

## AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into this 17th day of September, 2003, by and between the City of Naples, Florida, a municipal corporation, (hereinafter referred to as the "OWNER") and Preferred Governmental Claim Solutions (PGCS), a Florida corporation, whose business address is P.O. Box 958456, Lake Mary, Florida 32795-8456 (hereinafter referred to as the "CONTRACTOR").

### WITNESSETH:

WHEREAS, the OWNER desires to obtain the professional Third Party Claims Administration services of the CONTRACTOR concerning certain services related to Workers' Compensation, Property and Liability claims (hereinafter referred to as the "Project"), said services being more fully described in Exhibit A, "Scope of Services", which is attached hereto and incorporated herein; and

WHEREAS, the CONTRACTOR has submitted a proposal for provision of those services; and

WHEREAS, the CONTRACTOR represents that it has expertise in the type of professional services that will be required for the Project.

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

### ARTICLE ONE CONTRACTOR'S RESPONSIBILITY

1.1. The Basic Services to be performed by CONTRACTOR hereunder are Third Party Claims Administration of workers' compensation, property and liability claims (and those services more completely detailed in the attached proposal from PGCS in response to the City of Naples RFP#013-04 dated July 24, 2003).

1.2. The CONTRACTOR agrees to obtain and maintain throughout the period of this Agreement all such licenses as are required to do business in the State of Florida, the City of Naples, and in Collier County, Florida, including, but not limited to, all licenses required by the respective state boards and other governmental agencies responsible for regulating and licensing the professional services to be provided and performed by the CONTRACTOR pursuant to this Agreement.

1.3. The CONTRACTOR agrees that, when the services to be provided hereunder relate to a professional service which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, it shall employ and/or retain only qualified personnel to provide such services.

1.4. CONTRACTOR agrees to employ and designate, in writing, within five (5) calendar days after receiving its Notice to Proceed, a qualified licensed professional to serve as the CONTRACTOR's project manager (hereinafter referred to as the "Project Manager"). The Project Manager shall be authorized and responsible to act on behalf of the CONTRACTOR with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement.

1.5. The CONTRACTOR has represented to the OWNER that it has expertise in the type of professional services that will be required for the Project. The CONTRACTOR agrees that all services to be provided by CONTRACTOR pursuant to this Agreement shall be subject to the OWNER's review and approval and shall be in accordance with the generally accepted standards of professional practice in the State of Florida, as well as in

accordance with all published laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agencies which regulate or have jurisdiction over the Project or the services to be provided and performed by CONTRACTOR hereunder. In the event of any conflicts in these requirements, the CONTRACTOR shall notify the OWNER of such conflict and utilize its best professional judgment to advise OWNER regarding resolution of the conflict.

1.6. CONTRACTOR agrees not to divulge, furnish or make available to any third person, firm or organization, without OWNER's prior written consent, or unless incident to the proper performance of the CONTRACTOR's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by CONTRACTOR hereunder, and CONTRACTOR shall require all of its employees, agents, subconsultants and subcontractors to comply with the provisions of this paragraph.

1.7. CONTRACTOR agrees not to employ or offer to employ any Elected Officer or City Managerial Employee of OWNER who in any way deals with, coordinates on, or assists with, the professional services provided in this Agreement, for a period of two (2) years after termination of all provisions of this Agreement. For purposes of this paragraph, the term "Elected Officer" shall mean any member of the City Council. For purposes of this paragraph, the term "City Managerial Employee" shall mean the City Manager, the Assistant City Manager, the City Clerk, and any City department head or director. In the event CONTRACTOR violates the provisions of this paragraph, CONTRACTOR shall be required to pay damages to OWNER in an amount equal to any and all compensation which is received by the former Elected Officer or City Managerial Employee of OWNER from or on behalf of the contracting person or entity, or an amount equal to the former Elected Officer's or City Managerial Employee's last two (2) years of gross compensation from OWNER, whichever is greater.

1.8. CONTRACTOR agrees not to provide services for compensation to any other party other than OWNER on the same subject matter, same project, or scope of services as set forth in this Agreement without approval from the City Council of OWNER.

1.9. Except as otherwise provided herein, CONTRACTOR agrees not to disclose or use any information not available to members of the general public and gained by reason of CONTRACTOR'S contractual relationship with OWNER for the special gain or benefit of CONTRACTOR or for the special gain or benefit of any other person or entity.

