

**CLAIMS SERVICE AGREEMENT**  
**Self Insured/Two Party**

This CLAIMS SERVICE AGREEMENT ("Agreement") is made by and between NovaPro Risk Solutions, LP, a Georgia limited partnership with its principal office located at 401 West A Street, Suite 1400, San Diego, CA 92101 ("NRS"), and City of West Covina with its principal office located at 1444 West Garvey Avenue, West Covina, CA 91790 (Client").

W I T N E S S E T H

WHEREAS, the Client wishes to retain the services of NRS to provide Claims Management and related services as defined in Section 3, for its liability risks and desires to have NRS provide specific services in connection with such claims program, and

WHEREAS, NRS is willing to provide such services on the terms and conditions hereinafter stated, and

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties agree as follows:

**Section 1. Definitions**

As used in this Agreement, the following terms shall have the meanings ascribed to them in this Section 1.

1.1 Allocated Loss Adjustment Expenses. Customary and usual costs and expenses incurred and/or paid by NRS on Client's behalf in connection with the investigation, adjustment, settlement or defense of a particular Claim. Such costs and expenses shall include, but shall not be limited to: Field Claims Services performed by NRS field office personnel or other third-parties, attorneys fees, court costs, and service of process expenses; charges for copies of police reports and other public records; medical evaluation fees; laboratory fees; expert witness fees; certified mail and courier expenses; subrogation and collection expenses; charges for credit bureau reports; photograph costs; costs for providing filing with Index Bureau, NATB or PILR, or other regulatory filing; charges and fees for medical cost containment services such as utilization review, pre-admission authorization, hospital and provider bill audits and medical case management; travel costs and associated service fees for off-site meetings, settlement conferences, depositions, hearings and similar appearances necessary or appropriate to protect the interests of Client. Allocated Loss Adjustment Expenses shall not include Claims Management Fees payable to NRS as described in Section 2 nor the salaries, wages, or benefits paid to NRS' employees or offices and other overhead expenses associated with the performance of Claims Management Services by NRS hereunder.

1.2 Authority Limit. The term "Authority Limit" shall mean the limit of NRS' authority established by Client for the administration, settlement, reserving and payment of Claims as described in Section 3.1.

1.3 Claims Management Services. Shall mean those services described in Section 3 herein.

1.4 Inception Date. The Inception date of this Agreement shall be 12:01 AM, January 1, 2011.

1.5 Claim. Shall mean an occurrence or event reported to NRS where reserves are established or where payment is requested.

1.6 Incident. Shall mean an occurrence or event reported to NRS for database entry only and where no claim technical activity is incurred.

1.7 Term of Agreement. The term of the Agreement shall commence on the Inception Date and continue until 12:01 AM December 31, 2016 unless otherwise terminated earlier as provided in Section 10 herein.

## **Section 2. Scope & Terms of NRS Service Obligations**

2.1 Scope and Term of Service Obligations. Commencing on the Inception Date, Claims Management Services, Field Claims Services (as defined in 4.1) and other services as specified shall be performed by NRS hereunder with respect to all Claims with dates of loss falling under the effective dates of this Agreement. NRS shall have no obligation whatsoever to perform any services hereunder other than as specifically set forth herein.

2.2 Claims Management and Field Claim Fees – Claims. Client agrees to pay NRS service fees as set forth in Schedule 1 ("Fee Schedule") for Claims Management and related Services provided by NRS. Fees shall be payable to NRS in accordance with the terms set forth in Section 2.3 and Schedule 1 attached herein.

2.3 Payment Terms. All sums due hereunder shall be paid by delivery of Client's check, or wire transfer to NRS' offices located at the address set forth herein within thirty (30) days following the invoice date. Fees not paid within 30 days of invoice date, at NRS' option, will be subject to a late charge of 18% per annum calculated from the due date to the date payment is received by NRS.

