

CONTRACT FOR THIRD PARTY ADMINISTRATION OF WORKER'S COMPENSATION CLAIMS

1. **PARTIES.**

This is a contract between the City of Madison, Wisconsin, hereafter referred to as the "City" and Wisconsin Municipal Mutual Insurance Company, hereinafter referred to as "WMMIC".
2. **PURPOSE.**

The purpose of this contract is as set forth in Section 3.
3. **SCOPE OF SERVICES AND SCHEDULE OF PAYMENTS.**

This is a contract for WMMIC to perform third party administration services for City's Worker Compensation claims. WMMIC will perform services and obligations and be paid according to the attached Schedule 1. City will perform the obligations it has in the attached Schedule 1.
4. **EFFECTIVE DATE.**

This contract is effective March 1, 2007, and terminates March 1, 2010.
5. **ENTIRE AGREEMENT.**

The entire agreement of the parties is contained herein and this contract supersedes any and all oral contracts and negotiations between the parties.
6. **ASSIGNABILITY/SUBCONTRACTING.**

WMMIC shall not assign or subcontract any interest or obligation under this contract without the City's prior written approval. All of the services required hereunder will be performed by WMMIC and employees of WMMIC, or agents otherwise retained by WMMIC.
7. **PROSECUTION AND PROGRESS.**
 - A. Services under this agreement shall commence upon the effective date.
 - B. Services by WMMIC shall proceed continuously and expeditiously through completion of each phase of the work.
8. **AMENDMENT.**

This contract shall be binding on the parties hereto, their respective heirs, devisees, and successors, and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto. Any other change in any provision of this contract may only be made by a written amendment, signed by the duly authorized agent or agents who executed this contract.
9. **EXTRA SERVICES.**

The City may require WMMIC to perform extra services or decreased services, according to the procedure set forth in Section 22. Extra services or decreased services means services which are not different in kind or nature from the services called for in the Scope of Services, Section 3, but which may increase or decrease the quantity and kind of labor or materials or expense of performing the services..

10. **NO WAIVER.**

No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or WMMIC shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or WMMIC therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

11. **NON-DISCRIMINATION.**

In the performance of work under this contract, WMMIC agrees not to discriminate against any employee or applicant for employment because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs or student status. WMMIC further agrees not to discriminate against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex, or national origin.

12. **AFFIRMATIVE ACTION.**

WMMIC agrees that, within thirty (30) days after the effective date of this contract, WMMIC will provide to the City of Madison Department of Affirmative Action certain workforce utilization statistics, using a form to be furnished by the City.

If the contract is still in effect, or if the City enters into a new agreement with WMMIC, within one year after the date on which the form was required to be provided, WMMIC will provide updated workforce information using a second form, also to be furnished by the City. The second form will be submitted to the City Department of Affirmative Action no later than one year after the date on which the first form was required to be provided.

WMMIC further agrees that, for at least twelve (12) months after the effective date of this contract, it will notify the City of Madison Department of Affirmative Action of each of its job openings at facilities in Dane County for which applicants not already employees of WMMIC are to be considered. The notice will include a job description, classification, qualifications, and application procedures and deadlines. WMMIC agrees to interview and consider candidates referred by the Department of Affirmative Action if the candidate meets the minimum qualification standards established by WMMIC, and if the referral is timely. A referral is timely if it is received by WMMIC on or before the date stated in the notice.

The remaining portion of this paragraph is not applicable to Contractors who are determined to be "Exempt" in the following table.

VALUE OF AGGREGATE ANNUAL BUSINESS WITH THE CITY*

NUMBER OF EMPLOYEES	LESS THAN \$25,000	\$25,000 OR MORE
14 or less	Exempt	Exempt
15 or more	Exempt	Not Exempt

*As determined by the City Comptroller

ARTICLES OF AGREEMENT

ARTICLE I

WMMIC shall take affirmative action in accordance with the provisions of this contract to insure that applicants are employed, and that employees are treated during employment without regard to race, religion, color, age, marital status, disability, sex or national origin and that the employer shall provide harassment-free work environment for the realization of the potential of each employee. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship insofar as it is within the control of WMMIC. WMMIC agrees to post in conspicuous places available to employees and applicants notices to be provided by the City setting out the provisions of the nondiscrimination clauses in this contract.

