

Cindy Conlon

From: Kelly, Kathleen <Kathleen.Kelly@key.insurance>
Sent: Tuesday, June 12, 2018 10:17 AM
To: swalters@townofhamburgny.com
Cc: 'cconlon@townofhamburgny.com'; Conley, Daniel
Subject: Hamburg contract renewal
Attachments: Hamburg contract.pdf

Mr. Walters,

Our current contract with the Town of Hamburg to perform claims management services expires 6/30/18. We welcome the opportunity to continue performing these services for the Town of Hamburg.

Please see the attached proposed contract covering the period 7/1/18 through 6/30/21. If you have any questions or would like to discuss the contract extension please feel free to contact me.

Thank you.

Kathy

KATHLEEN KELLY
Insurance Group Leader, TPA and Claims Services
USI Insurance Services, formerly Key Insurance & Benefits Services
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THIS AGREEMENT is entered into this 1st day of July 2018 by and between **USI INSURANCE SERVICES LLC**, formerly known as Key Insurance & Benefits Services, a Delaware corporation, hereinafter referred to as “**USI**” and the **TOWN OF HAMBURG**, hereinafter referred to as “**CLIENT**”.

I. RECITALS

- A. **CLIENT** wishes to retain the services of **USI** to provide claims management services for its General Liability, Automobile Liability, Police Liability, Public Officials Liability and Dispatchers Liability risk and desires to have **USI** provide specific services in connection with such claims program.
- B. **USI** is willing to provide such services on the terms and conditions hereinafter stated.

II. TERM

This Agreement shall be effective for a period of thirty-six (36) months from July 1, 2018 through June 30, 2021 and shall remain in full force and effect except as amended or terminated as hereinafter provided.

III. CANCELLATION

Either party shall have the right to terminate or renegotiate the Agreement after the initial three year period by giving to the other Party written notice at the address shown in F below of such termination or renegotiation of the terms of the Agreement at least ninety (90) days in advance. In the event timely notice of termination is given by either Party, the Agreement shall terminate upon expiration of the then current term. In the event timely notice of intent to renegotiate the terms of this Agreement is given by either Party and such renegotiated terms are not agreed to in writing by both Parties within such ninety (90) day period, this Agreement shall thereupon terminate. **CLIENT'S** failure to pay **USI'S** service fee as provided in Item IV, Section B of this Agreement shall be construed as a breach of the Agreement and, in the event **USI** shall have the right to terminate the Agreement by giving the **CLIENT** thirty (30) days written notice of its intention to terminate. Upon termination of this Agreement, neither Party shall have any further responsibility or obligation hereunder except as provided in Item IV, Section C of this Agreement.

IV. AGREEMENT

A. Services to be Performed by USI

With regard to **CLAIMS ADMINISTRATION**, **USI** shall:

- a. Review all claim and loss reports submitted by **CLIENT** to **USI** during the term of this Agreement and process each submitted claim or loss report in accordance with administrative notification requirements.
- b. Maintain a file for each qualified claim or loss which shall be available for review by the **CLIENT** at any reasonable time.
- c. Adjust, settle or resist all qualifying claims or losses arising therefrom within the stated discretionary settlement authority limit and, with specific prior approval of the **CLIENT**, adjust, settle or resist all other qualifying claims and losses resulting therefrom in excess of the discretionary settlement authority limit.
- d. Perform reasonable and necessary administrative and clerical work in connection with each qualified claim or loss, including the preparation of checks or vouchers, compromises, releases, agreements and any other documents to finalize a claim.
- e. Recommend claim reserves and provide a continuous review and updating of those to reflect changes.
- f. **USI** will make loss and expense payments from an escrow account or will assist the **CLIENT** in setting up a voucher system for loss and expense payments.
- g. Notify **CLIENT**, **CLIENT'S** representatives or excess insurers, as determined by **CLIENT**, of all qualified claims or losses with respect to which potential losses may exceed **CLIENT'S** retention and, if requested, provide such Parties with necessary information on the current status of those claims or losses.
- h. Coordinate investigations on litigated claims with attorneys approved by the **CLIENT** and with adjusters and attorneys of the excess insurance carrier as required. This includes the negotiation of settlements and preparation of subrogation and contribution actions. It is expressly understood by the Parties to this Agreement that all legal costs and loss payments will be charged to the **CLIENT'S** Loss Fund.

- i. **USI will furnish to the CLIENT two (2) standard sets of loss and information reports showing detail and summary loss information on a monthly basis.**
- j. **Additional optional and ad hoc information and analysis reports and services can be provided on a time and expense basis, as mutually agreed upon by USI and the CLIENT.**
- k. **Provide narrative or analytical reports of major or litigated claims, if requested by the CLIENT.**
- l. **Provide claim forms and other forms believed by USI to be appropriate for the efficient administration of the CLIENT'S program.**
- m. **Investigate and pursue all subrogation possibilities on behalf of the CLIENT in all states permitting subrogation. Funds received from all subrogation collections shall be considered revenue of the CLIENT.**
- n. **Provide all personnel necessary to effectively perform the services agreed to herein.**

With regard to **PROGRAM DEVELOPMENT**, **USI** shall to the extent appropriate:

- a. **Consult with key personnel of the CLIENT on the establishment and coordination of necessary procedures and practices to meet any applicable state requirements and the needs of the CLIENT.**
- b. **Participate in the orientation of the CLIENT'S personnel who are directly involved in the processing of qualified claims or losses.**
- c. **Review the development of the CLIENT'S program periodically with representatives of the CLIENT in order to identify problems and recommend corrective action.**

B. Obligations of the CLIENT

1. **CLIENT shall pay USI for services rendered herein in the annual sum of Eight Thousand, Four Hundred and Zero Cents (\$8,400.00) to be billed in advance monthly at the rate of Seven Hundred Dollars and Zero Cents. (\$700.00). In addition, CLIENT agrees to pay USI a surcharge of Five Hundred Twenty-Five Dollars and Zero Cents (\$525.00) per claim for each claim submitted in excess of Thirty (30) per year. At the end of the anniversary of this Agreement, annual compensation shall be subject to adjustment as mutually determined by USI and the CLIENT.**

Catastrophic losses. Those losses defined as being multiple bodily injury claims arising out of one (1) accident (more than two claimants), fatalities, high exposure bodily injury claims in excess of Twenty Five Thousand Dollars and Zero Cents (\$25,000.00), or involving paraplegic or quadriplegic exposures. Example – collapse of a roof at one of your locations, one of your vehicles striking a loaded school bus causing multiple injuries and/or death, etc. which shall be investigated and adjusted on a time and expense basis at an hourly rate of **Sixty-Five Dollars and Zero Cents (\$65.00)** plus expenses.

2. **Method of Payment** - USI shall, at the beginning of each month of the contract period, send to CLIENT, a bill, signed by USI in keeping with the Service Contract. CLIENT shall inspect the bill for accuracy and insure that the cost per claim (type and the hourly rate, if used) is the same as bid by USI. Payment shall be made to USI promptly upon receipt of USI'S statement for services for that month.
3. CLIENT agrees to provide adequate funds from which USI will pay all losses and expenses during the course of the contract and CLIENT will replenish funds on a monthly basis upon receipt of a monthly voucher or other procedure presently in use by the CLIENT.
4. It is expressly understood that USI shall not be required to advance its own funds to pay losses, allocated to loss expenses or banking charges hereunder, or to perform any services hereunder if CLIENT fails to provide adequate funds as herein set forth.

C. **Terms of Agreement and Cancellation**

In the event of cancellation of this Agreement, USI will continue to manage all pending claims and claims occurring but not reported prior to cancellation to a conclusion at a fee to be determined by mutual agreement with the CLIENT. This fee is to be based on anticipated claims administration costs. If the fee cannot be agreed upon, the files will be returned to the CLIENT in an orderly manner provided that approval is given by the excess carrier.

1. USI will treat as confidential all data furnished by the CLIENT or generated as a result of the processing services performed under this Agreement and any other information so designated in writing by the CLIENT, and USI will make the same effort to safeguard such information as it does in protecting its own confidential data.
2. USI reserves the right to gather and utilize, as it sees fit, statistical information from the data base; provided, however, that CLIENT'S name

and proprietary and/or confidential data are adequately protected and not disclosed.

D. Practice of Law

It is understood and agreed that USI will not perform, and CLIENT will not request performance of, any services which may constitute the unauthorized practice of law.

E. Indemnification

USI shall be fully responsible for exercising reasonable care at all time in the performance of its obligations hereunder. However, if USI is named as a party to any litigation because of its actions on behalf of the CLIENT hereunder, the CLIENT agrees to defend USI in any such litigation if no allegation is made that USI failed to exercise such reasonable care, and to hold harmless and indemnify USI if no finding is entered to the effect that USI failed to exercise such reasonable care.

F. Notices

Any notice required to be given under this Agreement shall be sent by certified mail to the following:

In the case of USI: USI Insurance Services LLC
239 Van Rensselaer Street
Buffalo, NY 14210

In the case of CLIENT: Supervisor
Town of Hamburg
S-6100 South Park Avenue
Hamburg, NY 14075

G. Successors

This Agreement shall be binding upon and shall inure to the benefit of all assigns, transferees and successors in the interest of any kind of the Parties hereto.

H. Termination

Should CLIENT not pay USI for services rendered within thirty (30) days of receipt of statement for services rendered, USI shall have the right to consider that a breach of this contract and terminate same.

I. Entire Agreement and Modification or Amendment

This Agreement represents the entire and exclusive statement of the Agreement of the Parties and, except as otherwise provided may be modified or amended only by a written statement signed by both Parties. Such modification or amendment shall be attached to, and shall thereupon become a part of, this Agreement.

J. Headings

Headings herein are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

K. Independent Contractor

It is understood and agreed that USI is engaged to perform services under this Agreement as an independent contractor and not as an agent of the CLIENT. The Parties hereto agree that neither Party has any relationship with, or contractual liability to, the other with respect to the subject matter of this Agreement, other than as set forth herein.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the day and date first above written.

USI INSURANCE SERVICES LLC

By: _____ Date: _____

Name: Daniel K. Conley

Title: Vice President, Director of Claims
TPA & Claims Services

TOWN OF HAMBURG

By: _____ Date: _____

Name: _____

Title: _____