



# Town of West Seneca

TINA M. HAWTHORNE  
TOWN ATTORNEY  
thawthorne@twyny.org

## MEMO

To: The Honorable Town Board

From: Tina M. Hawthorne, Town Attorney

Date: January 19, 2021

Subject: Resolution re Future Comp Management Services Agreement

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Kindly adopt the attached resolution and authorize the Supervisor to execute the attached Agreement with FutureComp to provide the Town with services as a third party administrator for workers' compensation claims.

**RESOLUTION FOR MANAGEMENT SERVICES**  
**FUTURECOMP**

**WHEREAS**, the Town of West Seneca (hereinafter referred to as “Town”) is authorized to self-insure its workers’ compensation injuries or occupational illnesses incurred by its employees arising during the course and scope of their employment; and

**WHEREAS**, FutureComp is a duly authorized provider of third party administrative services, and the Town would benefit from FutureComp’s administrative resources in management of its workers’ compensation injuries and occupational illnesses claims; and

**NOW THEREFORE**, be it resolved that the Town Board of the Town of West Seneca authorizes the Supervisor to execute the Management Services Agreement with FutureComp for management services as more fully described in the attached Agreement.

## MANAGEMENT SERVICES AGREEMENT

**THIS MANAGEMENT SERVICES AGREEMENT** (the “Agreement”) is entered into effect as of **August 23, 2020** (the “Effective Date”) by and between **Town of West Seneca** (“Client”), and **OMNI Underwriting Managers LLC, d/b/a FutureComp** (“Management Company”). In this Agreement, Management Company and Client may each be referred to individually as a “Party” and collectively as the “Parties”.

**WHEREAS**, Client is authorized to self-insure its workers’ compensation injuries or occupational illnesses incurred by its employees arising during the course and scope of their employment; and,

**WHEREAS**, FutureComp is a duly authorized provider of third party administration services in the State of New York; and,

**WHEREAS**, Client would like to obtain the benefit of Management Company’s resources, and Management Company is willing to make such resources available to Client on the terms and conditions set forth below;

**NOW, THEREFORE**, in consideration of the mutual covenants set forth below and other good and valuable consideration, receipt of which is hereby acknowledged by each Party, the Parties hereby agree as follows:

### **1. Scope of Engagement of Management Company.**

A. **Engagement.** Client hereby engages Management Company to provide the administrative and management services described in subsections Section 1(B)-(G), below, (the “Services”) commencing on the Effective Date and continuing during the term of this Agreement, subject to and in accordance with this Agreement. Management Company hereby accepts such engagement.

B. **Loss Prevention and Safety Engineering.**

Management Company will work with Client on specific Loss Prevention or Safety Engineering programs during the term of the contract. These loss preventions and safety services from Management Company will be billed on an hourly basis at a rate established in the compensation section of this agreement. These programs may include, but are not limited to:

- i. assistance in developing a written safety policy and return to work program, training manuals, and supervisor guidelines for use by Client’s managers and supervisors;
- ii. assistance with implementation of a safety program in conformity with safety guidelines, which may from time to time be established by Client;

- iii. preparing periodic safety reports which address unsafe conditions in the work place, including a review highlighting accident experience, and suggesting ideas to help control the occurrence of accidents; and,
- iv. providing a loss control specialist to provide loss control services and training programs to Client.

Notwithstanding Management Company's responsibility for the Services, and the policies, programs, reports and other materials and work product described in this Section 1(B), Management Company assumes no responsibility for and in no way guarantees the safety of Client's workplace.

C. Management Systems and Training.

- i. Establishing workflow procedures to create consistent, accurate and timely reporting of work-related injuries;
- ii. designing supervisor level training to explain to Client the emphasis on post-injury response and the supervisor's role in managing work related injuries;
- iii. developing and producing training materials;
- iv. supplying forms and a supervisor's guide; and,
- v. conducting quarterly meetings with Client the regarding claims, open issues and action items agreed to by both Management Company and Client.