ARTICLE II

WMMIC shall in all solicitations or advertisements for employees placed by or on behalf of WMMIC state that all qualified or qualifiable applicants will be employed without regard to race, religion, color, age, marital status, disability, sex or national origin.

ARTICLE III

WMMIC shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the City advising the labor union or workers representative of WMMIC equal employment opportunity and affirmative action commitments. Such notices shall be posted in conspicuous places available to employees and applicants for employment.

ARTICLE IV

(This Article applies to non-public works contracts.)

WMMIC agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison including the contract compliance requirements. WMMIC

warrants and certifies that, of the following two paragraphs, paragraph A or B is true (check one):

- A. It has prepared and has on file an affirmative action plan that meets the format requirements of Federal Revised Order No, 4, 41 CFR part 60-2, as established by 43 FR 51400 November 3, 1978, including appendices required by City of Madison ordinances or it has prepared and has on file a model affirmative action plan approved by the Madison Common Council _____.

- B. Within thirty (30) days after the effective date of this contract, it will complete an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR Part 60-2, as established by 43 FR 51400, November 3, 1978, including appendices required by City of Madison ordinance or within thirty (30) days after the effective date of this contract, it will complete a model affirmative action plan approved by the Madison Common Council _____.

ARTICLE V

(This Article applies only to public works contracts.)

WMMIC agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison, including the contract compliance requirements. WMMIC agrees to submit the model affirmative action plan for public works Contractors in a form approved by the Director of Affirmative Action.

ARTICLE VI

WMMIC will maintain records as required by Section 3.58(9)(f) of the Madison General Ordinances and will provide the City's Department of Affirmative Action with access to such records and to persons who have relevant and necessary information, as provided in Section 3.58(9)(f). The City agrees to keep all such records confidential, except to the extent that public inspection is required by law.

ARTICLE VII

In the event of WMMIC's or subcontractor's failure to comply with the Equal Employment Opportunity and Affirmative Action provisions of this contract or Sections 3.23 and 3.58 of

the Madison General Ordinances, it is agreed that the City at its option may do any or all of the following:

- A. Cancel, terminate or suspend this contract in whole or in part.
- B. Declare WMMIC ineligible for further City contracts until the Affirmative Action requirements are met.
- C. Recover on behalf of the City from WMMIC 0.5 percent of the contract award price for each week that such party fails or refuses to comply, in the nature of liquidated damages, but not to exceed a total of five percent (5%) of the contract price, or five thousand dollars (\$5,000), whichever is less. Under public works contracts, if a subcontractor is in noncompliance, the City may recover liquidated damages from the prime Contractor in the manner described above. The preceding sentence shall not be construed to prohibit a prime Contractor from recovering the amount of such damage from the noncomplying subcontractor.

ARTICLE VIII

(This Article applies to public works contracts only.)

WMMIC shall include the above provisions of this contract in every subcontract so that such provisions will be binding upon each subcontractor. WMMIC shall take such action with respect to any subcontractor as necessary to enforce such provisions, including sanctions provided for noncompliance.

ARTICLE IX

WMMIC shall allow the maximum feasible opportunity to small business enterprises to compete for any subcontracts entered into pursuant to this contract. (In federally funded contracts the terms "DBE, MBE, and WBE" shall be substituted for the term "small business" in this Article.)

13. SEVERABILITY.

It is mutually agreed that in case any provision of this contract is determined by any court of law to be unconstitutional, illegal or unenforceable, it is the intention of the parties that all other provisions of this contract remain in full force and effect.

14. NOTICES.

All notices to be given under the terms of this contract shall be in writing and signed by the person serving the notice and shall be sent registered or certified mail, return

receipt requested, postage prepaid, or hand delivered to the addresses of the parties listed below:

FOR THE CITY: Roger Goodwin, Interim Human Resources Director
Room 501, City-County Building
210 Martin Luther King, Jr. Blvd.
Madison, WI 53703

FOR WMMIC: Kevin C. Murphy, Executive Director
WMMIC
4785 Hayes Road
Madison WI 53704

Either party may change the person to receive notice by a notice sent under this paragraph.

