



AGENDA REPORT

CITY OF SAN CLEMENTE

City Council Meeting

Meeting Date: 9/6/2022

Agenda Item: 4H

Department: Finance and Administrative Services

Prepared By: Elora Dutra, HR Analyst - Risk Management, and Johanne Thordahl, HR Manager

Subject:

WORKERS' COMPENSATION THIRD PARTY ADMINISTRATIVE SERVICES AGREEMENT

Fiscal Impact:

Yes, funds are included in the FY 2022-23 budget in the amount of \$30,000 for this ongoing service.

Summary:

Staff seeks Council approval on a professional services agreement with AdminSure, Inc. for the purpose of providing Workers' Compensation claims administration services.

Background:

The City of San Clemente has been self-insured for Workers' Compensation since 2002. The City self-insures for the first \$300,000 per claim and purchases excess insurance coverage through Public Risk Innovation, Solutions, and Management (PRISM), formerly CSAC Excess Insurance Authority (CSAC-EIA). Previous research by staff and Bickmore Actuarial concluded that the current self-insurance arrangement is the most cost effective option. The City is classified by its excess insurance carrier as low risk for workers' compensation and their required actuarial reports indicate self-insurance continues to be the best way for the City to cover its workers' compensation obligation under the laws of the State of California.

As a self-insured employer, the City uses the services of a third party administrator (TPA) to administer the claims process. Administering claims is very complex as there are numerous mandated deadlines and a wide body of law and court cases that must be followed. PRISM provides oversight of the claims administrators of its member agencies. They conduct biennial audits to assist in assessing the performance of the TPA and report the results to the member agency. The City received the latest claims audit report in February 2021 and the next audit is scheduled to begin January 2023. In addition, PRISM provides members with support in selecting a TPA by designating five preferred service providers and providing a comparison of services and costs on a baseline with providers ranking above or below the baseline. The City has contracted with AdminSure, Inc. for claims administration services since September 2008. Staff recommends continuing to utilize their services based on performance, continuity, and cost.

Discussion:

The City has contracted with AdminSure, Inc. since September 2008 for workers' compensation claims administration services. They were selected through the Request for Proposal process and, at that time, Council approved the recommended three-year agreement. Council approved additional years based on staff recommendation in 2011 and 2017. The term of the contract is expiring on September 27, 2022 and staff is recommending the Council approve an additional five-year

agreement. Continuity of this service is important to provide injured employees as well as the Human Resources (HR) staff consistent interaction with a provider and claims adjuster that has history with the claimants.

HR staff continue to be very satisfied with the service AdminSure, Inc. provides. They have extensive experience handling public agency claims and provide claims administration services for 55 other PRISM members. They are familiar with our tail claims and internal policies. A minimum of a five-year agreement for claims administration services is standard in the workers' compensation industry and long-term service relationships can continue for fifteen years or more. The City used its previous claims administrator for thirteen years before they "left the market" necessitating a change. Another example is California JPIA, our liability pool; they have been with their workers' compensation TPA for twenty years.

AdminSure, Inc. - Previous Expenditures	
Year	Total Cost
2017-2018	\$30,162
2018-2019	\$27,352
2019-2020	\$25,223
2020-2021	\$20,627
2021-2022	\$21,942

In addition to being satisfied with the services and the desire for a long-term service relationship, cost is a consideration as well. The cost matrix provided by PRISM indicates that AdminSure, Inc. fees are 9% below the baseline for workers' compensation claims administration. The industry standard for a public entity is \$146 per-open claim, and the City currently pays \$106 per open claim. AdminSure, Inc. is proposing to keep the annual fee increase limited as shown in the table below. Because the City averages 18 open claims per month, the fee increase is approximately \$700 per year.