## **ARTICLE TWO OWNER'S RESPONSIBILITIES**

2.1. The Owner shall designate in writing a project coordinator to act as OWNER's representative with respect to the services to be rendered under this Agreement (hereinafter referred to as the "Project Coordinator"). The Project Coordinator shall have authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to CONTRACTOR's services for the Project. However, the Project Coordinator is not authorized to issue any verbal or written orders or instructions to the CONTRACTOR that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever:

- (a) The scope of services to be provided and performed by the CONTRACTOR hereunder;
- (b) The time the CONTRACTOR is obligated to commence and complete all such services; or
- (c) The amount of compensation the OWNER is obligated or committed to pay the CONTRACTOR.

2.2. The Project Coordinator shall:

- (a) Review and make appropriate recommendations on all requests submitted by the CONTRACTOR

for payment for services and work provided and performed in accordance with this Agreement;

(b) Arrange for access to and make all provisions for CONTRACTOR to enter the Project site to perform the services to be provided by CONTRACTOR under this Agreement; and

(c) Provide notice to CONTRACTOR of any deficiencies or defects discovered by the OWNER with respect to the services to be rendered by CONTRACTOR hereunder.

2.3. CONTRACTOR acknowledges that access to the Project Site, to be arranged by OWNER for CONTRACTOR, may be provided during times that are not the normal business hours of the CONTRACTOR.

### **ARTICLE THREE TIME**

3.1. Services to be rendered by CONTRACTOR shall be commenced subsequent to the execution of this Agreement upon written Notice to Proceed from OWNER for all or any designated portion of the Project and shall be performed and completed by **September 30, 2006 (with the option of two [2] additional one-year renewals upon mutual agreement)**. Time is of the essence with respect to the performance of this Agreement.

3.2. Should CONTRACTOR be obstructed or delayed in the prosecution or completion of its services as a result of unforeseeable causes beyond the control of CONTRACTOR, and not due to its own fault or neglect, including but not restricted to acts of God or of public enemy, acts of government or of the OWNER, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then CONTRACTOR shall notify OWNER in writing within five (5) working days after commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which CONTRACTOR may have had to request a time extension.

3.3. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of CONTRACTOR's services from any cause whatsoever, including those for which OWNER may be responsible in whole or in part, shall relieve CONTRACTOR of its duty to perform or give rise to any right to damages or additional compensation from OWNER. CONTRACTOR's sole remedy against OWNER will be the right to seek an extension of time to its schedule. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion. Provided, however, if through no fault or neglect of the CONTRACTOR, the services to be provided hereunder have not been completed within **12** months of the date hereof, the CONTRACTOR's compensation may be equitably adjusted, with respect to those services that have not yet been performed, to reflect the incremental increase in costs experienced by CONTRACTOR after expiration of said **12** month period.

3.4. Should the CONTRACTOR fail to commence, provide, perform or complete any of the services to be provided hereunder in a timely and reasonable manner, in addition to any other rights or remedies available to the OWNER hereunder, the OWNER at its sole discretion and option may withhold any and all payments due and owing to the CONTRACTOR until such time as the CONTRACTOR resumes performance of its obligations hereunder in such a manner so as to reasonably establish to the OWNER's satisfaction that the CONTRACTOR's performance is or will shortly be back on schedule.

### **ARTICLE FOUR COMPENSATION**

4.1. The total compensation to be paid CONTRACTOR by the OWNER for all Basic Services shall not exceed **the per claim rates** as set forth in Exhibit A, "Basis of Compensation", which is attached hereto and incorporated herein.

**ARTICLE FIVE  
MAINTENANCE OF RECORDS**

5.1. CONTRACTOR will keep adequate records and supporting documentation which concern or reflect its services hereunder. The records and documentation will be retained by CONTRACTOR for a minimum of five (5) years from the date of termination of this Agreement or the date the Project is completed, whichever is later. OWNER, or any duly authorized agents or representatives of OWNER, shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the five (5) year period noted above; provided, however, such activity shall be conducted only during normal business hours.

**ARTICLE SIX  
INSURANCE**

6.1. CONTRACTOR shall obtain and carry, at all times during its performance under the Contract Documents, insurance of the types and in the amounts set forth in Exhibit B to this Agreement.