D. Medical Delivery System.

- i. To the extent possible and legally permissible, coordinating the activities of the primary medical providers rendering services to employees of Client suffering work-related injuries;
- ii. identifying provider relationships to assist availability of medical service and coordination of care;
- iii. developing and managing a specialty network to provide necessary medical care; and
- iv. obtaining services of rehabilitation specialists for specific claims as recommended by Management Company with prior approval of Client and at Client's expense.

E. Case Management.

To the extent possible and legally permissible, Management Company will provide customized medical case management services. Management Company's charges for such customized medical case management services shall be allocated to the individual Claim File of each injured employee.

F. Claims Management.

- i. Reviewing and processing all workers' compensation cases in accordance with the requirements of state administrative agencies for reporting and notification;
- ii. reviewing compensability of illnesses and injuries in accordance with applicable State Law, and make relevant recommendations to municipal officials;
- iii. providing Client with a claims handling procedure manual (Claim Kit) to be used in processing claims. The manual shall include an updated listing of all claims adjusters and key personnel involved in processing claims;
- iv. presenting to Client recommendations for review and settlement approval of each and every claim;
- v. providing the following reports to Client:
  - a. A register of all checks written on the claims account weekly. The register shall contain the following information: claim number, check number, name of the payee and of the employee on whose behalf the payment is made, type of coverage to which the cost is being charged, amount of the check, a total of the number of checks on the check register, and a total of the check amounts issued for the week.
  - b. Within fifteen (15) days after the end of any month, provide loss reports for Client and a summary total for the program, which loss report shall be broken down by:  

Name  
Injury date  
Amounts paid, reserved and incurred for each claim.
- vi. issuance of all federal and state payment reporting tax forms in compliance with federal and state regulations to all persons or firms paid on behalf of Client's claims account, with a record/copy of all payees and amounts;
- vii. if requested by Client, a monthly open claims caseload count by the adjuster that is responsible for Claim Files, which count shall include a breakdown of all claims being handled by the adjuster;

- viii. the response time between receipt of a lost time claim report and contact by an adjuster to Client to investigate and adjust a claim shall not exceed twenty-four (24) hours;
- ix. reviewing all claim and loss reports submitted by Client to Management Company during the term of this Agreement and processing each submitted claim or loss report;
- x. conducting an investigation of each reported claim or loss;
- xi. maintaining a file (a "Claim File") for each qualified claim or loss and for each rejected claim, which Claim Files shall be available for review by Client in accordance with Section 6, below;
- xii. performing reasonable and necessary administrative and clerical work in connection with each qualified claim or loss, including the preparation of checks, compromises, releases, agreements and any other documents to finalize a claim, provided however that Client acknowledges that Management Company is not licensed or authorized to, and shall not, engage in the practice of law or provide any services which require such licensure or authorization;
- xiii. recommending claim reserves and providing a continuous review and updating of these to reflect changes;
- xiv. coordinate and assist investigators, witnesses and attorneys as necessary in order to assist in the adjustment of specific claims, with all attorneys' fees to be paid by Client as part of the Claim File as an allocated expense. All attorneys' fees incurred in the hearing processes and in any litigated cases are to be part of the Claim File; all disbursements made by Management Company and/or by the attorneys in defense and administration of a claim, including without limitation, all witness fees, medical examination expenses and investigative services shall be paid as part of the claim by Client regardless of when they are incurred. Any attorney employed for purposes of the foregoing shall be chosen by Client;
- xv. furnishing to Client a standard set of loss and information reports showing detail and summary loss information in the following form:

<b>Standard Report</b>	<b>Frequency</b>
Loss & Claim Detail Report	Monthly
Excess Carrier Reporting	Quarterly
Fiscal Year Report	Annual
Check Register	Weekly

- xvi. providing narrative or analytical reports on major litigated claims, if requested by Client;

- xvii. investigating and pursuit of potential subrogation claims on Client's behalf, with all funds received from such subrogation claims being considered revenue of Client and shown as a reduction of claims costs; and,
- xviii. submitting all workers' compensation claims to the National Index Bureau for record purposes and to determine the existence of any prior loss history relating to each claim; the cost of this is allocated to the Claim File.

