entered by any court of competent jurisdiction, on the application of creditor, adjudicating Self-Insured bankrupt or insolvent or approving a petition seeking reorganization of the Self-Insured and such order, judgment or decree shall continue unstayed and in effect for period of sixty (60) consecutive days, then in case of any such event, the term of this Agreement shall expire, at Company’s option, on ten (10) days written notice to Self-Insured.
4. The handling of any claim pending on the date of termination of this Agreement shall be negotiated by both parties unless the parties agree to enter into a renewal or new contract for the same services. In such case, all pending claims shall be handled consistent with the fees set forth in the new Agreement.
5. Upon termination of this Agreement, the Self-Insured shall be entitled, if it so requests, to possession of the electronic files the Company has maintained for claims, medical incidents, and occurrences (but not including any computer software or other proprietary information of the Company), provided, however, that the Company and its employees, agents, or attorneys shall continue to be entitled to inspect such files and make copies or extracts there from subject to approval by Self-Insured;

6. Upon termination of Company's duties hereunder, it shall be the responsibility of the Self-Insured to arrange and pay all costs for the transfer to a successor of custody of any of the Self-Insured's records in the Company's possession including original claims records. The Company may, at its option, transfer such records in such non-proprietary form, as it may desire, including computer tapes or disks, and it is the responsibility of the Self-Insured to convert such information into a form required by successor. If Company transfers such data in a proprietary form that requires licensing or payment in order to access or copy the data it shall be the responsibility of Company to either, secure appropriate licensing at Company's own cost, or convert the information to a non-proprietary form. In addition, the Company shall deliver to the Self-Insured all electronic data and hard copy data, if any, for claims within thirty (30) days following the termination of Company's duties hereunder.
7. It is expressly understood that the Company shall not be required to advance its own funds to pay losses or Allocated Expenses hereunder or to perform any services hereunder if the Self-Insured fails to provide adequate funds as herein set forth. Company will not be considered the insurer, guarantor or underwriter of the liability of the Self-Insured for coverage and Self-Insured will have final responsibility and liability for payment of claims in accordance with the provisions of the Program.

G. CONFIDENTIALITY.

The parties agree to keep all oral and written information confidential and, other than required to satisfy obligations under this Agreement, to refrain from releasing such information to any third party without the express written authorization of the other party, except to the extent such release may be required by law, regulation or court order and in which case prior notice of such release shall be given to the other party. Company acknowledges that Self Insured is subject to the Pennsylvania Right to Know Law, 65 Pa. C.S. §67.101 *et seq.*, and will assist Self Insured with producing public records where required pursuant to that act.

H. RIGHT TO AUDIT.

The Self-Insured shall have the right to review any open or closed claim files, billings, invoices, payment history related to a claim made under the Program and the services provided for a particular claim. Any such reviews shall be during normal business hours and upon reasonable advance notice to the Company. Failure by the Company to comply with a request for audit shall constitute a material breach of this agreement, and Company expressly agrees to waive its rights in Paragraph E of this agreement with respect to any damages to Self-Insured arising therefrom.

I. RELATIONSHIP OF THE PARTIES.

In the performance of the work, duties and obligations of the parties to this Agreement, Company shall at all times be acting and performing as an independent contractor with respect to Self-Insured. No relationship of employer and employee, partner, joint venturer, agent, fiduciary, trustee, or similar relationship between Company and Self-Insured is created by this Agreement or by performance of any activities contemplated hereunder. The Self Insured acknowledges and agrees that none of the Company, its affiliates, any of its subcontractors or vendor service providers, or any of their respective officers, directors, employees, agents, or representatives are employers or employees of the Self-Insured, partners, joint venturers, agents, fiduciaries or trustees or hold similar relationships with respect to the Self-Insured. Neither party hereto will make any claims or demands against the other party for any liability or loss of any kind or character in connection with any such relationships,

including, without limitation, claims for employee benefits. In addition, neither party shall have any power or authority to act for or on behalf of, or to bind the other except as herein expressly granted, and no other or the grant nor denial of power or authority specifically mentioned herein shall imply greater power or authority.

