

**CONTRACT FOR THIRD PARTY ADMINISTRATOR  
SERVICES FOR PROPERTY AND LIABILITY CLAIMS,  
CITY OF DURHAM**

This Contract is made and entered into as of the 21<sup>st</sup> day of October, 2011 by and between the Interlocal Risk Financing Fund of North Carolina, a Fund created by and comprised of North Carolina municipalities, institutions, and agencies which are parties to an interlocal agreement under the provisions of G.S. § 160A-460 through 160A-464, hereinafter called "IRFFNC", and the City of Durham, a municipal corporation of the State of North Carolina, hereinafter called "City".

**WITNESSETH**

WHEREAS, the City desires to procure an independent contractor to perform third party administrator services for property and liability claims; and

WHEREAS, the City has completed all necessary steps for retention of professional and other services under applicable City policies; and

WHEREAS, the City has agreed to engage IRFFNC, and IRFFNC has agreed to contract with the City, for performance of services as described, and according to the further terms and conditions, set forth herein.

NOW THEREFORE, in consideration of sums to be paid to IRFFNC, and other good and valuable consideration, IRFFNC and City do contract and agree as follows:

**1. SCOPE OF SERVICES**

IRFFNC agrees to provide and to cause to be provided through its third party administrator, the North Carolina League of Municipalities, the claims administration services described and set forth in Attachment "A", entitled "Scope of Services", which is incorporated into and made a part of this Contract by reference.

**2. TIME FOR PERFORMANCE**

The term of this Contract shall begin on December 1, 2011 and, unless terminated in accordance with the terms of paragraph 11 hereof, shall remain in effect until November 30, 2012 with the City's option to renew for two additional one year periods.

**3. COMPENSATION**

In conjunction with the terms set forth below, compensation to be paid to IRFFNC by the City shall be in accordance with the terms set forth in Attachment "B" entitled "Pricing" which is incorporated into and made a part of this Contract by reference.

The City will deposit with IRFFNC a monthly prepayment in the amount of \$10,000.00 for Property and Liability Claim Services throughout the Municipal fiscal year.

IRFFNC's fees for claims handled will be credited against this prepayment by multiplying the actual number of claims handled by IRFFNC by the agreed fee per claim as set forth in Attachment B.

If a surplus of funds remains after all fees have been credited against a monthly prepayment, such surplus will be held by IRFFNC to cover shortfalls in compensation funds which may arise in succeeding months. IRFFNC will be required to maintain an accounting of all prepayments, credits, and surpluses. Reconciliation of these payments and credits, if necessary, will occur on or about June 30<sup>th</sup> of each year during the contract period or more frequently upon the request of either party. IRFFNC shall within fifteen (15) days after reconciliation, return any excess funds to City, provided that excess funds shall be only those funds remaining after offset of the amount against any outstanding fees. Should the reconciliation conclude that funds are due to IRFFNC, IRFFNC shall invoice City for such amount due. City shall within fifteen (15) days after the date of the invoice, pay the amount invoiced or contact IRFFNC's representative herein designated with questions. Upon resolution of any such questions, City shall make appropriate payment to IRFFNC within fifteen (15) days thereafter.

#### 4. **TRANSFER OF CLAIMS FUNDS**

For each calendar month during the Contract period, the City will transfer to IRFFNC certain funds for use in payment of accepted claims against the City. The funds initially transferred to IRFFNC by the City will be in an amount to approximate 60 calendar days projected claim payments. In addition, in any case in which a claim or lawsuit is transferred by IRFFNC to the City Attorney's Office for handling, all expenses incurred by the City Attorney's Office in handling such claim or lawsuit shall be submitted to IRFFNC to be paid from these claims funds. IRFFNC will acknowledge receipt of these funds as well as its obligation to return unused funds to the City in accordance with the provisions of this Contract. The amount of monthly fund transfers will be reviewed semi-annually and increased or decreased as necessary to approximate 30 calendar days projected claim payments.

