

SERVICE AGREEMENT

In consideration of the mutual covenants herein contained, Accident Fund Insurance Company of America, hereinafter referred to as "Accident Fund", does contract and agree with City of Ann Arbor, hereinafter referred to as the "Employer", as follows:

Section 1 - Term of Agreement

The period of this Agreement shall be continuous, effective as of 12:01 a.m., July 1, 2008 through June 30, 2009, or until canceled, as provided in Section 8.

The services to be performed by the Accident Fund under this Agreement are as follows:

1. As third party administrator, act as advisor and representative of the Employer in all matters pertaining to any and all obligations and requirements of the Employer as imposed by the Workers' Disability Compensation Act of the State of Michigan.
2. Compile and file notices, reports, and forms required by the Workers' Disability Compensation Act upon receipt of the first report of injury from the Employer.
3. Conduct such investigations as the Accident Fund and the Employer deem necessary to determine the obligation the Employer may have under the Workers' Disability Compensation Act. Negotiate the settlement of and/or effect the compromise of any claims or suits arising out of such obligation, with prior approval from the Employer.
4. Make payments due, from an Employer-provided loss fund, on all claims utilizing a payment system mutually acceptable to the Employer and the Accident Fund.
5. Perform general administration of all other details pertaining to the Employer's obligations to its employees under the Michigan Workers' Disability Compensation Act of the state of Michigan.
6. Assist the Employer in preparing for and will attend all scheduled hearings before the Bureau of Workers' & Unemployment Compensation.
7. Arrange for and provide the defense of any claims, suits, or other proceedings arising out of, or claimed to arise out of, such obligations. Legal fees, costs, expert witness fees, outside investigator fees, and other allocated loss expenses shall be funded from the Employer-provided loss fund by Employer.
8. Provide standard monthly reports detailing the status of all reported claims. The report will provide summary information for each claim, including the name of claimant, description of injury, date of injury, amount paid to date, current status, and the outstanding liability existing at the time of each report. An "ad hoc" reporting system is also available. Depending on the complexity of the report and the availability of the data, there may be a nominal programming charge involved on some requests.
9. Price provides service for up to 24 months after expiration date of contract. Beginning 24 months after expiration/renewal, there will be a \$200.00 per claim per year or partial year charge for each claim that remains open or until relieved of that responsibility by the Bureau of Workers' & Unemployment Compensation, Department of Consumer and Industry Services, State of Michigan, or other courts of Michigan. Periodic claim reviews with the Employer to review all open cases.
10. Accident Fund to do 1099's for all payments made to medical providers.
11. Continue with all normal reporting and provide on-line file access to the Employer until all claims covered by the term of this agreement have been resolved and closed. Should there be any system changes that affect file access, the Accident Fund will provide programming support to maintain on-line access at the Employer's expense.

Section 2 - Payment/Service Fee

Service and minimum fees shall be determined for each annual period as defined in Section 1 and shall be effective on any anniversary date of the Agreement's original effective date.

The Service Fee payable by this Employer to the Accident Fund in consideration of the services described above shall be:

The annual workers' compensation fee is based on 4.125% per \$100 of the annual payroll and subject to annual payroll audits.

Minimum Annual Service Fee = \$19,782.00

	Workers' Comp. Administration Fee	Health Care Rules Administration	Safety Services Hours
2008 – 2009	\$21,979.00	Included	50 hours annually

The service fee will be billed annually.

Section 3 - Claim Reporting and Handling

A. Funding

The Employer will make funds available to the Accident Fund for claim payments and for allocated loss expense in advance of any payment. The Accident Fund will not be responsible for any payments unless these funds are provided in advance. The funds will be provided as follows:

The employer will establish a loss fund of a mutually agreed upon amount with the Accident Fund. Additional deposits to the loss fund will be requested as needed and will be supported by a detail register of payments made.