G. Electronic Recordkeeping.

Management Company shall utilize its own systems to maintain the following electronic data:

- i. Claims List, listing of all claims by (a) department, and (b) facility.
- ii. Safety Report, identifying type and cause of injury by (a) department, and (b) facility.
- iii. Frequency/Severity List, providing a statistical analysis of the ten (10) most (a) frequent claims by accident type, and (b) severe claims by accident type.

Management Company will undertake Section 111 reporting requirements on behalf of Client for the purpose of reporting required information to the government.

**2. Compensation.**

As compensation for the Services, Client shall pay to Management Company fees and other compensation in the amount and manner set forth in the Fee Schedule attached as Exhibit A to this Agreement and incorporated herein by reference.

**3. Term; Termination.**

- A. The initial term of this Agreement shall commence on the Effective Date and, unless earlier terminated as provided in this Section 3, conclude on **August 22, 2023.**
- B. This Agreement shall be renewed for successive three, one-year renewal terms if Management Company gives written notice to Client of Management Company's willingness to renew not less than four (4) months prior to the expiration of the then current initial or renewal term, and Client does not give written notice to Management Company of Client's refusal to accept such renewal not less than three (3) months prior to such expiration.
- C. This Agreement may be terminated by either Party as follows:
  - i. upon sixty (60) days prior written notice to the other Party, at any time, with or without cause;

- ii. upon thirty (30) days prior written notice to the other Party, specifying the breach in question, in the event that such other Party has breached any of its material obligations arising pursuant to this Agreement and fails fully to cure such breach prior to the expiration of such thirty (30) day notice period;
  - iii. immediately upon written notice to the other Party in the event that such other Party is dissolved, ceases doing business, or becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors;
  - iv. immediately upon written notice to the other Party in the event that such other Party engages in fraud or criminal or willful misconduct in connection with the performance of such other Party's obligations arising pursuant to this Agreement;
  - v. upon six (6) months prior written notice to the other Party during any renewal term; or,
  - vi. as otherwise agreed in writing between such Party and the other Party.
- D. This Agreement shall terminate immediately and automatically in the event that any governmental license, authorization, registration or approval necessary for either Party to perform such Party's obligations arising pursuant to this Agreement is suspended, withdrawn, surrendered, terminated or not renewed.
- E. Promptly after the termination or expiration of this Agreement on any basis, any and all fees due to Management Company for any and all Services performed prior to such termination or expiration shall be calculated and paid by Client.
- F. After the termination or expiration of this Agreement on any basis, Management Company will turn over to the Client or its designee all documents associated with the program with 10 business days of written notification.

**4. Subcontractors.**

- A. Management Company shall cooperate fully with all independent contractors and consultants hired by Client.
- B. Management Company may fulfill its obligations arising pursuant to this Agreement by utilizing personnel of affiliated entities or retaining independent contractors and consultants at Management Company's expense. The use of any such personnel or independent contractor shall not relieve Management Company of its responsibilities and obligations arising pursuant to this Agreement, and Management Company shall be responsible for the performance of all of its independent contractors. Management Company shall designate a primary contact person who has overall responsibility for



performance of any of Management Company's independent contractor and is readily accessible to Client.

- C. When neither Management Company nor Client is assigned specific responsibility under this Agreement to undertake a specific duty, obligation or service at its respective expense, and satisfaction of the duty, obligation or service requires engagement of an independent contractor or consultant, then Management Company may: (i) notify Client of the need to engage independent contractors or consultants for purposes of performing or satisfying such duty, obligation or service; and, (b) engage such independent contractors or consultants, with Client's written approval and at Client's expense.

#### **5. Administrative Matters.**

Management Company shall maintain at its expense an office for the performance of Services, and provide necessary and appropriate equipment and supplies (including mailing, photocopying, telephone, reproduction, printing, postage, paper and other materials customarily utilized in the administrative performance of such Services), provided however that such office, equipment and supplies may also be used for any other business of Management Company.