### Section 3. Claims Management Services

3.1 Authority Limit. NRS will promptly notify Client in writing of any Claim which, in NRS' opinion, is reasonably expected to result in total settlement payments of \$0 to claimant, excluding administration, adjusting, defense and other costs and expenses.

3.2. Claims Management Services - Defined. NRS shall perform the following services ("Claims Management Services") in compliance with applicable law and in accordance with industry standard practices and procedures with respect to serviced Claims during the Term hereof:

- (a) Record, examine and report each Claim to Client, as well as any reserve established therefor by NRS.
- (b) Maintain a Claim file for each Claim containing, among other things, documentation, which shall clearly show all file activity.
- (c) Perform reasonable and necessary adjusting and clerical work in connection with Claims, including, without limitation, the following:
  - (i) Investigate all Claims to the extent NRS deems reasonably necessary (including the engagement of NRS branch office personnel to perform Field Claims Services as defined in Section 4).
  - (ii) Evaluate any coverage issues in connection with the Claims and refer same to Client or counsel designated by Client with NRS' preliminary coverage assessment. Unless NRS is expressly directed by Client to do so, Client shall have the sole authority to issue written communications to third parties reserving Client's rights or denying coverage for any Claim.
  - (iii) Establish appropriate reserves for all Claims.
  - (iv) Incur and pay Allocated Loss Adjustment Expenses and other loss payments on behalf of Client according to approval and payment procedures to be established with NRS' concurrence.
  - (v) Adjust, handle, or settle Claims in accordance with applicable law, the terms of this Agreement, and industry standards.
  - (vi) Prepare and transmit checks, vouchers, and appropriate compromise agreements, releases, and other documents necessary or desirable to settle or otherwise close out Claims, as necessary, utilizing mutually agreed upon Claim disbursement, checking and coding procedures.

(vii) Provide monthly account reconciliation to the Client, along with a copy of the bank statement.

(viii) Provide Client with periodic reports reflecting Claims activity as more specifically set forth in Section 5.1 herein.

(ix) Record and report to Client all indemnity, Allocated Loss Adjustment Expenses, and other charges and expenses paid or incurred.

(d) Where NRS has issued payments, prepare and forward Client's required federal and state 1099 filings and prepare and distribute 1099 Forms to all applicable payees pertaining to Claims administered by NRS under this Agreement.

(e) Provide excess insurers such reports as they may reasonably require within specific excess coverage reporting requirements. In order to accomplish such reporting, Client agrees to advise NRS on a timely basis of all pertinent excess insurance reporting requirements and/or reporting modifications for all annual periods for which claim administration services are provided.

(f) Report suspected fraud as required by any applicable statute or regulation.

(g) Report and account for any such salvage, subrogation, special or second injury fund recovery and contribution collection.

(h) Promptly notify and consult with Client with respect to the following:

(i) Any Claim resulting in a lawsuit being instituted against NRS, or Client.

(ii) Any complaint being filed with, or any inquiry from, any insurance department or other regulatory authority relating to any Claim.

(iii) Any Claim within which NRS has identified potential grounds for denial of coverage or liability.

(iv) Any Claim NRS anticipates will result in loss payments in excess of threshold amounts established by Client by written notice to NRS.

(v) Any Claim that is open longer than a threshold period established by Client from time to time in writing or which involves allegations or injuries of a type or nature specified by Client, in writing.

## **Section 4. Field Claims Services**

4.1 Field Claims Services - Defined. NRS may engage its own branch office staff and/or other qualified entities to perform the following services (hereinafter "Field Claims Services") with respect to Claims. Such services shall include, but shall not be limited to: field investigations; witness interviews and summaries; appearance at hearings, administrative proceedings, depositions, settlement conferences and similar proceedings, and the preparation and transmittal of written reports and other functions related thereto. All such services shall be performed in compliance with applicable law and in accordance with industry practices and procedures.

## **Section 5. Reporting**

5.1 Standard Claims Reports. NRS shall provide monthly and/or other periodic Claims reports as described in Schedule 2 ("Standard Claims Reporting."), attached herein.