**ARTICLE SEVEN  
SERVICES BY CONTRACTOR'S OWN STAFF**

7.1. The services to be performed hereunder shall be performed by CONTRACTOR's own staff, unless otherwise authorized in writing by the OWNER. The employment of, contract with, or use of the services of any other person or firm by CONTRACTOR, as independent contractor or otherwise, shall be subject to the prior written approval of the OWNER. No provision of this Agreement shall, however, be construed as constituting an agreement between the OWNER and any such other person or firm. Nor shall anything contained herein be deemed to give any such party or any third party any claim or right of action against the OWNER beyond such as may otherwise exist without regard to this Agreement.

**ARTICLE EIGHT  
WAIVER OF CLAIMS**

8.1. CONTRACTOR's acceptance of final payment shall constitute a full waiver of any and all claims, except for insurance company subrogation claims, by it against OWNER arising out of this Agreement or otherwise related to the Project, except those previously made in writing and identified by CONTRACTOR as unsettled at the time of the final payment. Neither the acceptance of CONTRACTOR's services nor payment by OWNER shall be deemed to be a waiver of any of OWNER's rights against CONTRACTOR.

**ARTICLE NINE  
TERMINATION OR SUSPENSION**

9.1. CONTRACTOR shall be considered in material default of this Agreement and such default will be considered cause for OWNER to terminate this Agreement, in whole or in part, as further set forth in this section, for any of the following reasons: (a) failure to begin work under the Agreement within the times specified under the Notice(s) to Proceed, or (b) failure to properly and timely perform the services to be provided hereunder or as directed by OWNER, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by CONTRACTOR or by any of CONTRACTOR's principals, officers or directors, or (d) failure to obey laws, ordinances, regulations or other codes of conduct, or (e) failure to perform or abide by the terms or spirit of this Agreement, or (f) for any other just cause. The OWNER may so terminate this Agreement, in whole or in part, by giving the CONTRACTOR seven (7) calendar day's written notice.

9.2. If, after notice of termination of this Agreement as provided for in paragraph 10.1 above, it is determined for any reason that CONTRACTOR was not in default, or that its default was excusable, or that OWNER otherwise was not entitled to the remedy against CONTRACTOR provided for in paragraph 10.1, then the notice of termination given pursuant to paragraph 10.1 shall be deemed to be the notice of termination provided for in paragraph 10.3 below and CONTRACTOR's remedies against OWNER shall be the same as and limited to those afforded CONTRACTOR under paragraph 10.3 below.

9.3. OWNER shall have the right to terminate this Agreement, in whole or in part, without cause upon seven (7) calendar day's written notice to CONTRACTOR. In the event of such termination for convenience, CONTRACTOR's recovery against OWNER shall be limited to that portion of the fee earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by CONTRACTOR that are directly attributable to the termination, but CONTRACTOR shall not be entitled to any other or further recovery against OWNER, including, but not limited to, anticipated fees or profits on work not required to be performed.

#### **ARTICLE TEN CONFLICT OF INTEREST**

10.1. CONTRACTOR represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. CONTRACTOR further represents that no persons having any such interest shall be employed to perform those services.

#### **ARTICLE ELEVEN MODIFICATION**

11.1. No modification or change in this Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

#### **ARTICLE TWELVE NOTICES AND ADDRESS OF RECORD**

12.1. All notices required or made pursuant to this Agreement to be given by the CONTRACTOR to the OWNER shall be in writing and shall be delivered by hand or by United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following OWNER's address of record:

City of Naples  
735 Eighth Street South  
Naples, Florida 34102-3796  
Attention: Robert E. Lee, DPA, City Manager

12.2. All notices required or made pursuant to this Agreement to be given by the OWNER to the CONTRACTOR shall be made in writing and shall be delivered by hand or by the United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following CONTRACTOR's address of record:

**Preferred Governmental Claim Solutions  
PO Box 958456  
Lake Mary, Florida 32795-8456  
Attention: Kevin Cothron, Vice President**

12.3. Either party may change its address of record by written notice to the other party given in accordance with requirements of this Article.

**ARTICLE THIRTEEN  
MISCELLANEOUS**

13.1. CONTRACTOR, in representing OWNER, shall promote the best interest of OWNER and assume towards OWNER a duty of the highest trust, confidence, and fair dealing.