If a surplus of funds remains after all claim payments have been credited against a monthly fund transfer, such surplus will be held by IRFFNC to cover shortfalls in claim payment funds which may arise in succeeding months. IRFFNC will be required to maintain an accounting of all fund transfers, claim payments, and surpluses. The City agrees that any deficiency in funds availability during any calendar month shall be due and payable not later than fifteen (15) days from the date of invoicing from IRFFNC. Reconciliation of these fund transfers and claim payments, if necessary, will occur on or about June 30<sup>th</sup> of each year during the contract period or more frequently upon the request of either party. IRFFNC shall within fifteen (15) days after reconciliation, return any excess funds to City, provided that excess funds shall be only those funds remaining after offset of the amount against any un-reimbursed claim payments.

Upon receipt of an invoice, the City shall pay amounts invoiced with fifteen (15) days after the date of the invoice or contact IRFFNC's representative herein designated with questions. Upon resolution of any such questions, City shall make appropriate payment to IRFFNC within fifteen (15) days thereafter.

Notwithstanding the fund transfer provisions above, any loss settlement in excess of \$25,000.00 will require pre-funding within three (3) business days of IRFFNC's notice to City.

**5. QUALITY OF SERVICES**

All services performed under this Contract shall be performed in a professional manner, to the reasonable satisfaction of the City, and shall conform to all prevailing industry and professional standards for third party administrator services for property and liability claims.

**6. NOTICES**

All notices, requests for payment, or other communications arising hereunder shall be, until notice of a change is given to the other party in accordance with the provisions of this section, sent or directed to the following:

**City of Durham**  
Attn: Ann-Marie Sharpe  
Risk Manager  
101 City Hall Plaza  
Durham, N.C. 27701  
Telephone (919) 354-2740

**IRFFNC**  
Attn: J. Steven Lee  
Director of Claims  
P.O. Box 1310  
Raleigh, NC 27602-1310  
Telephone (919) 733-3106

**7. ASSIGNMENT**

This Contract may not be assigned by IRFFNC or its third party administrator, the North Carolina League of Municipalities, without the express written consent of the City.

**8. APPLICABLE LAW**

This Contract shall be governed by and construed in accordance with the applicable laws of the State of North Carolina, and venue for any legal actions shall be in Durham County.

**9. INCORPORATION OF DOCUMENTS**

Specifically incorporated into this Contract are the following attachments, or if not physically attached, are incorporated fully herein by reference:

- i. Attachment A – Scope of Services
- ii. Attachment B – Pricing
- iii. City of Durham Request for Proposal dated August 19, 2011

This instrument constitutes the whole and entire agreement between the parties and supercedes all prior oral and written agreements. This instrument may be altered only by a subsequent mutual agreement that is reduced to writing and is executed by authorized legal representatives of both parties.

#### **10. SELF INSURED STATUS OF CITY; HOLD HARMLESS**

The City is not a party to the interlocal agreement referred to hereinabove pursuant to which IRFFNC was established and exists, and the City is not a participant in the risk pool therein created. This Contract is exclusively for third party administrator services only as the City is self insured.

IRFFNC, its third party administrator and the risk pool hereinabove referred to shall not be liable for any claims, damages, losses, costs, charges, fees, interest or expenses of whatever kind (including punitive damages, court costs and attorneys' fees) arising out of any incident, occasion or claim made against the City for which services are provided hereunder. To the extent allowed by North Carolina law, the City shall indemnify and hold harmless IRFFNC, its third party administrator and the risk pool referred to from all liability, costs, and legal fees arising out of any incident, occasion or claim made against the City for which services are provided hereunder. The parties understand and acknowledge that no North Carolina case, statute or Constitutional provision authorizes a local government to indemnify a contractor and that this contract provision may be unenforceable.

IRFFNC shall indemnify, defend and hold harmless the City with respect to any claims or demands, actions, damages, costs and expenses resulting from any errors, omissions, torts or other negligent acts or omissions of IRFFNC, its agents, servants, employees, associates or subcontractors; provided however, that the foregoing hold harmless provision shall have no force and effect with respect to any such claims or demands, actions, damages, costs and expenses which are the result of the instructions or acts of the City, or are the result of IRFFNC's non-negligent fulfillment of its obligations under this Contract.

#### **11. SUSPENSION OR TERMINATION AGREEMENT**

**Default** In the event that IRFFNC's performance shows non-conformance to the work required by this Contract, the Scope of Services or other terms or conditions contained herein as a result of IRFFNC's errors, omissions or negligent acts, IRFFNC shall be in breach of this Agreement and the City may take corrective action as it deems necessary including, but not limited to, termination, withholding or reduction of payment.