5.2 Custom Claims Reports. If requested by Client, NRS shall exert its best efforts to develop custom Claims reports in accordance with written specifications provided by Client. Custom report development and programming shall be performed by NRS at its then current hourly billing rate for such services. Fees for such services shall be invoiced to Client upon completion and delivery to Client of each requested custom report. Invoices shall be due and payable in full within thirty (30) days following the invoice date. Each special or custom report developed by NRS hereunder may be added to Client's Standard Claims Reports for the payment of an additional fee to be negotiated between the parties.

## **Section 6. Claims Files**

6.1 Claims Files Retention. Closed files retained by NRS shall be preserved from the date of the last file activity for not more than the period of time required by the applicable insurance department or other regulatory body, or returned to owner at an earlier date at owner request. At the end of such period, NRS, at the expense of Client, shall return the closed file to owner in accordance with reasonable written instructions provided by owner.

6.2 File Audit Rights. All Claims files and records regarding the administration of Claims pursuant to this Agreement, including the financial records relating to the Claim Loss and Expense Payment Account and the payment of Claims and Allocated Loss Adjustment Expenses may be audited, examined, and copied by Client, or its' representatives, or any state insurance department or other regulatory body that so requires, during normal business hours and upon reasonable notice. Client Agrees to provide to NRS the source documents, reports, memos and all other results of any and all audits, quality reviews or other performance assessments as soon as prepared or within one month of audit or assessment dates, whichever is sooner.

6.3 Confidentiality. NRS shall take reasonable measures to maintain the confidentiality of the contents of Claims files and all data supplied to or developed by NRS relating to the Claims administered under this Agreement. NRS agrees it shall not disclose such data without the prior written consent of Client, or as otherwise expressly permitted by the terms of this Agreement except as may be required by any rule, regulation or authority. This entire Agreement shall additionally be held in confidence by both parties and shall not be copied, described, or related in part or in whole by either party to a third party without prior written permission of the other party to this Agreement.

## **Section 7. Insurance, Licensing and Regulatory Matters**

7.1 Maintenance of Errors & Omissions Insurance. At all times during the Term of Agreement, NRS shall maintain an Errors and Omissions insurance policy providing coverage for all Claims Management Services performed by NRS in connection with this Agreement. A copy of the certificate evidencing the above coverage will be presented upon request.

7.2 Licensing. NRS agrees at all times during the Term of Agreement, NRS, or its approved subcontractors engaged to perform services hereunder, shall maintain all requisite licenses and permits to perform the Claims Management Services in the jurisdiction(s) in which such services are to be performed under this Agreement.

7.3 Compliance. NRS shall at all times during the Term comply with all laws and regulations applicable to the performance of its obligations hereunder.

## **Section 8. Indemnification**

8.1 Client's Indemnification Obligation. Client agrees it will indemnify, defend and hold harmless NRS and its affiliates, and their respective officers, directors, employees, agents, attorneys, shareholders, and their successors and assigns, (collectively "NRS Indemnitees") from and against any loss, claim, damage, cost or expense, including but not limited to reasonable attorney's fees and costs, that such NRS Indemnitees may incur arising out of, in connection with, or in any way related to the performance of NRS' duties and obligations under this Agreement except claims solely resulting from or arising out of:

- a) acts of NRS performed in bad faith or failures to act occurring as a result of NRS' negligence resulting in a breach of NRS' duties and obligations under this Agreement; or
- b) acts of NRS which exceed the authority granted to it by Client under this Agreement; or

c) acts or failures to act of NRS which are not in compliance with lawful written instructions issued by Client to NRS provided such instructions are consistent with the scope, objectives and terms of this Agreement.