13.2. No modification, waiver, suspension or termination of the Agreement or of any terms thereof shall impair the rights or liabilities of either party.

13.3. This Agreement is not assignable, in whole or in part, by CONTRACTOR without the prior written consent of OWNER.

13.4. Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

13.5. The headings of the Articles, Exhibits, Parts and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions in such Articles, Exhibits, Parts and Attachments.

13.6. This Agreement constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matter set forth herein, and any such prior agreements or understanding shall have no force or effect whatever on this Agreement.

**ARTICLE FOURTEEN  
APPLICABLE LAW**

14.1. Unless otherwise specified, this Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and by the laws, rules and regulations of the United States when providing services funded by the United States government. Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought in the appropriate Florida state court in Collier County, Florida.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for the day and year first written above.

ATTEST:

**OWNER:**

CITY OF NAPLES, FLORIDA,  
A Municipal Corporation

By: \_\_\_\_\_  
Tara A. Norman, City Clerk

By: \_\_\_\_\_  
Dr. Robert E. Lee, City Manager

Approved as to form  
and legal sufficiency:

**CONTRACTOR:**  
**PREFERRED GOVERNMENTAL CLAIM SOLUTIONS**  
A Florida Corporation

By: \_\_\_\_\_  
Robert D. Pritt, City Attorney

By: \_\_\_\_\_  
Kevin Cothron, Vice President

(CORPORATE SEAL)

**EXHIBIT A**  
**BASIS OF COMPENSATION**

A.1.1. As consideration for providing Basic Services as set forth herein in Article I, Section 1.1 of the Agreement, OWNER agrees to pay, and CONTRACTOR agrees to accept payment on a time and reimbursement cost basis as follows:

**RUN-OFF CLAIMS**

For the run-off claims the expense would be as follows:

\$150 per each Automobile Liability – Bodily Injury claim  
\$100 per each Automobile Liability – Property Damage claim  
\$200 per each Errors & Omissions claim  
\$150 per each Professional Liability claim  
\$150 per each General Liability – Bodily Injury claim  
\$150 per each General Liability – Property Damage claim  
\$60 per each Workers’ Compensation – Medical Only claim  
\$275 per each Workers’ Compensation – Indemnity claim

- Any claim from the assumption that closes within 30 days will not be billed.)
- Data Conversion - The typical data conversion cost for Gallagher data is \$10,000.00 (100 hours). However this is completely dependent on how cooperative they are in the process.

**MISCELLANEOUS**

All pricing is on a per claim basis.

All pricing and services are for the Life of the Contract.

All subrogation is handled for ten percent (10%) of recovery.

All invoicing for above services is performed on a monthly basis.

All pricing for automobile claims does not include automobile appraisals.

Medical bill fee scheduling is performed for \$1.30 per line.

The monthly administration fee includes excess reporting, monthly loss reports, quarterly large loss reports, check processing, check register reports and BSI-17's. 1099's are processed for a fee of \$5.00 per form.