**Suspension** In the event that IRFFNC's performance is found by the City to be deficient under the Contract, the City shall also have the right to suspend the Contract upon ten (10) days written notice to IRFFNC. Such written notice shall state the reasons for suspension and allow for a review period of ten (10) days during which IRFFNC shall be provided with an opportunity to respond with an explanation or justification, and/or shall undertake any reasonable remedial action required by the City. If, in the opinion of

the City IRFFNC remains in violation of the Contract at the completion of ten (10) day suspension period, the City shall have the right to terminate the Contract whereupon all obligations of the City to IRFFNC shall cease. If following a suspension, the City elects to resume performance under the Contract, such resumption of performance shall not constitute waiver of any rights or claims of the City under the Contract.

Nothing contained herein shall prevent the City from pursuing any other remedy that it may have against IRFFNC including claims for damages.

Upon expiration, termination, or default of the contract, IRFFNC will provide the City or authorized agent access to all electronic data files that need to be transferred to another software system.

Either the City or IRFFNC shall have the right to terminate this contract without cause by giving 90 days written notice to the contact person.

## 12. **AUTHORITY**

IRFFNC and City, each to the other, represent and warrant that each has full authority to enter into this Contract and that each has obtained all necessary consents in connection with execution and delivery thereof. This Contract constitutes the valid and legally binding obligation of each party, enforceable in accordance with its terms. The persons or persons executing this Contract on behalf of the parties are duly authorized to do so.

## 13. **ADDITIONAL TERMS**

**Settlement Authority** Pursuant to the terms of this Contract, the City relinquishes full and complete authority and control to IRFFNC and its third party administrator for all matters pertaining to the handling of claims within IRFFNC's discretionary settlement authority limit under this Contract. IRFFNC shall, in connection with such claims comply with all applicable Federal, State or Local laws in the adjustment of assigned claims or the subject matter thereof, and shall exercise its own judgment unless the City specifically advises otherwise. The City reserves the right to take over the handling and control of any claim at any time for any reason.

City represents and warrants that any settlement requiring the prior approval of the City's Finance Department as specified herein shall be, when so approved, the duly authorized act of the City and that the representative of the City's Finance Department providing such approval shall be authorized to do so on behalf of the City.

**Professional Standards** The City of Durham strives to provide an exceptionally high level of customer service to its employees, to members of the general public and to organizations utilizing City facilities and programs. Therefore the City will expect IRFFNC to conduct its activities on behalf of the City in that spirit by adhering to the highest standards of professionalism and recognized insurance industry best-practices.

**Claims After Contract Period** Any claim occurring during the contract period and reported to IRFFNC more than twelve (12) months after the end of the contract period

will be handled on a Time and Expense basis by IRFFNC at its then prevailing hourly rate and expense method of billing.

**Counterparts** This Contract will be executed in several counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same Contract.

IN WITNESS WHEREOF, IRFFNC has executed the foregoing Contract with the signature(s) of its duly authorized officer(s), and the City has executed with the signature of its City Manager, attested by its (Assistant/Deputy) Clerk-Treasurer, with the official seal affixed, the day and year first above written.

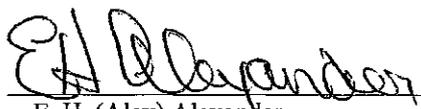
ATTEST:

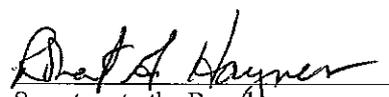
CITY OF DURHAM

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

**IRFFNC:**

ATTEST:

By:   
E. H. (Alex) Alexander  
Chair, Board of Trustees

By:   
Secretary to the Board

(Affix Seal)

The North Carolina League of Municipalities, as third party administrator for IRFFNC and of the IRFFNC risk pool, hereby assents to the terms of the foregoing Contract and agrees to perform for the City such of the services therein described as may be directed by IRFFNC, and in the performance thereof agrees to comply with and be bound by its terms.

NORTH CAROLINA LEAGUE OF MUNICIPALITIES

By:   
S. Ellis Hankins, Executive Director

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
City's Finance Officer

\_\_\_\_\_  
Date