

BROKER/RISK MANAGEMENT SERVICES AGREEMENT

THIS AGREEMENT is entered into at Nassau County, Florida this 16th day of September 2015 by and between **Nassau County Board of County Commissioners**, a political subdivision of the State of Florida (hereinafter referred to as "COUNTY") and **Harden and Associates, Inc.**, a Florida corporation (hereinafter referred to as "HARDEN"). The entities are referred to collectively as "Parties" and individually "Party".

RECITALS

WHEREAS, COUNTY desires to enter into an agreement with HARDEN for the provision of broker/risk management services in accordance with the terms and conditions of this Agreement; and

WHEREAS, HARDEN is willing and able to provide services to the COUNTY in accordance with the terms and conditions of this Agreement; and

WHEREAS, HARDEN is a licensed insurance agency in the State of Florida and can provide insurance administrative services; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties hereto do mutually agree as follows:

ARTICLE I

Property and Casualty Insurance Broker and Risk Management Services

- 1.1 Services. HARDEN shall provide services to COUNTY in accordance with the Exhibit "A" attached hereto and made a part hereof.

ARTICLE II

HIPAA

- 2.1 Health Insurance Portability and Accountability Act. HARDEN shall comply with the Health Insurance Portability and Accountability Act (HIPAA)(42 U.S.C. Section 1320D et seq.) as well as all regulations promulgated thereunder (45 C.F.R. Parts 160, 162, 164).

ARTICLE III
Applicable Law

- 3.1 **Compliance with Law.** HARDEN shall at all times during the term of this Agreement comply with, and provide all services required hereunder in accordance with, all applicable federal, state, and local laws, rules, regulations and ordinances including, but not limited to, the federal Social Security Act (as amended) and the Americans with Disabilities Act.

ARTICLE IV
Nondiscrimination

- 4.1 **Nondiscrimination.** HARDEN shall not differentiate or discriminate in the provision of services or against any of its employees or any applicant for employment because of age, race, religion, color, disability, national origin, marital status or sex.

ARTICLE V
Obligations of COUNTY/Compensation

- 5.1 **Compensation.** COUNTY shall pay HARDEN for services pursuant to the terms of this Agreement a fee of \$125,000.00 per year for thirty six (36) months, which may be paid on a quarterly basis. The first invoice shall be received on October 1, 2015. COUNTY shall pay service invoices within forty-five (45) days of invoice date. Fees for additional services desired by COUNTY for the provision of services to additional operations shall be separately negotiated.
- 5.2 **Compliance with Law.** The agreement specifies HARDEN's compensation and additional compensation will not be paid to HARDEN. Any additional compensation to HARDEN, including commissions paid by any other party, including wholesale brokers is strictly prohibited.

ARTICLE VI
Relationship of Parties

- 6.1 HARDEN is an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer/employee relationship, a joint venture relationship or partnership relationship. In consideration of the compensation from the COUNTY to HARDEN, HARDEN is providing services to the COUNTY as its exclusive insurance broker.

ARTICLE VII
Non-Funding Clause

- 7.1 In the event sufficient budgeted funds are not available for a new fiscal period, the COUNTY must promptly notify HARDEN of such occurrence and this Agreement must terminate on the last day of the current fiscal period without penalty or expense to the COUNTY.

ARTICLE VIII
Termination

- 8.1 (a) Either Party may terminate this Agreement, without cause and for any reason whatsoever, by giving written notice of termination to the other Party at least ninety (90) days prior to the effective date of termination, which shall be specified in such written notice.

(b) Notwithstanding the provisions in sub-paragraph (a) above, COUNTY may terminate this Agreement upon the happening of any one of the following causes:

1. Suspension or termination of HARDEN's insurance license in the State of Florida is not cured by HARDEN within sixty (60) days following such suspension or termination;
2. HARDEN's participation in any fraud; or
3. HARDEN's material failure to properly perform its duties and responsibilities hereunder because of HARDEN's gross neglect, proven dishonesty or commission of a felony.

Termination for any cause enumerated in this sub-paragraph (b) shall become effective upon the delivery of written notice of termination to HARDEN or at such later time as may be specified in the written notice.