#### **6. Records.**

- A. Management Company shall maintain all Claim Files created under this Agreement in a location accessible to Client and its agents (including without limitation Client's independent claims auditor) during normal working hours. For reasons of business necessity and convenience, copies of Claim Files and other records, either hardcopy or electronic, may be kept at other locations and, for temporary periods (e.g., to facilitate litigation) originals may be removed from and returned to their central location.
- B. Within sixty (60) days after termination or expiration of this Agreement on any basis, Management Company shall deliver to Client all Claim Files maintained by Management Company for Client pursuant to this Agreement. Notwithstanding the foregoing, Management Company may retain copies of any and all records relating to the Services or this Agreement to the extent that Management Company, in its sole discretion, deems necessary or appropriate for compliance with applicable law or regulations or for purposes of Management Company's regulatory examinations, internal or third party audits or record retention procedures.
- C. Until the expiration of four (4) years after termination or expiration of this Agreement on any basis, Management Company shall make available upon request to the Secretary, U.S. Department of Health and Human Services, the U.S. Comptroller General, and their representatives, this Agreement, and all related books, documents and records in Management Company's custody which are necessary to certify the nature and extent of the costs incurred by Client in purchasing services under this Agreement. If Management Company provided such services through a subcontract worth \$10,000 or more over a 12-month period with a related organization, the subcontract shall also contain a clause

permitting access by the Secretary, Comptroller General, and their representatives to the books and records of the related organization.

- D. Each Party shall cooperate fully with the other Party and its designees in providing information and records reasonably required by such other Party or its designees in connection with such other Party's audit functions or examination by regulatory authorities, or other third parties such as insurance underwriters who have contractual or other rights to audit or examine such information or records. Any and all such information and records shall be provided in a mutually convenient manner reasonably designed to minimize interference to the providing Party's day-to-day business functions, taking into due account any and all legal obligations or liabilities of the Party to whom such information and records are to be provided, and subject to the Parties' respective obligations with respect to Confidential Information as more fully set forth in Section 9, below.

#### **7. Covenant Not to Hire.**

Client covenants and agrees that it shall not, without Management Company's prior written consent, employ, offer to employ or solicit for employment any person engaged by Management Company as an employee, consultant or independent contractor during the period commencing upon the Effective Date and concluding two (2) years after the termination or expiration of this Agreement on any basis. This provision shall survive termination of this Agreement.

#### **8. Warranties and Representations.**

- A. Each Party (the "Warrantor") warrants and represents to the other Party that the Warrantor:
- i. shall at all times in the performance of its obligations arising pursuant to this Agreement comply with any and all applicable federal, state and local laws, rules, regulations and ordinances;
  - ii. is duly authorized and empowered to enter into and perform its obligations arising pursuant to this Agreement;
  - iv. shall perform such obligations in a diligent and workmanlike manner in compliance with customary standards of skill and care; and,
  - v. holds any and licenses, regulatory authorizations and permits necessary for the Warrantor to perform such obligations.
- B. With the sole exception of those warranties expressly stated in Section 8(A), above, each Party disclaims any and all other warranties, express or implied.

