RESOLUTION - ACTION REQUESTED 2015-213

MEETING: May 12, 2015

TO: The Board of Supervisors

FROM: Steve Johnson, Human Resources Director - Risk Manager

RE: Freese & Gianelli Claim Services Claims Administration Agreement

RECOMMENDATION AND JUSTIFICATION:
Approve an Agreement with Freese & Gianelli Claim Services, in a Not-To-Exceed Amount of $15,000, for the Period of July 1, 2015 to June 30, 2016, and Authorize the Board of Supervisors Chair to Sign the Agreement. Freese & Gianelli have been serving as the County’s General Liability Claims Administrator and perform all necessary administrative, investigative and clerical work in connection with tort liability claims filed against the County.

Last year, Freese & Gianelli reduced their contractual not-to-exceed amount charged to the County by 100 percent, from $30,000 to $15,000, due to both efficiency of service provided, and an overall reduction in the claims that were filed against the County. The proposed not-to-exceed amount for the July 1, 2015-June 30, 2016, Agreement period is again recommended at $15,000.

Finally, Freese & Gianelli's annual administrative fee ($2,000) and hourly rate ($75) remain unchanged.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
Since 1985, Freese & Gianelli have successfully served as the County’s General Liability Claims Administrator.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Seeking another liability claims administrator on short notice may result in both a disruption of service, and a loss of institutional claims history.

FINANCIAL IMPACT:
Funding is budgeted in the Liability Insurance Fund.

ATTACHMENTS:
Freese & Gianelli Agt (PDF)
CAO RECOMMENDATION
Requested Action Recommended

Mary Hodson
Mary Hodson, CAO 5/7/2015

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Marshall Long, District III Supervisor
SECONDER: John Carrier, District V Supervisor
AYES: Rosemarie Smallcombe, Merlin Jones, Marshall Long, John Carrier
EXCUSED: Kevin Cann
LIABILITY CLAIMS ADMINISTRATION

AGREEMENT

THIS AGREEMENT is entered into effective July 1, 2015 by and between the County of Mariposa, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and Freese & Gianelli, Inc., a California Corporation, hereinafter referred to as "ADMINISTRATOR".

WITNESSETH:

WHEREAS, COUNTY'S General Liability Insurance requires COUNTY to be self-insured for a portion of the potential liability of COUNTY, and

WHEREAS, COUNTY'S liability policy additionally requires that COUNTY employ a liability claims administrator, and

WHEREAS, ADMINISTRATOR is in the business of providing liability claims administration, and

WHEREAS, ADMINISTRATOR desires to provide liability claims administration services to COUNTY, and

WHEREAS, COUNTY desires ADMINISTRATOR to provide liability claims administration to COUNTY;

NOW, THEREFORE, for a valuable consideration, receipt of which is hereby acknowledged, and in further consideration of the mutual covenants and conditions hereinafter contained, the PARTIES hereto agree as follows:

1. The terms and conditions of this AGREEMENT shall cover the operations of COUNTY in the State of California.

2. This AGREEMENT shall commence July 1, 2015 and shall terminate June 30, 2016.

3. ADMINISTRATOR shall provide to COUNTY all of COUNTY'S liability claims administration during the term of this AGREEMENT. ADMINISTRATOR shall provide to COUNTY the following:

a. Examination of all claim and loss reports of personal injury, sickness, or disease, incurred during the term of this AGREEMENT (and death resulting at any time from any of the foregoing) by any person, and including personal injury, sickness, disease, or death, with respect to which the COUNTY has assumed the liability of others under contract. This provision does not apply to personal injury, sickness, disease, or death incurred by any employee of the COUNTY in the course and scope of his employment by the COUNTY and for which benefits are payable under any State or Federal Workers' Compensation Laws or similar laws.
b. Examination of all claim and loss reports of loss, damage or destruction of property incurred during the term of this AGREEMENT.

