Nolan M. Fields IV
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TO: Board of County Commissioners
Karen Keith, Chairman
Stan Sallee
Ron Peters

APPROVED
JUN 17 2019

DATE: June 13, 2019

REFERENCE: Large Loss Management Agreement with L2M, LLC for Administration of Claims Related to the May 2019 Flooding Emergency in Tulsa County

248129

Please place this item on the agenda for the next meeting of the Board of County Commissioners. It will not be necessary to review this matter in executive session. The vendor has already signed this document, and it is presented for this Board's review and potential action. Please let me know if you have any questions.

Respectfully,

Nolan M. Fields IV

Nolan M. Fields IV
Assistant District Attorney

CC:
Kathy Burrows, HR Director

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APPROVED

JUN 17 2019

LARGE LOSS MANAGEMENT AGREEMENT

This Large Loss Management Agreement ("Agreement") entered into this **12th day of June 2019**, by and among the Client and/or Insured, **Tulsa County, 500 South Denver, Tulsa, OK, 74103**, Client , (hereinafter jointly referred to as "Client"), and **L2M, LLC**, a Texas LLC having offices in Castle Rock, Colorado, at 202 6th street, Suite 301K and 2530 East 71st Street, Suite L, Tulsa Oklahoma 74136 (hereinafter "L2M") (collectively "Parties"). This agreement is regarding pre-claim and/or active insurance claims associated with Client Properties (hereinafter "Properties") legally identified in Schedule A attached.

RECITALS

WHEREAS, The Client has the authority to act on behalf of the Insured for the Properties (Attached) and has or may in the future experience a Large Loss (as defined below) (each, a "Large Loss Claim"), and represents that they or their agents are duly authorized to enter into this binding Agreement; and

WHEREAS, The Client acknowledges that the complexity of the Claims is in excess of their normal scope of work, requiring professional management, and wishes to engage L2M to perform the services listed in Exhibit A and to otherwise manage the indemnification and repairs related to a Large Loss Claim; and

WHEREAS, L2M is a professional firm specializing in Large Loss insurance claims and the indemnification of its clients to return their property to pre-loss state; and

NOW, THEREFORE, in consideration of the mutual promises made herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

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DEFINITIONS

1. Claim Amount or Replacement Cost Value (RCV): The total amount of money paid by the Insurer to the Insured (Client) in conjunction with any and all parts or associated costs relating to the Claim, including deductibles; full or partial settlements, whether by agreement, court judgment, mediation, arbitration, appraisal, and other forms of dispute resolution.

2. Construction/Commercial Management: The activities and processes required to complete a construction project as defined by a Scope of Work, Plans, Specifications or other instrument that is commonly accepted in the construction industry.

3. Claims Administration: The act or process of managing an insurance claim for the best possible outcome for the Client, including but not limited to damage assessments, documentation, interfacing with the Carrier, Brokers, Trades, Property Managers, and others as necessary to pursue indemnification of the Client.

4. Large Loss: Any loss or damage that is greater than $50,000 USD or a claim that the Client requests L2M to assist with due to scope and complexity.

5. Insurer/Carrier: The Insurance Company with whom the Client is insured with respect to the Claim or by whom the Client is owed indemnification.

6. Overhead and Profit (O&P) and Commercial Construction Management Fees: The Insurer line item(s) that reflects the cost of managing the construction required to indemnify the Client from their Claim; paid in addition to the trade's actual costs of labor, materials and their corporate O&P for the indemnification of the Claim.

7. Pre-event envelope assessment: The performance, and subsequent documentation, of a baseline assessment regarding the existing external conditions of a facility.