## **9. Confidentiality.**

- A. Each Party (the "Receiver") acknowledges and agrees that, in connection with this Agreement or the performance of the Services, it may be provided with or gain access to information, in oral, written or other form, that is proprietary and confidential to the other Party (the "Discloser") or the Discloser's customers ("Confidential Information"), including without limitation the following: (i) employee or customer or lists, employee, customer or supplier identities or characteristics, details of products or contracts, marketing knowledge or information, sales figures, pricing information, marketing or business plans, strategies, forecasts or projections, legal documents to which the Receiver is not a party, financial information, budgets, software, source and object code, research papers, procedures, processes, formulas, copyrighted matter, patented or patentable inventions, trade secrets, innovations, improvements or discoveries, research or development, test results, specifications, data, know-how, plans, sketches, drawings or models; (ii) information that is designated secret, private or confidential by the Discloser or its customers or potential customers; (iii) information which the Discloser is obligated to maintain confidential or otherwise safeguard in accordance with United States Public Law 106-102 (the Gramm-Leach-Bliley Financial Services Modernization Act of 1999) or federal Regulation P; and, (v) personal information regarding Discloser's employees, including without limitation information regarding any such employee's insurance coverage, benefits or claims, physical or mental disability, health or medical information, credit rating or history and background investigation(s). Confidential Information does not include information that: (a) is in the public domain other than as result of a breach of any duty to the Discloser or any of its customers or potential customers; (b) is received by the Receiver from a third party that has no obligation of confidentiality with respect thereto; or, (c) is independently developed by the Receiver without any use of or access to information of the Discloser or any of its customers or potential customers. The Discloser shall retain all rights, title and interest in the Confidential Information.
- B. The Receiver and its employees and agents may use Confidential Information only for purposes of this Agreement, and disclose Confidential Information only to those of the Receiver's employees and agents who have a legitimate need to know the information for such purposes and are legally bound to maintain its confidentiality. The Receiver shall employ the same degree of care in preventing the disclosure or misuse of Confidential Information as the Receiver uses for its own confidential information of a similar nature, but in no event less than a reasonable degree of care. Where in doubt or necessary for the Receiver's compliance or other purposes, the Receiver shall promptly notify the Discloser and provide a reasonable opportunity and period of time for the Discloser to object or seek to limit disclosure of Confidential Information. In the event of service upon the Receiver of any subpoena, request for production or other legal process seeking the disclosure of any Confidential Information, the Receiver shall promptly notify the Discloser of such service in writing, and provide a reasonable opportunity and period of time for the Discloser to object to or seek the limitation of such disclosure. The Receiver shall promptly notify the Discloser, in writing, of any use or disclosure of Confidential Information in breach of this Agreement. The Receiver's obligations arising pursuant to

this Agreement shall survive any termination of the business relationship between the Parties.

- C. The Receiver agrees and acknowledges that unauthorized use or disclosure of Confidential Information may result in immediate and irreparable injury to the Discloser or its customers or employees for which monetary damages would be inadequate relief. Accordingly, in the event that the Discloser proves any actual or threatened use or disclosure of Confidential Information in breach of this Agreement by the Receiver, its employees or agents, the Discloser shall be entitled to injunctive and other equitable relief (e.g., specific performance) in accordance with applicable law and judicial procedures, in addition to any and all other rights and remedies available to the Discloser.

#### **10. Insurance.**

Management Company shall secure and maintain on its behalf and at its expense, during the term of this Agreement, so long as such insurance is commercially available, comprehensive general and professional liability insurance (including personal injury), directors and officers liability insurance and errors and omissions insurance, workers' compensation and automobile liability insurance with minimum limits of \$1,000,000 and a \$3,000,000 annual aggregate. All such insurance shall be with companies licensed to do business in the applicable State. Upon request, Management Company shall furnish to Client a current certificate of insurance evidencing such coverage.

#### **11. Limitation of Liability.**

With the exception of (i) liabilities arising from unlawful, willful or grossly negligent misconduct on the part of the liable Party, (ii) the Parties' respective obligations arising pursuant to applicable law (other than the law of contracts generally applicable to this Agreement), and, (iii) Client's obligation of pay compensation to Management Company pursuant to Section 2, above, each Party's liability to the other Party arising pursuant to this Agreement shall be limited to the amount of compensation paid or payable by Client to Management Company pursuant to Section 2, above, during the twelve (12) months preceding the events giving rise to such liability. In no event shall either Party be liable to the other Party pursuant to this Agreement for any indirect, consequential, incidental or punitive damages.

#### **12. Notices.**

All notices, requests, demands and other communications hereunder shall be in writing, and shall be deemed to have been duly given three (3) business days after mailing by certified or registered mail addressed as follows:

*if to Management Company:*

Omni Underwriting Managers LLC  
d/b/a FutureComp  
726 Exchange Street, Suite 618  
Buffalo, NY 14210

*if to Client:*

Town of West Seneca  
1250 Union Road  
West Seneca, NY 14224

or to such other person and address as either Party may designate by notice to the other given in accordance with this Section 12.