**ANNUAL CLAIMS ADMINISTRATION**

CLAIMS ADMINISTRATION	PGCS - YR 1			PGCS - YR 2			PGCS - YR 3		
	# of Claims	Per Claim Rate	Total Annual Cost	# of Claims	Per Claim Rate	Total Annual Cost	# of Claims	Per Claim Rate	Total Annual Cost
Auto Liab. - Bodily Injury	1	\$575	\$575	1	\$600	\$600	1	\$625	\$625
Auto Liab. - Property Damage	15	\$425	\$6,375	15	\$450	\$6,750	15	\$475	\$7,125
Auto Physical Damage	12	\$500	\$6,000	12	\$525	\$6,300	12	\$550	\$6,600
General Liab. - Bodily Injury	8	\$575	\$4,600	8	\$595	\$4,760	8	\$620	\$4,960
Gen. Liab. - Property Damage	18	\$500	\$9,000	18	\$595	\$10,710	18	\$620	\$11,160
Products Liability	0		\$0	0		\$0	0		\$0
Professional Liability	1	\$500	\$500	1	\$525	\$525	1	\$550	\$550
Property	4	\$500	\$2,000	4	\$525	\$2,100	4	\$550	\$2,200
Workers' Compensation									
Medical Only	50	\$120	\$6,000	50	\$130	\$6,500	50	\$140	\$7,000
Indemnity	20	\$625	\$12,500	20	\$635	\$12,700	20	\$650	\$13,000
Stat Pay Claims	20	\$20	\$400	20	\$20	\$400	20	\$20	\$400
<i>Subtotal - Claims</i>	149		<b>\$47,950</b>	149		<b>\$51,345</b>	149		<b>\$53,620</b>
<b>ANCILLARY SERVICES</b>									
Standard Reporting Package		Included			Included			Included	
Electronic Reports		Included			Included			Included	
Banking		Included			Included			Included	
Internet Access		Included			Included			Included	
<i>Subtotal - Ancillary Services</i>			\$0			\$0			\$0
<b>OPTIONAL SERVICES</b>									
Loss Control Services		Additional			Additional			Additional	
Managed Care Services		Additional			Additional			Additional	
Non-Standard Reports		Included			Included			Included	
Property Appraisals		Additional			Additional			Additional	
Run-Off Claims		*Claims	\$14,230						
Assumption of open claims	*Data	Conversion	\$10,000						
<b>Other: Monthly Admin. Fee</b>	12	\$1,000	\$12,000	12	\$1,000	\$12,000	12	\$1,000	\$12,000
<i>Subtotal - Optional Services</i>			\$36,230			\$12,000			\$12,000
<b>TOTAL ANNUAL COST</b>			<b>\$84,180</b>			<b>\$63,345</b>			<b>\$65,620</b>

\*Estimates based on open claim count a/o 7/31/03 at above run-off per claim costs

\*Please see the attached copy of PGCS's response to the City of Naples Request for Proposal (RFP#013-04) for Third Party Claims Administration of Workers' Compensation, Liability and Property Claims dated July 28, 2003 for more detailed explanations of services provided.

END OF EXHIBIT A.



**EXHIBIT B**  
**GENERAL INSURANCE REQUIREMENTS**

The Contractor shall not commence work until he has obtained all the insurance required under this heading, and until such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work until all similar insurance required of the subcontractor has also been obtained and approved by the Owner.

Certificates of insurance must be issued by an authorized representative of the insurance company at the request and direction of the policyholder and must include sufficient information so as to identify the coverage and the contract for Owner's improvements for which they are issued. Certificates of insurance must be issued by a nationally recognized insurance company with a Best's Rating of no less than B+VII, satisfactory to the Owner, and duly licensed to do business in the state of said Contract.

The Contractor shall procure and maintain, during the life of this Contract, Workmen's Compensation Insurance for all of his employees to be engaged in work under this Contract, and he shall require any subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work, unless such employees are covered by the protection afforded by the Contractor's insurance. In case any employees are to be engaged in hazardous work under this Contract, and are not protected under this Workmen's Compensation statute, the Contractor shall provide, and shall cause each subcontractor to provide, adequate coverage for the protection of such employees. It is acceptable to use a State-approved Workmen's Compensation Self-Insurance fund.

The Contractor shall take out and maintain during the life of this Contract, Public Liability and Property Damage and shall include Contractual Liability, Personal Injury, Libel, Slander, False Arrest, Malicious Prosecution, Wrongful Entry or Eviction, Broad Form Property Damage, Products, Completed Operations and XCU Coverage to be included on an occurrence basis, and to the full extent of the Contract to protect him, the Owner, and any subcontractor performing work covered by this Contract from damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this contract, whether such operations be by himself or by a subcontractor, or by anyone directly or indirectly employed by either of them. The Contractor shall also maintain automobile liability insurance including "non-owned and hired" coverage. The entire cost of this insurance shall be borne by the Contractor.

The amount of such insurance shall be no less than \$1,000,000 annual aggregate for bodily injury and property damage combined per occurrence.

The City of Naples and their Engineer must be named as **Additional Insured** on the insurance certificate and the following must also be stated on the certificate. "These coverages are primary to all other coverages the City possesses for this contract only." The City of Naples shall be named as the Certificate Holder. **The Certificate Holder shall read as follows:**

**The City of Naples**  
**735 Eighth Street South**  
**Naples, Florida 34102**

No City Division, Department, or individual name should appear on the Certificate.  
No other format will be acceptable.

Thirty (30) days cancellation notice required.

The Certificate must state the bid number and title.

When using the "Accord" form of insurance certificate, please note that under the cancellation clause, the following must be deleted: "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company"