

**Approval of Administrative Services Agreement with  
CareWorks USA, Ltd. For Family Medical Leave Act**

February 6, 2018

The Honorable Mayor Fournier and  
Members of the City Commission:

The Family Medical Leave Act (FMLA) of 1993 provides employees who work 1,250 hours in the preceding twelve months with a federally mandated twelve-week unpaid leave for most medical emergencies of the employee, direct relatives, or i.e. in the case of the birth of a child. The hour requirement means that all full-time employees and permanent part-time employees typically qualify for such leave throughout any given year.

FMLA administration and tracking can be complex and carries with it potentially significant risk pitfalls and liability to the city as the employer if not administered properly. FMLA results in human resources having to handle sensitive protected health information of the employee and maintain a constant dialog for consistent absence tracking, often placing itself in a difficult position between the interests of the employee and the employer. Further complicating FMLA administration are provisions in the city's collective bargaining agreements, Americans with Disability Act (ADA) protections, and workers' compensation law. Ultimately, we concluded that our employees and the city are likely to be better served by contracting with a FMLA administration services company.

With the help of our benefits consultant Cornerstone Municipal we looked at several solutions. In the end, CareWorks Absence Management ("CareWorks") was determined to be the best fit for the expected scope of services and the ability to work within the \$10,000 that was already approved by the city commission in the 2017-2018 budget. CareWorks agreed to lock in its negotiated pricing for the full three years of the agreement. The administrative services agreement (Attachment 1) and a state of work (Attachment 2) which describes the services covered are provided.

We recommend approval of the following resolution:

**Be it resolved**, the city commission hereby approves the administrative services agreement between CareWorks USA, Ltd (d/b/a CareWorks Absence Management) and the City of Royal Oak for a period of three years from the "go live" date and authorizes the mayor to execute the agreement on behalf of the city.

Respectfully submitted,  
Dennis Van de Laar  
Human Resources Director

Approved,



Donald E. Johnson  
City Manager

2 Attachments

## MASTER SERVICE AGREEMENT

This Master Service Agreement (the "Agreement") is entered into this \_\_\_ day of December, 2017 (the "Effective Date") between CareWorks USA, Ltd (d/b/a CareWorks Absence Management), with its principal place of business located at 5555 Glendon Court, Dublin, Ohio 43016 ("CareWorks Absence Management"), and the City of Royal Oak, Michigan, with its principal place of business located at [REDACTED] (the "Client"). Client and CareWorks Absence Management are hereafter collectively referred to as the "Parties".

**WHEREAS**, CareWorks Absence Management provides leave administration, disability claim administration and integrated disability management services to employers; and

**WHEREAS**, Client wishes to contract with CareWorks Absence Management to provide leave administration, disability claim administration and/or integrated disability management services as they relate to Client's employees;

**NOW THEREFORE**, in consideration of the mutual promises, covenants and agreements contained herein, the Parties agree as follows:

### **1. Services and Obligations.**

CareWorks Absence Management shall provide to Client the services ("Services") set forth in the Statement of Work attached hereto as Exhibit A. Client shall pay CareWorks Absence Management fees for such Services as also set forth in Exhibit A, shall timely provide accurate and uncorrupted data requested by CareWorks Absence Management, and shall reasonably cooperate with CareWorks Absence Management as needed for CareWorks Absence Management's provision of the Services in compliance with all applicable laws including, but not limited to, Department of Labor regulations, guidance and interpretation of the Family and Medical Leave Act, and Equal Employment Opportunity Commission regulations, guidance and interpretation of the Americans with Disabilities Act, as amended.

## 2. Payment and Adjustment of Fees.

- (a) **Invoices.** For all Services, CareWorks Absence Management shall issue monthly invoices to Client, each of which shall be due and payable no later than 30 days after the date of such invoice.
- (b) **Fee Adjustment.** If at any time after the first 36 months of this Agreement, CareWorks Absence Management determines that the fees for Services require adjustment due to a significantly higher than anticipated incidence rate among Client employees, CareWorks Absence Management may, at its discretion, increase any fee or replace the method of calculating any fee, by sending a written notice to Client that specifically references this Section 2(b) (hereafter a "Notice of Special Fee Adjustment"). The prices set forth in any Notice of Special Fee Adjustment shall be effective 90 days after the date of the Notice of Special Fee Adjustment. Client shall have the right to terminate this Agreement upon written notice within 30 days of receipt of CareWorks Absence Management's Notice of Special Fee Adjustment pursuant to this Section 2(b), which termination shall be effective 60 days thereafter.
- (c) **Price Increase.** Pricing for each subsequent year of a multi-year contract shall be subject to the greater of 3.0% or the percentage increase as reported by the U.S. Department of Labor – Bureau of Labor Statistics (<http://www.bls.gov/cpi/home.htm>) for the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average, All Items, covering the prior 12 month period, valued as of the month ending two months prior (to allow time for reports to be published) to the anniversary date of the contract.

**3. Term of Agreement.** The initial term (the "Initial Term") of this Agreement is from the Effective Date through the three-year anniversary of the Go-Live Date. The Agreement shall automatically renew for successive one-year terms (each, a "Renewal Term" and collectively with the Initial Term, the "Term") unless either Party provides written notice of its intentions not to renew at least 90 days before expiration of the Term.

**4. Termination.** In the event of a material breach of this Agreement by either Party, the non-breaching Party may terminate this Agreement by providing 30 days' prior written notice to the breaching Party, provided that such notice sets forth the particular facts underlying the claimed breach of the Agreement and the claimed breach is not remedied within 30 days of receipt of the written notice of breach. If the claimed breach is remedied within 30 days of receipt of the written notice of breach, this Agreement shall continue in effect. Material breach includes, but is not limited to, a failure by either Party to perform in whole or in part an affirmative obligation to the other Party under this Agreement.

**5. Relationship of Parties.** CareWorks Absence Management and Client are independent associations. Neither CareWorks Absence Management nor Client is a partner of the other and each acknowledges that this Agreement is not intended to create, and shall not be interpreted, construed or deemed to create in any respect an agency, employment, association, joint venture, co-ownership, co-authorship, co-employment relationship, or partnership, whether general, limited or otherwise.

**6. Non-Solicitation of Employees.** During the Term of this Agreement and for 12 months after any termination of this Agreement, Client will not, directly or indirectly, solicit on its own behalf or in the service or on behalf of others, or in any capacity induce or attempt to induce, any officer, director, or employee to leave CareWorks Absence Management.

**7. Representation of Outcome.**

- (a)** CareWorks Absence Management cannot and does not make any representation or warranty regarding the result or resolution of any claim referred to CareWorks Absence Management by Client for performance of Services pursuant to this Agreement, including, but not limited to, guaranteed savings for any particular claim, successful return to work, or reduction of duration of benefits or allocated reserves. Except to the extent set forth in this Agreement, no other warranty or representation, or obligation of indemnity, whether express or

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implied, is created by this Agreement or in connection with the Services.

- (b) CareWorks Absence Management warrants that it will use reasonable care in the performance of its duties under this Agreement.
- (c) CareWorks Absence Management expressly does not provide legal advice and Client is advised to seek its own legal counsel in regard to any contemplated employment actions. Client agrees that it shall not rely upon CareWorks Absence Management for employment status or disciplinary advice; and CareWorks Absence Management offers no advice or position regarding disciplinary or other actions against employees, including, but not limited to, discipline relating to employees who avail (or attempt to avail) themselves of benefits under the Family and Medical Leave Act or reasonable accommodations under the Americans with Disabilities Act and its amendments.

## **8. Indemnification.**

- (a) CareWorks Absence Management shall indemnify Client from and against only those losses, damages, judgments, claims, fines, interest and penalties that Client may suffer as a result of any third-party claim, action or proceeding asserted against Client based on any negligent acts, errors or omissions of CareWorks Absence Management which occurred in breach of its express contractual duties in its performance under this Agreement, excluding all special, incidental, punitive, or consequential damages. The indemnification obligation created under this paragraph shall not apply to any losses, damages, judgments, claims, fines, interest and penalties attributable to Client's independent acts or omissions or acts or omissions beyond the control (or the ability to control) of CareWorks Absence Management. CareWorks Absence Management's liability to Client under this Section 8 shall not exceed an amount equal to one year of fees under this Agreement.

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- (b) If (i) one of Client's current or former employees asserts a claim seeking damages or other relief from CareWorks Absence Management and (ii) that claim is not caused by CareWorks Absence Management's negligence, or willful misconduct, Client shall indemnify CareWorks Absence Management for any losses, damages, judgments, claims, fines, interest and penalties that CareWorks Absence Management may incur.
  
- (c) The party seeking indemnification hereunder pursuant to Section 8(a) or 8(b) as applicable (the "Indemnified Party") shall notify the party with the indemnification obligation (the "Indemnifying Party") in writing via overnight delivery of any claim, action or proceeding for which it seeks indemnification pursuant to this Agreement within seven calendar days of receipt or knowledge of the same and shall afford the Indemnifying Party the opportunity to defend or participate in the defense of said claim, action or proceeding. Upon receipt of such notice, the Indemnifying Party shall be entitled to, but shall have no duty to, control the defense of the claim, including the selection of counsel. Notwithstanding the foregoing, the Indemnifying Party will not settle a claim without the Indemnified Party's written consent, unless such settlement results in (i) no liability to the Indemnified Party or future obligation of the Indemnified Party, and (ii) no admission of wrongdoing by Client or CareWorks Absence Management. The Indemnified Party will cooperate fully in the defense of any claim, action or proceeding for which it seeks indemnification pursuant to this Agreement.

## **9. Confidentiality.**

- (a) The Parties acknowledge that the information collected and reviewed in connection with the provision of Services under this Agreement is confidential and may be subject to federal or state privacy laws and regulations. The Parties shall not disclose such information to any third party (other than the Client employee to which such information relates) except for

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purposes of this Agreement or as may otherwise be required or directed by applicable law or judicial process.

- (b) CareWorks Absence Management shall own all rights to all business processes, methods, documents, software, formatting, trademarks, service marks, intellectual property, trade secrets, or any other tools used by CareWorks Absence Management in the performance of its obligations under this Agreement; shall have the right to retain copies of any documents provided by Client or its employees or their healthcare providers or other agents in accordance with CareWorks Absence Management's document retention policies or practices as those may be amended from time to time; and, subject to the agreed upon confidentiality constraints, shall have the right to use any data and documents provided by Client or its employees or their healthcare providers or other agents in the general course of its business. Upon termination of this Agreement, Client shall be entitled only to such information or documents in CareWorks Absence Management's possession as may be reasonably necessary to assure the continuity of Client's administration of specific claims.
- (c) This Section 9 shall survive the termination of this Agreement, regardless of the reason for termination.

**10. Insurance.** During the course of this Agreement, CareWorks Absence Management shall maintain workers' compensation insurance (or qualification as a self-insurer to satisfy the laws of the state(s) in which Services are being performed), commercial general liability insurance, automobile liability insurance, errors and omissions insurance, and commercial crimes insurance for its employees and business interests. CareWorks Absence Management shall identify Client as an additional insured on its commercial general liability and automobile liability insurance.

**11. Miscellaneous.**

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- (a) **Entire Understanding.** No modification or amendment of, or waiver under, this Agreement shall be binding upon a Party unless set forth in a written instrument executed and delivered by an officer on behalf of each Party. This Agreement constitutes the entire Agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous, express or implied, written or oral, agreements, representations and conditions between the Parties. There are no representations, warranties, or agreements between the Parties hereto except as herein set forth.
- (b) **Choice of Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Michigan without regard to its conflict of law provisions. The Parties shall submit any and all claims, controversies, disputes, or conflicts of any type and of any manner or relating to this Agreement to an appropriate state court in Oakland County, Michigan or the federal District Court for the Eastern District of Michigan.
- (c) **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. The Parties do not intend to create and expressly disclaim the existence of any third-party beneficiaries to this Agreement.
- (d) **Jury Trial Waiver.** With respect to any civil action, counterclaim or proceeding, whether at law or in equity, which arises out of, concerns or relates to this Agreement, any transactions contemplated hereunder, the performance hereof or the relationship created hereby, whether sounding in contract, tort, strict liability or otherwise, trial shall be to a court of competent jurisdiction and not to a jury. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT (STATUTORY, CONSTITUTIONAL, COMMON LAW OR OTHERWISE) IT MAY HAVE TO A TRIAL BY JURY. Either Party may file an original counterpart or a copy of this Agreement with any court as written evidence of the waiver of the other Party's right to trial by jury. No Party has made or relied upon any oral representations by the other Party

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regarding the enforceability of this provision. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

- (e) **Notice.** All notices which are required to be given or submitted pursuant to this Agreement shall be in writing and shall be transmitted or delivered by commercial overnight delivery service to the parties at the addresses set forth below:

**CareWorks Absence Management:**

CareWorks Absence Management  
5555 Glendon Court  
Dublin, Ohio 43016  
Attention: Heather Luiz, President

**With a copy to:**

CareWorks Absence Management  
One Upper Pond Road  
Building F, 4<sup>th</sup> Floor  
Parsippany, NJ 07054  
Attention: Michael Krawitz, General Counsel

**(Client).:**

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

# Attachment 1

## SO AGREED:

City of Royal Oak, Michigan

CareWorks Absence Management

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

\_\_\_\_\_  
Heather Luiz, President

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## STATEMENT OF WORK- City of Royal Oak, Michigan

### Summary of Services to be Provided

CareWorks Absence Management will provide leave management services to Client including (select those that are appropriate):

- Administration of leave under the Family and Medical Leave Act (FMLA)
- Administration of leave under applicable state leave laws. Please list applicable states below:  
Michigan.
- Administration of leave or benefits under applicable Client policies. Please list policies below:
- Coordination of requests for accommodation under the Americans with Disabilities Act, as amended (ADA)

### Detailed Scope of Work

#### 1. Implementation

- Assignment of Implementation Coordinator, Account Executive, and Operations Lead
- Creation of project plan, including establishment of a go-live date
- Review of applicable Client policies for consistency with CareWorks Absence Management best practices
- Workflow development and set up
- Provision of toll free number for reporting absences/claims available 24/7
- Deployment of secure web-based portal for employee absence reporting, real-time claim information and/or claim initiation
- Establishment of weekly status calls during implementation
- Provision of tail (take-over) claim file layout and assistance with downloading file into CareWorks Absence Management's system
- Establishment of eligibility file format for Client to provide CareWorks Absence Management with employee data sufficient to determine employee eligibility for covered benefits
- Provision of correspondence and notifications

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- Instruction regarding report-generation capabilities through web-based portal
- Provision of electronic version of customized employee identification cards, communication and training materials for Client to distribute to employees. Additional fees apply to mailings.
- Training for Client's human resources and select people managers regarding CareWorks Absence Management best practices for FMLA administration and compliance
- Data security protocols including secured connection (SSL), data encryption, unique login accounts, encrypted data file transfer, and secured user access

## 2. FMLA/State Leave Claim Administration

- Entry of claim information in CareWorks Absence Management's proprietary system, CaseWorks
- Evaluation of benefit eligibility
- Determination of benefit entitlement based on work-schedule information provided by Client
- Transmission of eligibility notice, rights and responsibilities notice, certification of healthcare provider, optional authorization for release of medical records and information, and return to work form in accordance with federally regulated timeframes
- Fulfillment of state-specific notification requirements
- Email notification to designated Client contacts regarding all new claims
- Monitoring of employee deadline (at least 15 days) for returning medical certification form
- Review of medical certification of healthcare provider by Absence Management Specialist
- Clarification or escalation review of medical certification if necessary
- Issuance of approval or denial letter to employee with email copy to designated Client contact
- Recording and tracking of benefit utilization with notification to designated Client contact
- Concurrent tracking of FMLA with absences for which STD benefits are being paid, workers' compensation absences, and absences covered by other employer policies

# Attachment 2

- Accurate summaries of all communications with employee and Client within CaseWorks system
- Recertification when appropriate and necessary
- Notification to employee of benefit exhaustion for continuous leaves with a copy to designated Client contact
- Coordination of return to work/fitness for duty certification with designated Client contact

### 3. Coordination of ADA Accommodation Process

- Nurse management of accommodation process
- Retrieval of necessary medical information regarding need for accommodation
- Evaluation of the request for accommodation
- Identification of potential reasonable accommodations
- Assistance with the interactive process between Client and employee
- Provision of information necessary for Client to evaluate potential accommodations for reasonableness or undue hardship
- Documentation of all communications with employee and Client
- Outcome tracking in CaseWorks

### Services

- Training for HR and management
- Training at implementation
- Quarterly stewardship reporting
- Designated Account Executive, Operations Manager, Operations Lead ,Nurse Case Manager for ADAAA

### Key Assumptions

- Client will provide tail claim information in file layout specified by CareWorks Absence Management. If Client does not use the tail claim file layout provided by CareWorks Absence Management, CareWorks Absence Management will complete the file on Client's behalf for an additional fee of \$100 per claim.
- Client and/or its prior third-party vendor will provide all documentation for tail claims within a reasonable time following go-live. If Client elects to defer go-live or chooses to suspend and later re-start implementation, additional implementation fees may apply.

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- CareWorks Absence Management will bill the implementation fee upon commencement of implementation work. If, after implementation work has begun, Client does not proceed with the remainder of implementation or go-live, Client shall still be responsible for payment of the implementation fee.
- Client will provide CareWorks Absence Management with hard or electronic copies of all policies/plans to be administered
- Client will provide updated eligibility files to CareWorks Absence Management through its secure FTP site no less frequently than every two weeks. If Client does not provide timely eligibility files, CareWorks Absence Management will bill Client \$100 for each employee who initiates leave and for whom CareWorks Absence Management must manually build a profile.
- Client will provide 30 days' advance notice of any changes to the content or format of the eligibility file.
- Client will adhere to CareWorks Absence Management best practices compliance recommendations.

**CareWorks Absence Management reserves the right to adjust the fees set forth below to the extent these key assumptions are not met.**

### **Fees:**

Implementation fee (CareWorks Absence Management will invoice this fee once implementation work begins)	\$800
Leave administration per employee per month – "PEPM" (CareWorks Absence Management will invoice the PEPM fee based on the number of employees included in Client's eligibility file)	\$2.45 PEPM FMLA, State, ADAAA
ADA Accommodation Services	Included in Fee above