8.2 NRS' Indemnification Obligation. NRS agrees it will indemnify, defend and hold harmless Client and its respective affiliates, and their respective officers, directors, employees, agents, attorneys, shareholders, and their successors and assigns, (collectively "Client Indemnitees") from and against any loss, claim, damage, cost or expense, including but not limited to reasonable attorney's fees and costs, that such Client Indemnitees may incur solely resulting from or arising out of:

a) acts of NRS performed in bad faith or failures to act occurring as a result of NRS' negligence resulting in a breach of NRS' duties and obligations under this Agreement; or

b) acts of NRS which exceed the authority granted to it by Client under this Agreement; or

c) acts or failures to act of NRS which are not in compliance with lawful written instructions issued by Client to NRS provided such instructions are consistent with the scope, objectives and terms of this Agreement.

8.3 Limited NRS Indemnity Obligations. NRS' Indemnification Obligations set forth in this Agreement shall apply only to the extent such obligations solely relate to or solely arise in connection with Claims serviced by NRS during the term and under the scope of this Agreement.

8.4 Survival of Obligations. The obligations of the parties set forth in this Section 9 shall survive termination of this Agreement.

## **Section 9. Term of Agreement**

9.1 Voluntary Termination. This Agreement may be terminated at any time by either party, without cause, by giving the other party not less than sixty (60) days prior written notice of such termination.

9.2 Termination for Cause. This Agreement shall terminate at the election of Client or NRS if the other party breaches any material provision of this Agreement and fails to cure such breach within ten (10) business days after written notice thereof is given to the party, or in the event the breach is not capable of being cured within such ten (10) business day period, the breaching party has not commenced good faith efforts to cure such default within ten (10) business days and continued thereafter in good faith to diligently pursue the completion of such cure. Failure of Client to comply with Section 2.3 Payment Terms shall qualify as cause under this Section.

9.3 Procedures Upon Termination. Client shall, upon written notice to NRS, have the option to transfer control of all open and closed Claims. In such event, NRS shall cooperate fully with Client to effect an orderly transfer of Claim files, at Client's expense, to new third party adjuster, the owner or its representative. Upon transfer of the files, NRS shall be relieved from any further obligation to provide services hereunder. The Client shall pay full fees to NRS for claims administered up to the date of Termination.

## Section 10. Notices

All notices, requests, demands and other communications hereunder must be in writing (including telex or telecopier transmission) and shall be deemed to have been duly given when received if delivered by hand, sent by telex or telecopier transmission or by overnight courier providing delivery confirmation or mailed by first-class, registered or certified mail, return receipt requested, postage and fees prepaid, and addressed as follows (or to such other address as any party shall designate in a written notice to the other parties hereto):

If to NRS: NovaPro Risk Solutions, LP  
Attention: Rebecca Forbes  
Contracts Manager  
401 West A Street, Suite 1400  
San Diego, California 92101  
Tel: 619-557-2777  
Fax: 619-557-2767

With copy to: NovaPro Risk Solutions, LP  
Attention: Glenn Betts  
Vice President  
17862 East 17<sup>th</sup> Street  
Suite 111  
Tustin, CA 92780  
Tel: 714-544-0980  
Fax: 714-544-1979

If to Client: City of West Covina  
Attention: Debbie Dominguez  
Safety and Claims Manager  
1444 West Garvey Avenue  
West Covina, CA 91793  
Tel: 626-939-8436  
Fax: 626-939-8673



## 11. Miscellaneous

11.1 Governing Law. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of California.

11.2 Amendments, Etc. Neither this Agreement nor any of the terms hereof may be amended, changed, waived, discharged or terminated except by an instrument in writing signed by both of the parties hereto.

11.3 No Waiver. No delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any waiver on the part of any party hereto of any such right, power or privilege, or any single or partial exercise of any such right, power or privilege, preclude any further exercise thereof or the exercise of any other right, power or privilege.

11.4 Severability. If any part of this Agreement is contrary to, prohibited by or deemed invalid under, any applicable law of any jurisdiction, then such provision shall, as to such jurisdiction, be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, without invalidating the remainder hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

11.5 Independent Contractor. At all times during the term of this Agreement, NRS shall be deemed to be an independent contractor to Client acting in the capacity as Client's agent subject to the limited authority granted herein. Nothing contained in this Agreement shall be deemed to create the relationship of employer and employee, partners, or joint venturers between Client and NRS. NRS shall not act as an insurer, nor shall it be ultimately financially responsible for payment or satisfaction of Claims or causes of action against Client.