FOR THE CITY: _____
_____ (Department or Division Head)

FOR THE CONTRACTOR _____

15. **GOODWILL.**
Any and all goodwill arising out of this contract inures solely to the benefit of the City; WMMIC waives all claims to benefit of such goodwill.

16. **THIRD PARTY RIGHTS.**
This contract is intended to be solely between the parties hereto. No part of this contract shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.

17. **AUDIT AND RETAINING OF DOCUMENTS.**
WMMIC agrees to provide all reports requested by the City including, but not limited to, financial statements and reports, reports and accounting of services rendered, and any other reports or documents requested. Any other reports or documents shall be provided within five (5) working days after WMMIC receives the City's written requests, unless the parties agree in writing on a longer period. Payroll records and any other documents relating to the performance of services under the terms of this Contract shall be retained by WMMIC for a period of seven (7) years after completion of all work under this contract, in order to be available for audit by the City or its designee.
18. **LAW APPLIED AND VENUE.**
This contract shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin and Wisconsin Courts and venue for any action arising out of this agreement will be in Dane County, Wisconsin.
19. **COMPLIANCE WITH APPLICABLE LAWS.**
WMMIC shall become familiar with, and shall at all times comply with and observe all federal, state, and local laws, ordinances, and regulations which in any manner affect the services or conduct of WMMIC and its agents and employees.
20. **CONFLICT OF INTEREST.**
A. WMMIC warrants that it and its agents and employees have no public or private interest, and will not acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the services under this agreement.
B. WMMIC shall not employ or contract with any person currently employed by the City for any services included under the provisions of this agreement.
21. **COMPENSATION.**
Compensation is set forth in attached Schedule 1.
22. **BASIS FOR PAYMENT.**
A. **GENERAL**
(1) The City will pay WMMIC for the completed and accepted services rendered under this contract on the basis and at the contract price set forth in Section 21 of this contract. The City will pay WMMIC for completed and approved "extra services", if any, if such "extra services" are authorized according to the procedure established in this section. The rate of payment for "extra services" shall be the rate established in this contract. Such payment shall be full compensation for services rendered and for all labor, material, supplies, equipment and incidentals necessary to complete the services.
(2) WMMIC shall submit invoices, on the form or format approved by the City, specified in the Scope of Services, Section 3 of this contract. The City will pay WMMIC in accordance with the schedule set forth in the Scope of Services. The final invoice shall be submitted to the

City within three months of completion of services under this agreement.

- (3) Should this agreement contain more than one service, a separate invoice and a separate final statement shall be submitted for each individual service.
- (4) Payment shall not be construed as City acceptance of unsatisfactory or defective services or improper materials.
- (5) Final payment of any balance due WMMIC will be made upon acceptance by the City of the services under the agreement and upon receipt by the City of documents required to be returned or to be furnished by WMMIC under this agreement.
- (6) The City has the equitable right to set off against any sum due and payable to WMMIC under this agreement, any amount the City determines WMMIC owes the City, whether arising under this agreement or under any other agreement or otherwise.
- (7) Compensation in excess of the total contract price will not be allowed unless authorized by an amendment under Section 8, AMENDMENT.
- (8) The City will not compensate for unsatisfactory performance by WMMIC.