The Accident Fund will have the right to deposit and commingle in standard banking accounts all monies which are provided and retain any interest earned thereon.

B. Handling

The Employer agrees to report all claims to the Accident Fund which fall under the definition of claim included with this Agreement.

Control of day-to-day work and office procedures rests with the Accident Fund. The Accident Fund will control and direct the manner and means by which its work is to be performed subject to the limitations stated in Section 3(C) SETTLEMENT AUTHORITY; which provides for prior approvals and special handling.

The Accident Fund agrees to maintain a complete claim file on each reported claim, which will be available for inspection with reasonable notice. All closed indemnity files will be retained by the Accident Fund for 3 years after closure. All other claim files will be retained for 2 years after closure. Claim files will be made available to the employer, upon request at no charge.

The Accident Fund will advise the Employer's Excess Coverage Carrier of any claim against the employer, as required, assuming any penalties imposed as a result of the Accident Fund's late reporting.

C. Settlement Authority

The Employer hereby limits the Accident Fund claim settlement authority as described below:

- Advance notification of denial or disputes
- Prior approval of all settlements
- Prior approval of all attorney assignments
- Prior approval of any single payment in excess of \$5,000.00

Section 4 - Compliance with Law

Both the Accident Fund and Employer will comply with all federal, state, and local laws, ordinances, rules, and regulations particularly applicable to workers' compensation activities and obligations under this Agreement.

Section 5 - Non-Solicitation of Employees

Both parties agree not to solicit the services of or employ (without prior written consent) any employee of the other party who participates while this Agreement continues and for a period of six (6) months thereafter.

Section 6 - Indemnification

To the extent permitted by law, the Employer agrees it will indemnify and hold harmless the Accident Fund against all losses, actions, proceedings, claims, demands, costs, damages, and expenses to which the Accident Fund may be subjected by any person, firm, and company whomsoever as a consequence of the Employer's negligence, gross negligence or willful misconduct in the performance of its obligations under this Agreement. Notwithstanding the above, the Employer reserves the right to assert any defense it may have, whether in law or equity, including but not limited to governmental immunity, to any claim, demand or action brought by any person, firm or company whomsoever. This obligation survives the term of this Agreement.

The Employer shall hold the Accident Fund free of all liability for any penalties, fees, fines, costs, and/or any other charges which are imposed due to delinquent medical payments caused by the Employer's delay in forwarding bills to the Accident Fund for payment.

The Accident Fund agrees it will indemnify and hold harmless the Employer against all losses, actions, proceedings, claims, demands, costs, damages and expenses to which the Employer may be subjected by any person, firm and company whomsoever as a consequence of the Accident Fund's negligence, gross negligence or willful misconduct in the performance of its obligations under this Agreement. This obligation survives the term of this Agreement.

Section 7 - Confidentiality/Nondisclosure

The Accident Fund and the Employer agree that they shall restrict the use or disclosure of all nonpublic personal and proprietary information, written or oral, including electronic data, concerning their respective companies and customers obtained in connection with the performance of the responsibilities specified in this Agreement. Both parties shall comply with all laws and regulations, pertaining to the confidentiality of financial, medical, and other information, including the exemption or disclosure of information under Freedom of Information laws. Both parties will put forth their best efforts to prevent the unauthorized disclosure, use or duplication of such information by third parties, except as required by law and/or necessary for each party to perform their respective obligations under the terms of this Agreement. Any disclosure made otherwise shall be deemed unauthorized unless prior written consent of the affected party is obtained.

Section 8 - Cancellation of this Agreement

This Agreement may be canceled by either party giving to the other party ninety (90) days written notice setting forth the reason for the Cancellation and the date upon which Cancellation is to be effective. In the event of Cancellation, the Employer must pay the Accident Fund the balance of any monies owing to the Accident Fund through the effective date of the Cancellation within fifteen (15) days of the effective date of the Cancellation.