AGREEMENT

1. **Consideration and Fees.** The Parties agree that the fees to be paid to L2M for services shall be the total amount of negotiated O&P, Commercial Construction Management fees, if any, or other insurance paid items paid by the Carrier for managing the construction for each Claim that L2M manages. Fees are due and payable promptly upon receipt of funds from the Carrier. Any additional fees for out of scope work must be agreed, in advance and in writing, by both Parties. L2M recognizes that we are at risk of payment from the insurance provider as it relates to an insurance claim, on a "pay if paid" basis. **Initial_____.**

2. **Term and Termination.** The term of this Agreement shall be for twelve months (12) following the date of this Agreement and shall continue thereafter on a month to month basis unless terminated as provided in this paragraph. Notwithstanding the foregoing, either Party may terminate this agreement by giving 30 (thirty) days written notice to the other Party, during which time all outstanding invoices shall be paid in full based on the work in place as of the effective date of termination (but subject to receipt of funds from the Carrier in accordance with paragraph 1) and a final reconciliation of any work in place shall be conducted. L2M shall be entitled to its full fees for any and all services rendered during the period of performance. Should there be any dispute between Parties regarding close out of services for anything less than the full agreed service fee, defined in paragraph 1, L2M shall be entitled to payment of $300 (three-hundred) USD per hour of work related to the project and actual expenses plus 10% (ten percent). The termination of this Agreement will

not release either Party from any payment or other obligations accruing prior to the effective date of such termination and such obligations shall remain in effect until all payments and other obligations are made and/or performed in full and both Parties release each other. **Initial_____.**

3. **Scope and Claim Identification.** Scope of work shall be identified in **Exhibit A.** An active Claim shall be documented in **Exhibit B** and shall constitute a notice to proceed by the Client for L2M to begin all work identified in this Agreement. L2M shall obtain the prior written approval of Client prior to any final settlement or adjustment of a Claim. At all times during the performance of the services under this Agreement, L2M is and shall be an independent contractor, and shall act solely as agent and for the account of Client regarding each Claim.

4. **Pre-event envelope assessment.** Unless L2M is paid for the Pre-event assessment, the Parties agree that the Pre-event assessment is NOT work for hire and is the wholly owned IP of L2M, until such time as it is used in an actual Claim. Once the Claim has been completed, all invoices are settled and a final Acceptance of Work and Mutual release is signed, the complete documentation package, including the Pre-event assessment shall become property of the Client. Client hereby grants a perpetual license to L2M, or is successors, to the rights and use of all documentation, construction documents, photos, video, and Claim information for the purposes of record keeping.

5. **Third-Party Paymaster.** In order to better facilitate the construction and indemnification process, L2M uses a Third-Party Paymaster to receive any and all funds from the Claim paid by the Carrier and including deductibles paid by Client. Client shall have the right to approve the Paymaster and any agreement with the Paymaster prior to its being retained, and to impose reasonable requirements to ensure that all funds are adequately protected, bonded and/or insured. The Paymaster will pay all approved invoices at the direction of the Client and L2M. The service provides a buffer between the Client and tradesmen/material suppliers and allows for full accounting of the Claim. The service includes a fully audited accounting of the Claim and a segregated accounting file for the Client's records by an independent CPA and fraud examiner. This service is provided at **NO COST** to the Client but must be selected and requires a separate contract with the Paymaster.

6. **Notifications.** Parties agree to notify each other of any damage to the Property before engaging or notifying any third-party, except that Client shall be permitted to notify its lender, tenants and others as may be required pursuant to any agreement or by law. This is specifically intended to prevent any third-party from complicating the Claim and

potentially causing a detriment to the Client. (i.e. roofers, contractors, outside adjusters, etc.) **Initial**_____.

7. L2M is authorized to negotiate terms and conditions with all contractors and trades working on the Claim, including but not limited to, prices and fees, scheduling, materials management and disposal, site clean-up, punch lists and close out. Client, or the applicable property owner, shall be the signatory to, and shall have final approval over the terms and conditions of, any contracts for the work under each Claim, and L2M acknowledges that such contracts may be subject to lender approval as well.

8. L2M shall have no other duties to Client, contractors, subcontractors, materials suppliers or any other party, and L2M shall have no authority to act regarding a Claim, other than as set forth herein. L2M shall have no liability for liens or other proceedings which may arise as a result of a failure to pay an invoice which has not been properly approved by the Client or for which the Carrier has not made payment. L2M shall perform its services under this Agreement in compliance with all applicable laws, rules, regulations and orders of any governing authority having jurisdiction, and in accordance with all licenses and permits issued for any work pursuant to a Claim.

9. Client and each contractor are responsible for making any regulatory, tax or other filings if any are required. L2M shall have no obligation to make such filings.

10. L2M shall indemnify, defend and hold harmless Client and its members, managers, directors, officers and employees from any and all Actions (as defined below) sustained or incurred by or asserted against any one or more of them arising from (a) the negligent or willful acts or omissions of L2M or its agents or employees, (b) a breach by L2M of its duties and obligations under this Agreement, or (c) acts by L2M outside the scope of its authority under this Agreement (each, a "L2M Indemnified Action"). ~~Client shall indemnify, defend and hold harmless L2M and its members, managers, directors, officers and employees from any and all Actions sustained or incurred by or asserted against any one or more of them arising from (y) the negligent or willful acts or omissions of Client or its agents (other than L2M) or employees, or (z) a breach by Client of its duties and obligations under this Agreement, except in each case, to the extent that any indemnification by Client arises out of a L2M Indemnified Action.~~ "Actions" means any third-party claim, demand, cause of action, loss, damage, fine, penalty, liability, cost and expense, including attorneys' fees and court costs. Notwithstanding any other provision of this Agreement to the contrary, each party's obligation to indemnify, defend and hold harmless the other party shall survive termination of this Agreement.

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11. This agreement shall be governed by the law of the State of Oklahoma, USA. Any dispute arising from or related to this agreement shall be submitted to binding arbitration before the American Arbitration Association. Any such Arbitration shall be located and conducted in Tulsa, Oklahoma, USA according to the provisions of the Federal Arbitration Act and the Commercial Rules of the American Arbitration Association.

12. The Client represents and warrants that all documents and information provided to L2M to complete its due diligence in connection with any Claim are true and accurate, and that the individuals identified as such are the authorized signatories for the Client.

13. The provisions in this agreement shall survive the expiration or completion of the duties set forth herein.

14. This is the entire agreement between the parties; any modifications of this agreement shall be in writing signed by the parties agreeing to any modification.

15. This agreement shall become effective upon the date of the last signature of the parties.

16. If any provisions within this contract are found to be unenforceable by a court of competent jurisdiction, all other provisions shall remain in full force and effect.

17. This Agreement may be executed in as many counterparts as may be necessary, including by facsimile or .pdf format, and each such counterpart so executed shall be deemed to be an original; and such counterparts together shall constitute one and the same instrument.

18. Following the voluntary termination of this agreement all provisions regarding confidentiality and trade secrets shall remain in effect.

Confidentiality & Protection of Trade Secrets

1. **Parties' Obligations**. Each of the parties will: (1) keep and maintain all Confidential Information of the other Party in confidence, using such degree of care as is appropriate to avoid unauthorized use or disclosure; (2) not, directly or indirectly, disclose Confidential Information of the other Party, except as set forth in paragraph 3 below or with the prior written consent of the other Party; (3) upon the expiration or termination of this Agreement and upon the request of the other Party, promptly deliver to the requesting Party or, at the requesting Party's option or in the absence of direction from the other Party, destroy, all information, data, memoranda, notes, records, reports, media and other documents and materials (and all copies thereof) regarding or including any Confidential Information of the requesting Party which the other Party may then possess or have under its control; and (4) not take any action with respect

to the Confidential Information of the other Party that is inconsistent with its confidential and proprietary nature.