Proposed 5 year contract - cost per open claim fee structure			
Year	Term	Per Open Claim	Anticipated Yearly Cost
1	October 2022- September 2022	\$110	\$23,760
2	October 2023- September 2023	\$113	\$24,408
3	October 2024- September 2024	\$116	\$25,056
4	October 2025- September 2025	\$119	\$25,704
5	October 2026- September 2026	\$122	\$26,352

City Policy and Procedure #201-2-3, Selection of Professional Contractors, establishes the methods for selecting service providers and includes a competitive bid process. The City Council has the authority to determine that the procedure need not be followed when direct selection of a professional

services contractor is in the interest of the public in certain situations. AdminSure, Inc. is a PRISM preferred provider for workers' compensation claims administration with a proven service record and continuity of service with them is desirable. They offer a fee structure 9% below the baseline cost for PRISM preferred providers and have proposed to limit the annual fee increase to three dollars per open claim, per year starting in year 2. Due to these reasons, staff is requesting the Council authorize an exemption to the selection process for the proposed contract based on Exemption 7.1.2 of the policy; the proposed professional services provider has unique familiarity with the project, subject area, or possesses other attributes that make the professional services provider uniquely qualified to provide the services.

Recommended Actions:

Staff recommends that the City Council approve, and authorize the City Manager to execute, Contract C22-53, by and between the City of San Clemente and AdminSure, Inc., providing for Workers' Compensation Claims Administration Services, for a period of five years not to exceed a total amount of \$190,000.

Attachment:

Professional Services Agreement

Notification:

Alithia Vargas-Flores, President, AdminSure, Inc.

CITY OF SAN CLEMENTE
PROFESSIONAL SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into this 27th day of September, 2022, by and between the City of San Clemente, a municipal corporation, organized under the laws of the State of California, with its principal place of business at 910 Calle Negocio, San Clemente, California, 92673 ("City") and **AdminSure, Inc.**, an **incorporation** with its principal place of business at **3380 Shelby Street, Ontario, CA 91764** ("Contractor"). City and Contractor are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Contractor.

Contractor desires to perform and assume responsibility for the provision of certain professional **workers' compensation administration** services required by the City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing professional **workers' compensation administration** services to public clients, is licensed in the State of California, if applicable, and is familiar with the plans of City.

2.2 Project.

City desires to engage Contractor to render such professional **workers' compensation administration** services for the **City** as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Contractor promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional **workers' compensation administration** services necessary ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from **September 27, 2022** to **October 31, 2027** unless earlier terminated as provided herein. Notwithstanding the forgoing, the City Manager or his/her designee shall have the authority on behalf of the city to administratively approve extensions to the term hereof not to exceed a cumulative total of one hundred eighty (180) days. Contractor shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Responsibilities of Contractor.

3.2.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Contractor on an independent contractor basis and not as an employee. Contractor retains

the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Neither City, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Contractor or any of Contractor's officers, employees, or agents, except as set forth in this Agreement. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Contractor represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, City shall respond to Contractor's submittals in a timely manner. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Contractor has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Contractor may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Contractor cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Contractor at the request of the City. The key personnel for performance of this Agreement are as follows: Sherry Lancaster, Workers' Compensation Claims Manager.

3.2.5 City's Representative. The City hereby designates Johanne Thordahl, Human Resources Manager, or her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all products submitted by Contractor but not the authority to enlarge the Scope of Work or change the total compensation due to Contractor under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Work or change the Contractor's total compensation subject to the provisions contained in Section 3.3 of this Agreement. Contractor shall not accept direction or orders from any person other than the City Manager, City's Representative, or her designee.

3.2.6 Contractor's Representative. Contractor hereby designates Alithia Vargas-Flores, President or his/her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor's Representative shall supervise and direct the Services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Contractor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, contractors and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or its sub-contractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If Contractor performs any work knowing it to be contrary to such laws, rules and regulations, Contractor shall be solely responsible for all costs arising therefrom. Contractor shall defend, indemnify and hold City, its officials, directors, officers, employees, agents, and volunteers free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions, where applicable, shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.11 Insurance. Contractor agrees to procure and maintain, at Contractor's expense all insurance specified in Exhibit "C" attached hereto and by this reference incorporated herein. Contractor shall require all subcontractors to carry the same policies and limits of insurance that the Contractor is required to maintain, unless otherwise approved in writing by the City.