ARTICLE IX
Insurance and Indemnification

- 9.1 Liability Insurance. During the term of this Agreement, HARDEN shall maintain and keep in effect, at its sole expense, general liability insurance and errors and omission (professional liability) insurance coverage in an amount satisfactory to COUNTY. At COUNTY's request, HARDEN shall furnish to it a certificate of insurance evidencing the insurance coverage required under this Section.
- 9.2 Indemnification. HARDEN shall indemnify, defend, and hold harmless COUNTY and its officers, directors, employees and agents from and against any and all liability, loss, damage, claims, and all costs or expenses related thereto (including attorneys' fees), that may arise out of and/or be incurred in connection with: (a) any negligence or misconduct caused or alleged to have been caused by HARDEN or its employees, agents, or representatives in connection with the provision of the services under this Agreement or in connection with the use or maintenance of any property, facility, or any equipment by, or under the direction or control of HARDEN, or (b) any act or failure to act by HARDEN or its employees, agents, or representatives outside the scope of or in breach of, the terms of this Agreement. The provisions in this section shall survive the termination of this Agreement.

ARTICLE X
Term of Agreement/Termination

- 10.1 Term. This Agreement shall be effective from October 1, 2015 to September 30, 2018. This Agreement may be renewed on an "as needed basis" for a period of twelve (12) months, not to exceed a total period of 3 years. Such renewals shall be contingent upon satisfactory fiscal and program performance reviews as determined by COUNTY and subject to the availability of funds as determined by COUNTY. Each renewal shall be confirmed in writing by HARDEN and the COUNTY and shall be subject to the terms and conditions set forth in the original Agreement and its amendments.
- 10.2 Event of Default. In the event that either Party fails to perform any of its obligations and such failure shall continue for a period of sixty (60) days after written notice describing such failure has been given by the non-defaulting party, the non-defaulting party may terminate this Agreement

with no further obligation or liability by giving an additional written notice to the defaulting party informing such Party of the termination of this Agreement. Subject to Section 11.1 any such termination shall not limit the legal or equitable rights and remedies that may be available to any Party.

- 10.3 Termination With Notice Other. Notwithstanding Section 10.1 above, this Agreement shall immediately terminate upon written notice by COUNTY to HARDEN in the event HARDEN (or any of its officers, directors, or employees) is placed on the convicted vendor list kept by the Florida Department of Management Services pursuant to Section 287.133, Florida Statutes.

ARTICLE XI **Dispute Resolution**

- 11.1 Dispute Resolution. Any dispute arising under this Agreement shall be addressed by representatives of the COUNTY and HARDEN as set forth herein. Dispute shall be set forth in writing to the County Manager with a copy to Human Resources and provided by overnight mail, UPS, FedEx, or certified mail, with a response provided in the same manner prior to any meetings of representatives. The initial meeting shall be with the County Manager and Human Resources Director of the County or their designee and a representative of HARDEN. If the dispute is not settled at that level, the County Attorney shall be notified in writing by the County Manager or his/her designee, and the County Attorney and the County Manager and the Human Resources Director or their designee(s) shall meet with HARDEN representative(s). Said meeting shall occur within thirty (30) days of the notification by the County Manager. If there is no satisfactory resolution the claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof, if not disposed of by agreement as set forth herein, shall be submitted to mediation in accordance with mediation rules as established by the Florida Supreme Court. Mediators shall be chosen by COUNTY from a Florida Supreme Court approved list of mediators in the Fourth Judicial Circuit and the cost of mediation shall be split by the parties. If either Party initiates a Court proceeding and the Court orders, or the parties agree to, mediation, the cost of mediation shall be split by the parties. HARDEN shall not stop work during the pendency of mediation or dispute resolution. No litigation shall be initiated unless and until the procedures set forth herein are followed. The provisions in this section shall survive the termination of this Agreement.

ARTICLE XII **General Provisions**

- 12.1 Recitals. The Parties acknowledge that the statements contained in the recitals above are true and correct, and the recitals are incorporated herein by reference and made a part hereof.
- 12.2 Assignment. This Agreement may not be assigned or subcontracted by HARDEN without the prior written consent of COUNTY, which consent shall not be unreasonably withheld.
- 12.3 Third-Party Beneficiaries. Nothing in this Agreement is intended to be construed or to be deemed to create any right or remedy to the benefit of a third party.
- 12.4 Notices. Any notice required hereunder shall be in writing, signed by a duly authorized officer, and shall be delivered personally (by courier or otherwise), sent by certified mail, registered, or express mail, postage prepaid and return receipt requested, or transmitted by telecopier with a copy of such notice or other communication and a confirmation of transmission sent by certified,

registered or express mail, postage prepaid and return receipt requested, and shall be addressed as follows:

When HARDEN is to be notified:

Elisa Simpson
Harden and Associates, Inc.
463820 State Road 200, Suite 101
Yulee, FL 32097

When COUNTY is to be notified:

Ted Selby
County Manager
96135 Nassau Place, Suite 1
Yulee, FL 32097

With a copy to:

Michael S. Mullin
County Attorney
96135 Nassau Place, Suite 6
Yulee, FL 32097

A Party may, by notice given in accordance with this Section 12.4 to the other Party, designate another address or person to which notice is required to be given pursuant to this Agreement shall thereafter be transmitted. Each notice transmitted shall be deemed to have been given, received and become effective for all purposes at the earlier of the time it shall have been actually received or (i) delivered to the addressee as indicated by the return receipt or the affidavit of the messenger, or transmitted to the addressee or (ii) presented for delivery to the addressee as so indicated during normal business hours, if such delivery shall have been refused for any reason.

- 12.5 Captions; Partial Invalidity. The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such provisions of the agreement nor in any way affect this Agreement. If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, the invalidity or enforceability of such provision shall not affect the remaining provisions of this Agreement.
- 12.6 Change in Law or Regulations. Should any federal or state statute, regulation, or rule now existing, or enacted or promulgated after the effective date of this Agreement, be enacted or interpreted by any court, governmental body, or agency having jurisdiction over HARDEN or COUNTY during the term of this Agreement so as to materially affect the ability of a Party to perform any provision of this Agreement, then the Parties shall forthwith and in good faith amend the provision of this Agreement affected by such actions as reasonably necessary to comply with such law, regulation, or rule. Any such amendment shall preserve the underlying economic and financial arrangements between the Parties hereto.
- 12.7 Intellectual Property. Any copyrightable or patentable intellectual property or documents created specifically for or on behalf of COUNTY produced as a result of work or services performed under

this Agreement, or in any way connected with the Agreement, shall be the property of COUNTY, with only such exceptions as are clearly expressed and reasonably valued in the Agreement.

- 12.8 Amendment or Modification. This Agreement may not be amended or modified except by a written instrument executed by the Parties hereto. All amendments and modifications shall be in the form of a supplemental agreement.
- 12.9 Entire Agreement. This Agreement and attachments embody the entire Agreement among the Parties hereto with respect to the subject matter hereof and supersede any and all prior or contemporaneous, oral or written, understandings, negotiations, or communications on behalf of such Parties.
- 12.10 Survival. The provisions in Section 9.2 (Indemnification) and Section 11.1 (Dispute Resolution) shall survive the termination of this Agreement.
- 12.11 Applicable Law, Venue, Binding Effect. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and venue for any legal action or proceeding arising out of or construing this Agreement shall lie in the state courts for Nassau County, Florida. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their successors and permitted assigns.
- 12.12 Waiver. No waiver of any provision of this Agreement shall be binding upon any Party unless such waiver is expressly set forth in a written instrument executed by such Party. Such waiver shall be effective only to the extent specifically set forth in such written instrument. Neither the exercise nor the delay or failure to exercise any right, power or remedy shall operate as a waiver of or impair, limit or restrict the exercise by any Party of any such right, power or remedy at any time and from time to time thereafter. The waiver by either Party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach thereof.
- 12.13 Non-exclusivity. Nothing in this Agreement shall be construed to confer upon HARDEN the exclusive right to provide services to eligible consumers in all geographic areas, and COUNTY explicitly reserves the right to contract with other organizations or agencies providing similar services in HARDEN's geographic area.
- 12.14 Filing of Agreement. A certified copy of this Agreement and any amendments, modifications, and supplemental agreements shall be filed with the Nassau County Clerk.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

HARDEN AND ASSOCIATES, INC.



Elisa Simpson
Its: Senior Vice President

BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA



PAT EDWARDS

Its: Chairman

ATTEST AS TO CHAIRMAN'S SIGNATURE:



JOHN A. CRAWFORD
Its: Ex-Officio Clerk

MES
09.16.15

Approved as to form by the Nassau County
Attorney:



MICHAEL S. MULLIN

Exhibit A - Professional Services Contract

Property & Casualty Insurance Broker & Risk Management Services

Account Management

- a. Schedule and Conduct an Annual Planning Meeting > 120 days in Advance of Oct 1st
- b. Document and Gain Consensus on Strategic Objectives
- c. Create Annual Objective Support/Service Plan
- d. Provide consultation and recommendations on exposures, adequacy of coverage, and risk transfer options including those that might not be currently utilized by the BOCC
- f. Provide Daily Account Management
 - Liaison with service providers
 - Prepare Certificates of Insurance and Evidences of Property as required
- g. Create and Provide Access to Program Administration Manual
 - Provide access to Harden client communication portal
- h. Maintain Risk Management account program and risk profile data
 - Send Property, Inland Marine and Auto schedules quarterly to Department Heads to ensure accuracy of county assets
 - Verify accuracy of policies and endorsements received by carriers
 - Update and maintain County Asset schedules with information pertinent to BOCC
 - Coordinate and communicate with OMB/Clerk on items removed from inventory
 - Quarterly allocations of endorsements by department accounting code
 - Facilitate Workers' Compensation audit with carrier; verifying data and internal processes
 - Assist with insurance replacement cost appraisal services
- i. Automobile Fleet/Equipment/Driver Maintenance
 - Process Tag/Title/Decal requests
 - Review paperwork submitted by departments to ensure appropriate information and approvals
 - Provide Tax Collector appropriate information and request appointment
 - Process appropriate paperwork for County Manager approval for tag/title transfers on sold vehicles and equipment

- Notify appropriate department of processed paperwork and provide tag/title/decals as necessary
- Update Asset schedules with pertinent information
- Invoice and track payment of tag/title requests for Constitutional Officers
- Facilitate processing of paperwork for vehicle/equipment auctions

Drivers

- Annual review of MVR's to ensure compliance with NC BOCC driver requirements
- Process MVR requests from Constitutional Officers and Volunteer Programs

j. Property & other Asset Changes

- Review paperwork submitted by departments to ensure appropriate information and approvals
- Update Asset schedules with pertinent information

k. Review contracts to determine adequacy of indemnification, hold harmless, and insurance clauses

- Develop and implement standardized contract processes and provisions
- Review Certificates of Insurance from Vendors and Contractors, as requested
- Review volunteer projects and other requests to determine exposures and provide recommendations, as requested
- Review BOCC events and provide recommendations for loss control based on exposures
- Coordinate issuance of Certificate of Insurance needed by BOCC with Insurance Broker

l. Conduct risk management meetings

- Monthly status review with County Manager and County Attorney

m. Monitor claims investigation, work product outcome and loss reserve validation

- Coordinate with Insurance Carrier on status of open claims, reserving practices, claim outcomes

n. Conduct claims review of claims opened within previous month

- Review with County Manager and County Attorney all claims opened within previous month
- Assist with claim and coverage disputes

- o. **Develop Risk Management Internal Processes Manual**
 - Develop checklists and procedures for site inspections
 - Develop checklists and procedures for auto inspections
 - Update Risk Management Internal Process Manual
- p. **Compare and analyze platform of value added services for Third Party service providers**
 - Evaluate and make recommendations on Vendors to utilize - example JJ Keller Programs; Safety Council Programs, TPA's, etc.

Implement Pre - Loss Strategies

- a. **Facilitate the development and implementation of a loss control program**
 - Identify departments with highest loss frequency and severity
 - Update BOCC Safety Manual and Risk Management Internal Process Manual
 - Update BOCC Safety Manual with legislative, industry, safety program changes
 - Implement program for Department Heads to complete quarterly site inspections
 - Implement program for periodic automobile fleet self inspections
- b. **Provide assistance in complying with loss control recommendations**
 - Review loss control recommendations received from insurance carrier or determined through self inspections
 - Make recommendations for possible corrective actions; refer to carrier or other 3rd party vendor for assistance
 - Communicate with County Manager, County Attorney, and Department Heads to determine corrective action feasibility
- c. **Facilitate the development of Safety Committee protocols**
 - Facilitate Safety Committee meetings including committee member selection
 - Review monthly claim analysis with Safety Committee Personnel
- d. **Enhance Personal Protective Equipment Program, creating manual to identify appropriate equipment and guidelines**
 - Based on losses analysis, inspections and educational materials, make recommendations for new or updated PPE
 - Update Safety Manual with new or updated PPE, as needed

- e. Facilitate accident investigation program
 - Evaluate and update (as needed) existing accident investigation program utilizing carrier best practices
 - Develop root cause investigation protocol utilizing carrier best practices
- f. Evaluate workers compensation claims and impact to the experience modification factor utilizing analytics tool such as ModMaster
- g. Assist with emergency procedures and disaster planning as needed
- h. Facilitate or assist with quarterly Random Drug Free Workplace testing

Implement Post - Loss strategies

- a. Assist with accident analysis and investigation
 - Review accidents during monthly safety committee meetings (utilizing root cause investigation protocols)
 - Determine and communicate loss prevention recommendations, if any
 - Facilitate subrogation process for claims not covered by insurance and/or claims under the deductible
 - Johns Eastern TPA - Review and approve all invoices (check register) from claims activity
 - Review and monitor recovery from SDF and Excess carrier.
- b. Perform a loss retention analysis
 - Determine impact of loss retention on individual claim

Develop and Issue Request for Proposal

- a. Consult with BOCC to formulate a marketing strategy that focused on a cost-effective risk management strategy and program design based upon current market conditions
- b. Develop and issue Request for Proposal based upon agreed upon marketing strategy
- c. Represent BOCC in negotiations with all insurers, underwriters, and other service providers focused on delivering most cost effective solutions (terms, conditions, & price)
- d. Document risk profile data on renewal business
 - Coordinate collection of program renewal data from appropriate county personnel
 - Complete applications required by carriers

- e. Coordinate and facilitate carrier loss control site visits at client/prospect locations
 - Coordinate with Department Heads/Constitutional Officers for any site visits needed by Insurance Carrier personnel
- f. Review and approve all invoices received relative to BOCC insurance Program; code with appropriate accounting codes
- g. Review all policies and endorsements received from Broker/Insurance carrier to ensure accuracy
- h. Perform and in-depth comparative analysis of the quotes received from the RFP to include a comparison of value added services provided by the carriers
- i. Analyze impact to premium at various retention levels and assist in selecting optimal retentions
- j. Analyze underwriter financial ratings
- k. Communicate program options to BOCC and recommend optimal program design
- l. Make presentations to County Commission and/or Committees as requested
- m. Facilitate Program Implementation
 - Prepare binding instructions and documentation
 - Deliver confirmation of binding
 - Verify accuracy of binding documents

Client Education

- a. Monitor and report legislative environment, changes and trends
 - Attend Costangy, Brooks & Smith Employment Workshop
 - Attend Round Table forum to ensure coordination of Risk Management programs; gather Risk Management best practices from other Risk Managers/Safety Personnel
 - Attend FACT Conference and debrief on content during monthly Risk Management meeting
- b. Provide access to technical training
 - Facilitate On-site Employment Workshops for key staff and Constitutional Officers, as requested

- c. Facilitate statutory/regulatory compliance education
 - Facilitate Commissioner Awareness Training, as requested
 - Continue ongoing education programs on SDS compliance, Drug Free Workplace program, etc.

- d. Safety Program training
 - Provide training for BOCC staff
 - Provide training to Constitutional Officers and staff