J. DISCLOSURE OF BUSINESS ARRANGEMENTS

Self Insured understands and acknowledges that the Company may have business agreements, including cost sharing arrangements, with the vendor service providers that perform services related to this Agreement or in connection with the services provided under this Agreement including the Claims Administration Services provided by the Company and the services related to allocated and unallocated expenses. As part of these business agreements, there may be financial considerations paid by the vendor service provider to the Company for the resources and services that the Company may provide, which could include marketing, personnel, information technology, system access, and various administrative services. The amounts, which may be material, that the Company may receive from a vendor provider vary from provider to provider and may depend upon the types and quantity of resources and services the Company provides to the vendor provider. Self Insured understands and acknowledges that it is under no obligation to utilize any vendor provider that is recommended by the Company to perform services related this Agreement and if Self Insured elects not to utilize the services of a recommended vendor provider, then Self Insured can select a vendor service provider it chooses to the perform such services. Company agrees, when recommending vendors, to identify where such commercial relationships exist between Company and the proposed vendor. Self Insured acknowledges that if it selects a vendor service provider different than one that is recommended by Company then there may be an adjustment to the Claims Administration Services fee. Self Insured also acknowledges that it has control over the types of and amounts of services a vendor service provider performs under or in connection with this Agreement, whether recommended by the Company or selected by Self-Insured.

Self Insured understands and acknowledges that the Company also has an ownership interest in Keyscripts LLC, a managed care vendor that provides pharmacy benefit physical therapy network and durable medical equipment network services, that the Company may recommend using to control costs for the Program. As with any other vendor service provider, Self Insured is able to choose a different service provider for these theses.

K. MISCELLANEOUS PROVISIONS.

1. *Waiver.* Failure of either party to enforce at any time any provision of this Agreement or to exercise any of the rights granted in this Agreement shall not affect or impair the validity of any part of this Agreement or the right to require full performance at any time thereafter. Further, the waiver by either party of a breach of any such provision shall not be held to be a waiver of any subsequent breach thereof.
2. *Severability.* If, at any time, any part of this Agreement is found to be unenforceable, illegal, or contrary to public policy, then the remainder of the Agreement remains in full force and effect except for the unenforceable portion.
3. *Notices.* Any notices required by this Agreement shall be in writing and may be delivered personally or by registered mail, postage prepaid, and addressed to the respective parties at the last known

address given by either party to the other.

4. *Applicable Law.* This Agreement shall be construed, enforced, and administered in accordance with the laws of the Commonwealth of Pennsylvania.
5. *Headings and Subheadings.* The headings and subheadings in this Agreement are inserted for the convenience of reference only and are to be ignored in any construction of the provisions thereof.
6. *Gender and Number.* Wherever applicable, the feminine or masculine pronoun as used herein shall also include the masculine and feminine, as the case may be, and the singular or the plural, and vice versa.
7. *Reference to Statutes and Regulations.* Reference in the Agreement to laws, statutes, and regulations shall include all applicable local ordinances, state or federal statutes and all applicable regulations, rulings, procedures, releases, and other procedures, releases and other position statements issued by any governmental agency.
8. *Entire Agreement.* This Agreement represents the entire and exclusive statement of the Agreement of the parties and no modification or amendment of this Agreement shall be valid unless made in writing and signed by both parties. Such modification or amendment shall be attached to and will become a part of this Agreement.
9. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be considered an original and all of which taken together shall constitute one and the same instrument.

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SIGNATURE PAGE TO FOLLOW**

**SERVICE AGREEMENT FOR ADMINISTRATION OF
SELF-INSURANCE PROGRAM
SIGNATURE PAGE**

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals on the date(s) indicated.

ATTEST:

INSERVCO INSURANCE SERVICES, INC.

By: _____

Name: Staci L. Ulp, AIC

Title: Executive Vice President & COO

Date:

ATTEST:

CITY OF HARRISBURG

By: _____

Name: Eric Papenfuse

Title: Mayor

Date:

By: _____

Name: Charlie DeBrunner

Title: Controller

Date:

By: _____

Name:

Title: Law Bureau

Date: