

Henderson Brothers, Inc.'s Consulting Agreement

This Consulting Agreement, hereinafter referred to as "Agreement" is between the Allegheny County Council hereinafter referred to as "Client" and Henderson Brothers, Inc., hereinafter referred to as "Consultant."

WHEREAS, Client wishes to obtain the assistance of Consultant for the placement of certain insurance policies;

WHEREAS, Consultant has knowledge and expertise in assisting organizations with placing such insurance; and

WHEREAS, the parties wish to set forth their respective expectations;

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the parties hereby agree as follows:

1. Scope of Services to be Provided by Consultant

Consultant will provide Client with consulting and brokerage services (the "Services") for Client's Director's and Officer's Insurance Policies and Program. Consultant will perform the following tasks related to the D&O Insurance:

- Market and negotiate pricing for D&O policy options,
- Advise on policy options,
- Place coverage in consultation with Client,
- Process requests for certificates of insurance,
- Field and respond to requests for endorsements,
- Provide claims management services, as needed,
- Conduct policy reviews, and
- Perform the recordkeeping of insurance documents and invoices.

2. Disclosure and Recordkeeping

A. Full Disclosure. Client has the right to approve any arrangements and/or the utilization of any intermediaries in connection with, or arising out of, or in any way related to Client's insurance and risk management program. Consultant must seek approval from Client prior to the use of any of the above in connection with the Client's insurance and risk management program(s).

B. Recordkeeping. Consultant will maintain accurate and current files including, but not limited to, insurance policies and correspondence with insurers or brokers in accordance with industry standard record retention practice or as otherwise directed by Client.

3. Term & Termination

A. Term. This initial term of this Agreement shall be for three (3) years, commencing on _____ and ending on _____ (the "Initial Term"). Thereafter, this Agreement will renew and remain in effect until terminated as described below.

B. Termination. This Agreement may be terminated only as follows:

- a) By either party, effective upon thirty (30) days' advance written notice to the other party stating that such other party is in breach of any of the provisions of this Agreement, provided such breach (if able to be cured) is not cured within fifteen (15) days after the notice is received.
- b) By Client, effective upon sixty (60) days' advance written notice to Consultant given with or without reason, provided such notice is given after the Initial Term; or
- c) By mutual written agreement of the parties.

Any termination of this Agreement shall not relieve Client of any payment or reimbursement obligations to Consultant for the Services rendered prior to the effective date of termination.

4. Cost of Services

Client agrees to pay Consultant the professional fees in the form of a consulting fee in a single annual payment of \$2,500. Consultant will invoice Client annually. Client agrees to make payment within 30 days. Client also agrees that on each anniversary of the Effective Date, the consulting fees shall increase at 3.00% per annum as a COLA. Client agrees and accepts the COLA adjustment will occur automatically on each anniversary of the Effective Date.

5. Personnel

Consultant will assign its personnel according to the needs of Client and according to the disciplines required to complete the appointed task in a professional manner. Consultant retains the right to substitute personnel with reasonable cause.

6. Indemnification Rights and Limitation of Liability

- a) Indemnification. Each party ("Indemnifying Party") will promptly defend, indemnify, and hold the other party ("Indemnified Party") harmless from and against any and all claims, suits, actions, liabilities, losses, expenses, or damages which the Indemnified Party may incur as a result of any violation by the Indemnifying Party of any law, or any loss or expense to the Indemnified Party caused by the misrepresentation, negligent act or omission, or any breach of any of the Indemnifying Party's obligations under this Agreement or otherwise.
- b) Limitation of Liability. Notwithstanding any other term or provision of this Agreement, each party shall only be liable for actual damages incurred by the other party, and shall not be liable for any indirect, consequential, or punitive damages, including but not limited to, lost profits. Furthermore, the aggregate liability under this Agreement, if any, of either party to the other for claimed losses or damages shall

not exceed One Million U.S. Dollars (\$1,000,000). This provision applies to the fullest extent by applicable law.

7. Client's Responsibilities

Client will make available such reasonable information as required for Consultant to conduct its services. Such data will be made available as promptly as possible. It is understood by Consultant that the time of Client's personnel is valuable, and judicious use of that time is a requirement of this Agreement. Client agrees to make timely payments of the service fees as set forth elsewhere in this Agreement.

8. Reliance

Consultant, in the performance of its duties, may rely upon, and will have no obligation to independently verify the accuracy, completeness, or authenticity of, any written instructions or information provided to Consultant by Client or Client's designated representatives and reasonably believed by Consultant to be genuine and authorized by Client.

9. Records and Information

Consultant understands and agrees to limit its use and disclosure of Client's proprietary information. Consultant agrees to not disclose Client's and/or an employee's / claimant's personal or financial information, except as necessary to perform under this Agreement.

10. Independent Contractor. It is understood and agreed that Consultant is engaged by Client to perform services under this Agreement as an independent contractor. Consultant shall use its best efforts to follow written, oral, or electronically transmitted instructions from Client as to policy and procedure. If Consultant wishes to utilize sub-contractors to perform the Services, it shall receive Client's written approval before doing so.

11. Fiduciary Responsibility.

Client acknowledges that: (i) Consultant shall have no discretionary authority or discretionary control respecting the management of any of the insurance policies, and (ii) Consultant shall perform services pursuant to this Agreement in a non-fiduciary capacity.

12. Severability.

The various provisions and sub provisions of this Agreement are severable and if any provision or sub provision or part thereof is held to be unenforceable by any court of competent jurisdiction, then such enforceability will not affect the validity or enforceability of the remaining provisions or sub provisions or parts thereof of this Agreement. In such event, the parties shall attempt to amend this Agreement consistent with the original intent of this Agreement.

13. Governing law; Rule of Construction.

This Agreement will be construed, interpreted, and enforced in accordance with the laws of the Commonwealth of Pennsylvania without giving effect to the choice of law principles thereof or any canon, custom, or rule of law requiring construction against the drafter.

14. Successors.

This Agreement shall be binding upon and shall inure to the benefit of all assigns, transferees, and successors in the interest of the Parties hereto.

15. Survival of Provisions.

Sections 4, 6, 9, and 10 will specifically survive the termination of this Agreement.

16. Entire Agreement

This document constitutes the entire Agreement between the parties, and any other warranties or agreements are hereby superseded. Should any provision in another document or purported oral agreement differ or be inconsistent with any provision herein, the terms of this Agreement shall control.

Subsequent amendments to this Agreement shall only be in writing signed by both parties.

The Allegheny County Council

By: _____

_____ *Date*

_____ *Print Name*

_____ *Title*

HENDERSON BROTHERS, INC.

By: _____

_____ *Date*

_____ *Print Name*

_____ *Title*