2. **Confidential Information Defined.** For purposes of this Agreement, "Confidential Information" will mean with respect to L2M, (i) trade secrets (including the identities of agents and contacts and information related to business methods and services ("Trade Secrets")), (ii) information with respect to employees, customers and strategies, (iii) confidential information of third parties with which L2M conducts business, and with respect to each Party any information marked confidential, restricted or proprietary, and the payment terms of this Agreement.

3. **Permitted Disclosure.** Each of the Parties will be permitted to disclose Confidential Information of the other Party: (1) to its employees, lenders and agents having a need to know such information in connection with the performance or receipt of the Services or its obligations pursuant to this Agreement; and (2) if disclosure is required by law or requested by an authorized government agency; provided, however, that the disclosing Party will notify the other Party in advance of such disclosure, and provide the Party with copies of any related information so that the Party may take appropriate action to protect its Confidential Information. With respect to this clause (1) each of the parties will instruct all such employees, agents and subcontractors of their obligations under this Agreement.

Signature Page

The above terms and conditions of this Agreement are hereby agreed:

Client

Signature: _____

By: Karen Keith
Title: Chairman
Dated: 6/17/2019

Attest: _____
County Clerk

COUNTY CLERK TULSA COUNTY OKLAHOMA

L2M, LLC

Signature: _____

By: Chris Dorris
Title: Managing Director
Dated: 12 June 2019

Nolan M. Fields IV 6-12-19
APPROVED AS TO FORM
ASSISTANT DISTRICT ATTORNEY

Schedule A

The Properties identified as under contract by L2M as agreed in this Agreement are:

Address: Multiple unnamed locations in Tulsa County, OK covered by policy # MLP0198193-02

Exhibit A

Scope of Work. Activities vary based on each claim and includes, but are not limited to, the following:

1. L2M (if applicable) will perform a pre-event assessment of the Properties and document the findings for use in the event of subsequent claim.
2. Provide active storm tracking and alerts.
3. As part of an active claim, L2M will perform the necessary activities required to document the loss, assist with any negotiations with the Carrier, manage construction, and assist in the indemnification of the Properties, based on the agreed scope with the Carrier.
4. Recommend and vet ethical trades and contractors, including policies and procedures, appropriate liability insurance, safety plans and history and other items as necessary to retain the best available trades.
5. Review all contractor agreements for language that would cause undue risk/liability to the Client and negatively impact the Claim.
6. Management of trades including scheduling, inventory of materials and working around Property activities.
7. Review and approve trade invoices for accuracy and payment.
8. Obtain a Release of Lien for each contractor's work.
9. Distribute weekly activity and status reports to Client.
10. Address all Client concerns with the Claim and construction process.
11. Coordinate with Carrier to expedite the Claim process.
12. Provide a full accounting of all work done by trades on the Property
13. Create a bound deliverable documenting all aspects of the claim.
14. Perform in the overall capacity of the owner's representative and advocate.
15. Other tasks as may be necessary and relevant to the best interests of the Client.

Agreed and accepted: **Initial**_____.

Exhibit B

Identification of Active Loss or Claim and Notice to Proceed

1.	**Client:**	Tulsa County
2.	**Property Address:**	O'Brien Park Recreation Center 6149 North Lewis; Tulsa, OK 74130
3.	**Date of Loss:**	On or about May 2019
4.	**Carrier:**	Zurich
5.	**Claim Number:**	TBD
6.	**Type of Loss:**	Flood

L2M is hereby directed to begin the management of the above Claim in accordance with the Agreement between the Parties. Client Authorizes the Carrier to release all information related to the Claim to L2M for the purpose of Claim and construction management, including but not limited to estimates, bids, engineering reports, complete copy of the policy and all endorsements.

Agreed and accepted:

Client

Signature: _____

By: Karen Keith
Title: Chairman
Dated: 6/17/2019

Attest: _____
County Clerk

COUNTY CLERK TULSA COUNTY OKLAHOMA

Robert M. Fitch IV 6-12-19
APPROVED AS TO FORM
ASSISTANT DISTRICT ATTORNEY