B. SERVICE ORDERS, EXTRA SERVICE, OR DECREASED SERVICE.

- (1) Written orders regarding the services, including extra services or decreased services, will be given by the City, using the procedure set forth in Section 14, NOTICES.
- (2) The City may, by written order, request extra services or decreased services, as defined in Section 9 of this contract. Unless WMMIC believes the extra services entitle it to extra compensation or additional time, WMMIC shall proceed to furnish the necessary labor, materials, and professional services to complete the services within the time limits specified in the Scope of Services, Section 3 of this agreement, including any amendments under Section 8 of this agreement.
- (3) If in WMMIC's opinion the order for extra service would entitle it to extra compensation or extra time, or both, WMMIC shall not proceed to carry out the extra service, but shall notify the City, pursuant to Section 14 of this agreement. The notification shall include the justification for the claim for extra compensation or extra time, or both, and the amount of additional fee or time requested.
- (4) The City shall review WMMIC's submittal and respond in writing, either authorizing WMMIC to perform the extra service, or refusing to authorize it. WMMIC shall not receive additional compensation or time unless the extra compensation is authorized by the City in writing.

23. **DEFAULT/TERMINATION.**

- A. In the event WMMIC shall default in any of the covenants, agreements, commitments, or conditions herein contained, and any such default shall continue unremedied for a period of twenty (20) days after written notice thereof to WMMIC, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against WMMIC, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this contract and all rights of WMMIC under this contract.
- B. Notwithstanding paragraph A., above, the City or WMMIC may without any reason terminate this agreement at any time by furnishing the other party with ninety (90) days' written notice of termination. In the event of termination under this subsection, the City will pay for all work completed by WMMIC and accepted by the City. Services beyond the effective date of cancellation will be negotiated at the time of termination.

24. **INDEMNIFICATION.**

WMMIC shall be liable to and hereby agrees to indemnify, defend and hold harmless the City of Madison, and its officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from WMMIC's and Subcontractor's acts or omissions in the performance of this agreement, whether caused by or contributed to by the negligent acts of the City, its agents, or its employees.

25. **OWNERSHIP OF CONTRACT PRODUCT.**

All of the work product, including, but not limited to, documents, materials, files, reports, data, including magnetic tapes, disks of computer-aided designs or other electronically stored data or information (the "Documents"), which WMMIC prepares pursuant to the terms and conditions of this contract are the sole property of the City. WMMIC will not publish any such materials or use them for any research or publication, other than as expressly required or permitted by this contract, without the prior written permission of the City. The grant or denial of such permission shall be at the City's sole discretion.

WMMIC intends that the copyright to the Documents shall be owned by City, whether as author (as a Work Made For Hire), or by assignment from WMMIC to City. The parties expressly agree that the Documents shall be considered a Work Made For Hire as defined by Title 17, United States Code, Section 101(2).

As further consideration for the City entering into this contract, WMMIC hereby assigns to City all of WMMIC's rights, title, interest and ownership in the Documents, including the right to procure the copyright therein and the right to secure any renewals, reissues and extensions of any such copyright in any foreign country. The City shall be entitled to the sole and exclusive benefit of the Documents, including the copyright thereto, and whenever required by the City, WMMIC shall at

no additional compensation, execute all documents of assignment of the full and exclusive benefit and copyright thereof to the City. Any subcontractors and other independent Contractors who prepare portions of the Documents shall be required by WMMIC to execute an assignment of ownership in favor of the City before commencing work.

26. **LIVING WAGE (Applicable to contracts exceeding \$5,000).**
WMMIC agrees to pay all employees employed by WMMIC in the performance of this contract, whether on a full-time or part-time basis, a base wage of not less than the City minimum hourly wage as required by Section 4.20, Madison General Ordinances.
27. **WMMIC Members.**
No municipality which is a member of WMMIC shall in any way be liable for the performance of WMMIC's duties and obligations under this contract.

IN WITNESS WHEREOF, the parties hereto have set their hands at Madison, Wisconsin.

WMMIC

By: _____

Kevin C. Murphy, Executive Director
(Print Name Here)

Date _____

Signature Page - Con't.
Contract Between City of Madison and
WMMIC RE: Third Party Administration
of Workers Compensation Claims

CITY OF MADISON, WISCONSIN
a Wisconsin municipal corporation

By: _____

David J. Cieslewicz, Mayor

Date: _____

By: _____

Maribeth Witzel-Behl, City Clerk

Date: _____

Approved as to Form:

Dean Brassler, City Comptroller

Michael P. May, City Attorney

Date: _____

Date: _____

Risk Manager

Date: _____