**13. Miscellaneous Provisions.**

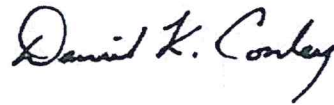
- A. No right or remedy herein conferred upon or reserved to either of the parties hereto is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing upon the occurrence of an Event of Default hereunder. The failure of either Party to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy as provided in this Agreement, shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof with respect to subsequent defaults. Every right and remedy given by this Agreement to the parties hereof may be exercised from time to time and as often as may be deemed expedient by the Parties hereto, as the case may be.
- B. Client and Management Company are and shall remain separate and independent corporations and Management Company and Client shall not be by virtue of this Agreement be deemed partners or joint venturers in the operation of Client, Management Company or any related entity. It is expressly understood that Management Company is hereby retained by Client to provide the Services to Client and that Management Company is constituted the agent of Client only for the purpose of carrying out its obligations under this Agreement.
- C. Neither Party may assign its interest in this Agreement to any other person or entity, other than an affiliate of such Party, without obtaining the prior written consent of the other Party. All provisions of this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of Management Company and Client, to the same extent as if each such successor and assign were in each case named as a Party to this Agreement.
- E. The headings to the various sections of this Agreement have been inserted for convenience of reference only and shall not modify, define, limit or expand the expressed provisions of this Agreement.
- F. This Agreement may be executed in any number of counterparts, each of which shall be an original, and each such counterpart shall together constitute but one and the same Agreement.
- G. Should any part of this Agreement, for any reason, be declared invalid, such decision shall not affect the validity of any remaining portion, which remaining portion shall remain in force and effect as if this Agreement had been executed with the invalid portion thereof eliminated.

- H. The execution and performance of this Agreement by Client and Management Company have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligation of Client and Management Company in accordance with its terms.
- I. The parties agree that this Agreement shall be construed in accordance with the laws of the applicable State.
- J. Any amendments to this Agreement shall be in writing and signed by a duly authorized officer of Management Company and a duly authorized officer of Client.
- K. All approvals required by this Agreement shall be in writing and the Party requiring such approval must receive it prior to undertaking any action for which the approval is required.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement.

**Town of West Seneca**

**Omni Underwriting Managers, LLC  
d/b/a FutureComp**



\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

By: \_\_\_\_\_

By: Daniel K. Conley

Title: \_\_\_\_\_

Title: TPA Division Senior Vice President

Date: \_\_\_\_\_

Date: September 24, 2020

## Exhibit A

### FEE SCHEDULE

#### 1. Claims Administration

Year 1: 8/23/2020 – 8/22/2021	Fee: \$21,320.00 (billed in monthly installments)
Year 2: 8/23/2021 – 8/22/2022	Fee: \$21,960.00 (billed in monthly installments)
Year 3: 8/23/2022 – 8/22/2023	Fee: \$22,620.00 (billed in monthly installments)

#### 2. Allocated Claims Expenses

Medical Case Management	\$85.00 per hour
MG-2/C-4AUTH/Treatment Auth/UR	\$150.00 per review
Medical Bill Review (MBR)	\$9.00 per bill
PPO Network Savings through MBR	23% of savings beyond fee schedule
Medicare Reporting	Included
ISO Claim Search	At cost, \$10.15 per search
Activity Checks	\$225 per activity check if done by FutureComp, otherwise at cost

#### 3. Other Services

Field Adjusting Services (i.e., Accident Scene Investigations and Signed Statements)	\$70.00 per hour
Loss Prevention and Safety Engineering	\$125.00 per hour

#### 4. Billing and Payment

Unless expressly provided to the contrary in this Fee Schedule or the accompanying Agreement, all fees shall be invoiced by Management Company on a monthly basis and shall be paid by Client within thirty (30) days after receipt of the invoice for such fees.