3.3 Fees and Payments.

3.3.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "D" attached hereto and incorporated herein by reference. The total compensation shall not exceed **the per open claim fee per year and a five (5) year total cost of \$190,000** without written approval of the City Council or City Manager as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Contractor shall submit to City a monthly invoice which indicates work completed and hours of Services rendered by Contractor. The invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges thereon. If the City disputes any of Contractor's fees, the City shall give written notice to Contractor within thirty (30) days of receipt of an invoice of any disputed fees set forth therein.

3.3.3 Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by City, or included in Exhibit "D" of this Agreement.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from the City.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of four (4) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time, with or without cause, by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services which have been adequately rendered to City, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Contractor to provide all finished or unfinished Documents and Data and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information

within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Contractor:	AdminSure, Inc. 3380 Shelby Street Ontario, CA 91764 ATTN: Alithia Vargas-Flores, President
City:	City of San Clemente 910 Calle Negocio San Clemente, CA 92673 ATTN: Johanne Thordahl, Human Resources Manager

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.4 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.5 Indemnification.

3.5.5.1 To the fullest extent permitted by law, Contractor shall defend (with counsel of City's choosing), indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, contractors or agents in connection with the performance of the Contractor's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Contractor, the City, its officials, officers, employees, agents, or volunteers.

3.5.5.2 If Contractor's obligation to defend, indemnify, and/or hold harmless arises out of Contractor's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Contractor's indemnification obligation shall be limited to claims that arise

out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor, and, upon Contractor obtaining a final adjudication by a court of competent jurisdiction, Contractor's liability for such claim, including the cost to defend, shall not exceed the Contractor's proportionate percentage of fault.

3.5.6 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.7 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Orange County.

3.5.8 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.9 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.10 Assignment or Transfer. Contractor shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.11 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.12 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.13 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.14 No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.15 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.16 Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for

Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.17 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Contractor shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.18 Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.19 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.20 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6 Subcontracting.

3.6.1 Prior Approval Required. Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the respective dates set forth opposite of their signatures.

CITY OF SAN CLEMENTE

By: _____

Its: _____

Dated: _____, 20__

ATTEST:

CITY CLERK of the City of
San Clemente, California

**APPROVED AS TO FORM:
BEST BEST & KRIEGER**

City Attorney

**APPROVED AS TO AVAILABILITY
OF FUNDING:**

Finance Authorization

("CONTRACTOR")

By: _____

Its: _____

Dated: _____, 20__

EXHIBIT "A"
SCOPE OF SERVICES

Service requirements

Contractor shall perform all services required to supervise and administer a self-insured workers' compensation program for the City of San Clemente, and to act as the City of San Clemente's representative in matters relating to the City of San Clemente's obligations under the workers' compensation laws of the State of California. Contractor shall perform but is not limited to the following Services on behalf of the City of San Clemente.

A. Program Administration

1. Program Administration Expectations

- Administer all claims except "first aid only" claims, promptly upon receipt of notice of injury. First Aid claims are to be administered by the City of San Clemente.
- Administer all claims as described under Claims Administration section.
- Identify the need for investigation, coordinate investigations, and ensure that they are conducted discreetly and sensitively while keeping the City of San Clemente informed and involved.
- Set appropriate reserves and review overall adequacy at least annually.
- Keep the City of San Clemente informed and involved in all accepted claims via phone contact and copies of all correspondence relating to claims.
- Negotiate settlements and make settlement payments that are authorized by the City of San Clemente. Keep the City of San Clemente informed and involved in all settlement decisions prior to sending pertinent documentation to employees.
- Pay benefits to claimants in accordance with State Law.
- Establish and maintain individual Workers' Compensation claim files.
- Closely monitor temporary disability and permanent disability cases.
- Coordinate and control vocational rehabilitation activities.
- Actively participate with attorneys when cases are litigated.
- Actively participate in strategy sessions on same employee workers' compensation and employer liability issues.
- Arrange periodic file reviews with the City of San Clemente.
- Conduct supervisory file review to ensure timely file closure, settlement, and adequate reserving.
- Work openly and closely with the City of San Clemente to assist in returning injured workers to modified or regular duty as outlined in the Return-to-Work Program section.
- Ensure that all documentation sent out is accurate and professional.
- Return employer and employee telephone calls as soon as possible but in all cases within 24 hours.
- Coordinate with the City of San Clemente for the designation of which physicians/facilities are to be used.