11.6 Current Law & Regulation. This Agreement is entered into with the understanding that existing Federal, State or other jurisdictional regulations will remain in effect for the duration of this Agreement. Client agrees that should administrative or other costs of service provided hereunder be substantially increased as a result of modifications in existing law, enactment of new legislation, or promulgation of new administrative guidelines, NRS service fees may be renegotiated during the Agreement term. If revised fee agreements cannot be reached, NRS may terminate this Agreement, at its option, after thirty (30) days written notice to Client.

11.7 Counterparts. This Agreement may be executed simultaneously in two counterparts, each of which when so executed and delivered shall be deemed an original, but both of which together shall constitute one and the same instrument, and all signatures need not appear on any one counterpart.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below.

“NRS”

NovaPro Risk Solutions, LP

By: 

Date: 12-8-10

Printed Name: Russ A. Whitmarsh

Title: COO

“Client”

City of West Covina

By: 

Date: 12/21/2010

Printed Name: Andrew G. Pasmant

Title: City Manager

**SCHEDULE 1  
Fee Schedule**

The Client agrees to pay the Service Company for services based on the following fee schedule:

**I. CLAIMS HANDLING FEES**

Annual Fees

01/01/2011 to 12/31/2013	\$31,500 (paid monthly at \$2,625)
1/1/14 to 12/31/16	\$32,445 (paid monthly at \$2,703.75)

Exclusions:

- Allocated Loss Adjustment Expenses
- Field Investigation
- Option RMIS Services

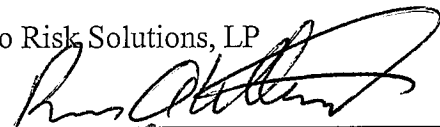
**II. RMIS FEES**

CDP On-Line Access                      \$100 / Month Per Password

Custom Report Development            \$150 per hour

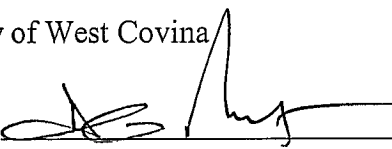
“NRS”

NovaPro Risk Solutions, LP

By:                       Date: 12-8-10  
Printed Name: Russ A. Wilborn  
Title: COO

“Client”

City of West Covina

By:                       Date: 12/21/2010  
Printed Name: Andrew G. Pasmant  
Title: City Manager

○

**SCHEDULE 2**  
**Standard Claims Reporting**

**Reports:**

Detail Loss Analysis: By fiscal year and department

Detail Loss Analysis: By department

Detail Loss Summary: Claims opened during month

Detail Loss Summary: Claims closed during month

Loss Analysis Summary: By fiscal year and department

Loss Analysis Summary: By department

Check Register (listing date, amount, type of payment (i.e. attorney's fees), fiscal year, claim number, department and claimant.

Litigation - Defense Counsel Report

**Monthly email submission to:**

Debbie Dominguez

City of West Covina

debbie.dominguez@westcov.org

Glenn Betts

Via CD-Rom

Nasreen Kassam

Driver Alliant

nkassam@driveralliant.com

## SECOND AMENDMENT TO CLAIMS SERVICE AGREEMENT

This Second Amendment to the Claims Service Agreement ("Second Amendment") is made as of July 1, 2017, by and between Carl Warren & Company, a California corporation and the City of West Covina ("City").