This provision does not apply to:
   i. Property owned by or in the care, custody, or control of COUNTY or property as to which COUNTY is exercising physical control for any purpose whatsoever, nor to
   ii. Property loss, damage, or destruction which is covered by property insurance maintained by or inuring to the benefit of COUNTY.

c. Conduct an investigation of the reported claims and loss, qualifying under 3(a) and 3(b) above, to the extent deemed necessary in the judgment of ADMINISTRATOR; to adjust and handle to a conclusion those claims ADMINISTRATOR, in its judgment, believes COUNTY is legally obligated to pay or which COUNTY advises ADMINISTRATOR they voluntarily wish to pay, and including the necessary preparation fee for any subrogation or contribution action which, in the judgment of ADMINISTRATOR, may inure to the benefit of COUNTY.

d. Perform all reasonable and necessary administrative and clerical work in connection with claim or loss reports qualifying under provisions 3(a) and 3(b).

e. Adjust, settle or resist all qualifying claims and loss and litigation arising therefrom, within discretionary settlement authority limit which may be provided by COUNTY; and with specific approval of COUNTY to adjust, settle, or resist all other qualifying claims and losses and litigation resulting therefrom, in excess of the discretionary settlement authority limit.

f. Conduct all necessary trial preparation, as requested by defense counsel.

g. Maintain a claim file for each reported claim which shall be reviewable at any and all reasonable times by COUNTY.

h. Provide all claim forms necessary for the efficient operation of the self-insurance program.

i. Provide a quarterly report which shall include a detailed listing of all claims by departments, summary description, loss payments, allocated expense, open reserves and a status of each pending claim in a format acceptable to COUNTY.

j. Provide 24-hour claim service with the availability of adequate backup staff from other offices.

k. Where ADMINISTRATOR or COUNTY deems necessary, ADMINISTRATOR will immediately consult with County Counsel or defense counsel for COUNTY in order to establish protection of the investigation under the theory of work-product through the theory of attorney-client privilege.
1. Once a suit has been filed against COUNTY, an immediate determination will be made with approval of County Counsel relative to referring the case to defense counsel for the filing of the appropriate appearance. In those instances where it appears settlement is imminent, the time for filing an answer will be protected in writing by ADMINISTRATOR and negotiations either instituted or continued.

m. Upon decision to refer the case to defense counsel, a copy of the entire investigation file will be transmitted to the defense attorney for review, analysis and filing of the appropriate appearance. From that point forward as approved by County Counsel, ADMINISTRATOR will continue to investigate, report, consult and meet with defense counsel and COUNTY personnel or representatives of their excess carrier in attempt to analyze the developments in the case and perfect those areas of defense as authorized by COUNTY.

n. ADMINISTRATOR will handle all pre-trial and in-trial investigation and activity as may be required to reach the optimum results in those cases of litigation as requested by COUNTY.

4. COUNTY shall pay to ADMINISTRATOR for services provided hereunder the following:

a. An annual administration fee of TWO THOUSAND DOLLARS ($2,000.00).

b. COUNTY shall additionally pay ADMINISTRATOR adjusting and investigative fees, office overhead, telephone charges and stenographic services at $75 per hour. Other services will be billed as follows:

<table>
<thead>
<tr>
<th>Service</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mileage</td>
<td>$.75 per mile</td>
</tr>
<tr>
<td>Photographs</td>
<td>$2.00 each</td>
</tr>
<tr>
<td>Cassette Tapes</td>
<td>$1.50 each</td>
</tr>
<tr>
<td>Reports/Outside Information</td>
<td>At Cost</td>
</tr>
<tr>
<td>Maximum Annual Fee</td>
<td>$15,000.00 (Agreement year)</td>
</tr>
</tbody>
</table>

The above-charges do not include: investigative and adjustment expense outside of the area serviced by Freese and Gianelli Claim Services; court costs; fees for attorneys; costs of undercover operatives; costs of employing consultants or experts for preparation of maps, photographs, diagrams, chemical or physical analysis or for advice, opinion or testimony concerning claims under investigation or litigation, such costs shall have advanced, written approval by COUNTY.

Also not included are costs for legal transcripts of testimonies taken at coroner's inquests, criminal or civil depositions and court reporters; and any other similar fee, cost or expense reasonable chargeable to the investigation, negotiation, settlement or defense of a claim, such costs shall have advanced, written approval by COUNTY.

c. It is expressly agreed by and between the PARTIES hereto that the total of the above administrative fee and adjusting and investigation fees shall not exceed an annual total cost to COUNTY of Fifteen Thousand Dollars ($15,000.00).
5. Adjusting and investigation fees for which the County of Mariposa is reimbursed by COUNTY'S Special Excess Liability Insurance Carrier shall not be allocated or chargeable to the annual total costs limits of Fifteen Thousand Dollars ($15,000.00).