Section 9 - Modifications

This contract represents the entire agreement between the parties and may be modified only in writing. Accident Fund reserves the right to modify fees if it is determined that the historical data upon which Accident Fund fees and service charges developed were based upon erroneous, obsolete or insufficient information, or that a change in the Employer's business will materially change the nature and/or volume of its business or claims as contemplated at the inception of the Agreement.

Section 10 - Definitions

DEFINITIONS - SERVICE AGREEMENT

- A. ALLOCATED LOSS EXPENSE means any cost or expense incurred as a result of exercising our right to engage the service of firms or persons outside our organization for work in connection with the investigation, adjustment, settlement, or defense of a particular claim with prior approval of the Employer. Allocated loss expense includes, but is not limited to, subrogation; rehabilitation; automobile appraisal; all court costs, fees, and expenses; fees for services of processes; fees to attorneys; the cost of services of undercover operations and detectives; fees of independent adjusters or attorneys for investigation or adjustment of claims in areas removed from reasonable access to our salaried employees; the cost of employing experts for the purpose of preparing maps, photographs, diagrams, chemical or physical analyses, or giving expert advise or opinion; the cost of copies of transcripts of testimony at coroner's inquests or criminal or civil proceedings; the cost of obtaining copies of any public records; and the costs of depositions and court reporter or recorded statements. Allocated loss expense is not included in either the minimum contract fee nor the claims service fees. Allocated loss expense is not subject to the settlement authority limit. Penalties assessed for the late reporting of a claim are not included in allocated loss expense nor in the service fee.
- B. CANCELLATION means the revocation of this contact prior to the end of the contract period stated in Section 1.
- C. CLAIM(S) means each monetary demand against the Employer based upon damage(s) resulting from bodily injury to a covered worker if the demand:
1. Is based on or arises out of an occurrence which takes place during the term of this agreement or, in the event of cancellation, is based on or arises out of an occurrence which takes place during the term of this agreement and prior to the effective date of such cancellation.
- D. SERVICE FEES means the amount owing to the Accident Fund as set forth in Section 2. Service fees do not include allocated loss expenses or claim payments.
- E. LOSS FUND means the money which the Employer has made available to the Accident Fund for use in paying allocated loss expense and claim payments on the Employer's behalf.
- F. MINIMUM SERVICE CONTRACT FEE means the minimum amount which the Employer must pay to the Accident Fund for services rendered. This fee is set forth in Section 2.

Section 11

ADDITIONAL SERVICES

1. MEDICAL COST SAVINGS

Through the use of a Preferred Provider Network, the Employer agrees to pay the Accident Fund 25% of the savings that are derived by using the Preferred Provider Network, after application of the Michigan Health Care Services Rules and Michigan Workers' Compensation Fee Schedule.

For use of the Pharmacy Program, Accident Fund will apply a dispensing fee per prescription to each claim. Employer agrees to pay Accident Fund 25% of savings derived from the ingredient costs of prescriptions filled.

2. LOSS PREVENTION SERVICES

After exhaustion of the Loss Prevention hours stated in Section 2, Loss Prevention services are available at the rate of \$100.00 per hour. The Employer will request Loss Prevention services as needed and said services will be billed quarterly.

3. LEGAL SERVICES

Legal services are provided at a rate of \$100.00 per hour.

4. INVESTIGATIVE SERVICES

Investigative services are provided at a rate of \$75.00 per hour. Reasonable expenses for travel and accommodations may be required.

IN WITNESS HEREOF, the parties hereto have executed this Agreement on the respective dates hereunder indicated.

Approval as to Substance

Roger W. Fraser, City Administrator

Approval as to Form

Stephen K. Postema, City Attorney

(Date)

CITY OF ANN ARBOR

BY:

John Hieftje, Mayor

Jacqueline Beaudry, City Clerk

(Date)

ACCIDENT FUND INSURANCE COMPANY
OF AMERICA

BY:

(Date)