

OPERATING MEMORANDUM
CITY OF WINSTON-SALEM, NORTH CAROLINA
AND
RISK ACCEPTANCE MANAGEMENT CORPORATION
Contract Year: July 1, 2021 to June 30, 2022

Section 1. Introduction. In consideration for the establishment of the Risk Management Program (Program) for the City of Winston-Salem, North Carolina (City) in order to provide a vehicle for the administration and payment of claims against the City, and in consideration for the prompt payment of all basic payments and additional payments to Risk Acceptance Management Corporation (Corporation), and in consideration for the execution of the Claim Administration Contract (Contract); the Corporation agrees to administer and pay claims for damages (established by judgment of a court of competent jurisdiction or by settlement as hereinafter provided) arising from actions or inactions of the City or its elected officials, appointed officials, employees, or agents as outlined below.

The City will not be required to make a basic payment for the term of this Contract which is estimated by the Corporation to be sufficient for administration of the Program as contemplated by the Contract and this Operating Memorandum, including the creation of reserves for claims, payment of claims, and payment of fees and expenses of the Program. RAMCO has previously agreed to be responsible for normal claim payments and expenses of not more than \$1 million. In the event that the Corporation determines that 1) the basic payment is insufficient for administration of the Program as contemplated by the Contract, the Indenture, and this Operating Memorandum, including creation of reserves for claims, payment of claims and payment of fees and expenses of the Program, and 2) RAMCO's cash and investments are less than \$25,000,000, the City will pay such deficiency as an adjustment to the basic payment. The Corporation will provide the City with written notice of any such deficiency and the amount thereof. Upon receipt of such notice, the City will pay an additional payment, provided, however, that a deficiency may

be paid, at the City's option, in equal annual installments over a period of not more than five (5) years.

In addition to the other provisions hereof, the City transferred on August 15, 1994, the balance in its excess claim reserve (\$1,254,226) to RAMCO for investment and, together with any investment earnings thereon, shall be used to pay individual or annual aggregate claims in excess of \$1 million but less than \$3 million. Should there be a claim or annual aggregate claims in excess of \$1 million for which payment has to be made, the payment in excess of the \$1 million is to be made by RAMCO from the Excess Claims Reserve. It is the intention of the parties that any reduction of the Reserve by payment of claims in excess of \$1 million will be restored by the City over a five (5) year period, but the City may choose not to reimburse the claim payment if the Reserve exceeds \$3 million at March 31 of the prior fiscal year after the excess payment is made. The City may request the return of the excess claim reserve prior to adoption of any future Operating Memorandum.

Section 2. Claims Subject to Administration by Corporation. Except as otherwise provided hereinafter, the Corporation shall be responsible for the administration of all claims for damages against the City which are not covered by commercial insurance (or participation in the Interlocal Risk Financing Fund of North Carolina or a similar "pooled fund") subject to either a \$1 million limit per occurrence or an aggregate of claims totaling \$1 million. The Corporation shall likewise be responsible for payment of any damages within the scope of its administration, if the damages are established by judgment of a court of competent jurisdiction or by settlement, consistent with the City policy on settlement of claims; provided, however, nothing herein shall be construed as indicating that governmental immunity shall not be used as a defense to any claim or to payment of any judgment, when applicable. The Corporation shall have authority to settle claims, either bodily injury or property damage, if the amount to be paid in settlement is \$20,000

or less after consultation with the City's Risk Management Director. If either of these claims exceed \$20,000 but does not exceed \$100,000, the claim may be settled only upon action of the Board of Directors of the Corporation. If the amount of money required to settle either of these claims exceeds \$100,000, approval of the City Council of the City of Winston-Salem shall be required. For approvals of authority, settlements for bodily injury and property damage are considered separately.

The responsibility of the Corporation for administering claims and paying judgments, as stated in this Section, shall also be applicable to officers and employees of the City subject to, and in accordance with the provisions of a resolution entitled "**RESOLUTION RELATING TO CLAIMS AND JUDGMENTS SOUGHT OR ENTERED AGAINST CITY OFFICERS OR EMPLOYEES**".

Section 3. Claims Not Subject to Jurisdiction of Corporation. The obligation of the Corporation to administer claims and make payments pursuant to the Contract and this Operating Memorandum shall not include any claim for which the City or Corporation is indemnified by insurance coverage through commercial insurance or participation in a "pooled fund" program such as the Interlocal Risk Financing Fund of North Carolina. Further, the Corporation shall not have jurisdiction over claims arising from completed products, water utility products with the exception of sewer backups, environmental hazards, storm water drainage, intentional injury or intentional infliction of damages, uninsured motorist, underinsured motorist, any no-fault claims, and any claims to the extent that they exceed \$1 million per occurrence or annual aggregate claims in excess of \$1 million but less than \$3 million, provided, however, those claims shall be subject to administration by RAMCO from the Reserve transferred by the City to RAMCO as described in Section 1 herein.

Section 4. Purchase of Liability Insurance. Nothing in the Contract is to be interpreted as preventing the City of Winston-Salem or the Corporation from purchasing commercial liability insurance or participating in a "pooled fund" insurance program. However, nothing in this Contract is to be interpreted as providing for liability insurance as the City does not have, and does not intend to have, insurance to pay basic claims except, as the City or Corporation shall notify the other party from time to time.

Section 5. Defenses Available to Corporation in Administering Program. It is the intent of the parties hereto that governmental immunity and any and all defenses available to a municipality that does not have liability insurance shall apply in the administration of this agreement, except to the extent the City is indemnified by purchased commercial liability insurance or a "pooled fund" program. It is understood that the Contract to which this Operating Memorandum is an exhibit is for risk administration and is not to be construed as a contract of insurance.

Section 6. No Liability Created. The parties hereto understand and agree that this Operating Memorandum and the Contract to which it is an exhibit are not intended to create any liability that would not otherwise exist.

Section 7. Claims Processing. Claims subject to the jurisdiction of the Corporation will normally be handled as follows: City personnel will initially receive and investigate all liability claims; upon determining that the claim is within the jurisdiction of the Corporation and is not of such a nature as to be summarily rejected, the City personnel shall furnish the claim and any investigative materials to the Corporation; the Corporation shall make such further investigation as it deems appropriate, settle the claim as herein before provided if deemed appropriate, and defend the claim if it results in litigation. To that end, the Corporation may

employ or contract for the services of actuaries, accountants, adjusters, attorneys, and such other employees or consultants as necessary to carry out its duties.

Section 8. Administration and Payment of Workers' Compensation Claims Exceeding \$250,000. In addition to the other rights and responsibilities of the City and RAMCO as specified herein, the parties agree that RAMCO will administer and pay workers' compensation claims determined to be due and which exceed the sum of \$250,000.

Section 9. Administration and Payment of Health Care Claims Exceeding \$250,000. In addition to the other rights and responsibilities of the City and RAMCO as specified herein, the parties agree that RAMCO will administer and pay health care claims determined to be due and which exceed the sum of \$250,000.

Section 10. Operating Memorandum as Part of Contract Between City and Corporation. Although denominated as an Operating Memorandum, and subject to annual review, this document is a part of the Contract and is to be interpreted as if incorporated verbatim into the Contract.

Section 11. Term. This Operating Memorandum shall be for the contract year July 1, 2021 to June 30, 2022.

Executed this ____ day of _____, 2021.

City of Winston-Salem, North Carolina

By _____
City Manager

Attest: (SEAL)

By _____
City Clerk

Risk Acceptance Management Corporation

By _____
President

Attest: (SEAL)

By _____
Secretary