6. All such fees described in Paragraph 4, above will be payable quarterly. Fees will be billed by ADMINISTRATOR on the basis of time and expense incurred for each claim file concluded or the interim charges for each claim file pending in litigation.

7. COUNTY shall:
   a. Pay all losses and claims which are approved for payment by COUNTY and for all "Allocated Loss Expense."
   
   b. Pay to ADMINISTRATOR the service fee as prescribed and include in the conditions of this AGREEMENT. The service fee is not included in and does not include "Allocated Loss Expense."

8. All "Allocated Loss Expense", as defined herein, incurred in the adjustment, handling, settlement, or resistance to claims (including litigation), within the discretionary settlement authority limit of ADMINISTRATOR, or in excess of the discretionary settlement authority limit but not with the specific approval of COUNTY shall be borne by ADMINISTRATOR.

9. ADMINISTRATOR shall have full authority and control in all matters pertaining to the adjustment, handling, investigation, and administration of claims and losses within the discretionary settlement authority limit (if provided) and may make such adjustment or settlement of claims within the discretionary settlement authority limit which in its judgment it deems proper.

10. Failure of ADMINISTRATOR to settle a claim or loss within the discretionary settlement authority limit shall not subject ADMINISTRATOR to liability above the discretionary limit in the event of an adverse judgment.

11. Upon termination of the AGREEMENT, a final accounting will be made of the service fees and "Allocated Loss Expense", if any, owing to ADMINISTRATOR and of any funds belonging to COUNTY in possession of ADMINISTRATOR. Any balance due will be promptly paid.

12. Any claim(s) or loss(es) pending on date of AGREEMENT termination will be handled and adjusted to conclusion by ADMINISTRATOR to liquidate such outstanding claim(s) or loss(es), including sufficient funds to satisfy anticipated "Allocated Loss Expense." Should COUNTY specify in writing to ADMINISTRATOR that pending claim(s) and loss(es) are to revert to control of and become the responsibility of COUNTY upon date of AGREEMENT termination, final accounting as per 4 (b) above shall include any amounts due either PARTY on account of such pending claim (s) and loss (es) including "Allocated Loss Expense."
13. "Allocated Loss Expense" shall mean all court costs, fees and expenses; fees for service of process; fees to attorneys; costs of undercover operative and detective services; fees of independent adjusters or attorneys for investigation or adjustment of claims outside of the area normally serviced by ADMINISTRATOR; cost of employing experts for preparation of maps, photographs diagrams, chemical or physical analysis or for advice, opinion or testimony concerning claims under investigation or in litigation; costs for legal transcripts of testimony for copies of any public records, costs of depositions and court reporter or recorded statements; and any other similar fee, cost or expense reasonably chargeable to the investigation, negotiations, settlement, or defense of a claim or loss or to the protection and perfection of the subrogation rights of COUNTY.

14. No forms, periodic reports, or reports on the status of individual claim or loss files, other than as provided in Paragraphs 3(g), 3(h), and 3(i), are required from ADMINISTRATOR, except as may be mutually agreed to on individual claim or loss files.

15. This AGREEMENT shall be interpreted pursuant to the laws of the State of California.

16. ADMINISTRATOR shall not assign or in any way hypothecate its interest hereunder without the express written consent of COUNTY first obtained.

17. In the event of a default hereunder, the non-defaulting Party shall be entitled to attorney's fees and costs incurred, whether or not litigation is instituted. County may terminate this Contract at any time by providing a notice in writing to Contractor that the Contract is terminated. Said Contract shall then be deemed terminated, and no further work shall be performed by Contractor. If the Contract is so terminated, the Contractor shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

COUNTY OF MARIPOSA:

Merlin Jones
Chair, Board of Supervisors
Date: May 12, 2015

FRESE & GIANELLI, INC.,
A California Corporation:

Neal Trost, Senior Vice President
Date: May 5, 2015

ATTEST:

RENE LaROCHE
Clerk of the Board

APPROVED AS TO FORM:

STEVEN W. DAHLEM
County Counsel