### RECITALS

WHEREAS, on January 1, 2011, the City entered into a Claims Service Agreement ("Agreement") with NovaPro Risk Solutions for liability claims adjusting services and,

WHEREAS, NovaPro Risk Solutions transferred all of its right, title, and interest in and to the Agreement to Carl Warren & Company and,

WHEREAS, on July 1, 2011, the City consented to the assignment of the Agreement to Carl Warren & Company and,

WHEREAS, on January 1, 2017, the parties entered into the First Amendment, to extend the contract term to June 30, 2017, and,

NOW, THEREFORE, Carl Warren & Company and the City agree as followings:

1. Amendment to Section 1.7 of the Agreement

Section 1.7 of the Agreement is hereby deleted in its entirety and replaced with the following:

Term of the Agreement The term of the Agreement shall commence on the Inception Date and continue until 12:01 AM April 30, 2018, unless otherwise terminated earlier as provided in Section 9 herein.

2. Amendment to SCHEDULE 1 – Fee Schedule

Claim Handling Fees for the period of July 1, 2017, to April 30, 2018, have been added to Schedule 1 – Fee Schedule. Client agrees to pay the Service Company for services based on the following fee schedule:

I. CLAIMS HANDLING FEES

Total Additional Fees

07/01/2017 to 04/30/2018                      \$28,660 (paid monthly at \$2,866)

3. Except as herein amended, the terms and conditions of the Original Agreement, executed on January 1, 2011, as modified by the First Amendment, shall remain in full force and effect.

IN WITNESS WHEREOF, Carl Warren & Company and the City have executed this Amendment as of the dates set forth below.

City of West Covina

Carl Warren & Company

By: 

By:   
Richard McAbee

Chris Freeland

Its: Chief Marketing Officer

Its: City Manager

Date: July 18, 2017

Date: July 19, 2017

### THIRD AMENDMENT TO CLAIMS SERVICE AGREEMENT

This Third Amendment to the Claims Service Agreement ("Third Amendment") is made as of May 1, 2018, by and between Carl Warren & Company, a California corporation and the City of West Covina ("City").

#### RECITALS

WHEREAS, on January 1, 2011, the City entered into a Claims Service Agreement ("Agreement") with NovaPro Risk Solutions for liability claims adjusting services and,

WHEREAS, NovaPro Risk Solutions transferred all of its right, title, and interest in and to the Agreement to Carl Warren & Company and,

WHEREAS, on July 1, 2011, the City consented to the assignment of the Agreement to Carl Warren & Company and,

WHEREAS, on January 1, 2017, the parties entered into the First Amendment, to extend the contract term to June 30, 2017, and,

WHEREAS, on July 1, 2017, the parties entered into the Second Amendment, to extend the contract term to April 30, 2018, and,

NOW, THEREFORE, Carl Warren & Company and the City agree to the following:

1. Amendment to Section 1.7 of the Agreement

Section 1.7 of the Agreement is hereby deleted in its entirety and replaced with the following:

Term of the Agreement The term of the Agreement shall commence on the Inception Date and continue until 12:01 AM October 29, 2018, unless otherwise terminated earlier as provided in Section 9 herein.

2. Amendment to SCHEDULE 1 – Fee Schedule

Claim Handling Fees for the period of May 1, 2018, to October 29, 2018, have been added to Schedule 1 – Fee Schedule. Client agrees to pay the Service Company for services based on the following fee schedule:

I. CLAIMS HANDLING FEES

Total Additional Fees

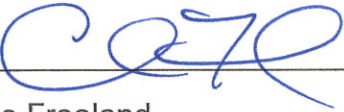
05/01/2018 to 10/29/2018                      \$17,196 (paid monthly at \$2,866)

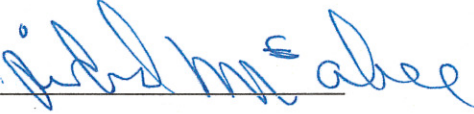
3. Except as herein amended, the terms and conditions of the Original Agreement, executed on January 1, 2011, as modified by the First Amendment, shall remain in full force and effect.

IN WITNESS WHEREOF, Carl Warren & Company and the City have executed this Amendment as of the dates set forth below.

City of West Covina

Carl Warren & Company

By: 

By: 

Chris Freeland

Richard McAbee

Its: City Manager

Its: Chief Marketing Officer

Date: May 1, 2018

Date: April 23, 2018