- Maintain a list of all provider referrals by specialty. The City of San Clemente

reserves the right to approve all providers.

- Ensure defense counsel sends copies of all correspondence to the City of San Clemente at the time of mailing the original, when requested.
- Review and explain claim-reporting requirements to the City of San Clemente representatives as requested.
- Report claims to excess insurers in accordance with policy terms and collect excess payments.
- Respond in a timely manner to all requests by identified representatives of the City of San Clemente for information, reports, calculations, history, or back-up data.
- Examiner caseloads to be maintained at no more than 150 active claim files per examiner in order to meet the claims services expectations as established by the City of San Clemente. All open caseloads will be periodically re-evaluated, and additions to the claims handling unit/team made as necessary. The examiner assigned to the account must have a minimum of five years full-time experience as a workers' compensation claims examiner in California, and have a California Self-Insured Workers' Compensation Certificate.

2. Ownership Of Records - All records, products and all claim files shall be the property of the City of San Clemente. Administrator shall be responsible for providing program tapes, data tapes, and system documentation to the City of San Clemente upon request for data from the Administrator's data system at Administrator's expense. Administrator shall make claim files available to the City of San Clemente upon request.
3. Forms - Provide all printed Workers' Compensation forms which the City of San Clemente may require and printed checks for the Workers' Compensation checking account.
4. Payment Of Benefits - The City of San Clemente maintains a Workers' Compensation claims trust checking account. The Administrator shall be responsible for payments of benefits from this account.
5. Assessments - Administrator shall be responsible for all penalties assessed whether by the Administrative Director, Office of Self-Insurance Plans, or the Office of Benefits and Enforcement, unless said penalties are for late indemnity payments which were caused by the City of San Clemente's late report of claim. If any penalty shall accrue as a result of the City of San Clemente's personnel practices, then the City of San Clemente shall be responsible and shall be billed by the Administrator.

6. Experience Modification - Recommend appropriate methodology for the calculation of the X-mod factor for the City of San Clemente. Provide backup information and explanation of calculations, development, and other rating information to the City of San Clemente.

B. Claims Administration

1. The Administrator will assign a dedicated or designated claims examiner to handle the City of San Clemente claim files. Other, non-dedicated personnel (e.g. file clerks, data entry clerks, etc.) may be used for administrative functions.
2. Review all initial claims and make telephone contact with injured employee(s) within 48 hours.
3. Send a letter to injured workers within three days or within the laws governing the state obligations of knowledge of injury informing them of their rights and benefits.
4. Keep the City of San Clemente informed and involved in all accepted claims prior to sending acceptance letters to employees. Send acceptance letters to employees within three working days when a claim has been accepted and any temporary disability has been determined.
5. Furnish copies of all correspondence to the City of San Clemente that is sent to employees on the same day that the original is sent to the employee.
6. Provide to the City of San Clemente, permanent disability information within 3 days of knowledge, prior to sending that permanent disability information to the employee.
7. Notify the City of San Clemente within 3 days when any previously closed claim is reopened and provide the rationale for reopening.
8. Take an active part in handling initial medical control to facilitate appropriate medical care and reduce self-procured medical treatment. Coordinate and contact by phone initial treatment facilities when indicated; and/or take control over claims where the injured employee has not initially gone to a designated facility.
9. Closely monitor temporary disability and permanent disability cases.
11. Closely and openly work with the City of San Clemente as outlined in the Return-to-Work Program section.
12. Review and process all claims for workers' compensation benefits in accordance with the requirements of the Industrial Relations Department for reporting and notification.
13. Determine the Compensability of claimed injuries and illnesses in accordance with the State of California workers' compensation laws.
14. Determine eligibility for, and recommend payment of, medical benefits and authorize examinations to determine the nature and extent of disability when appropriate.
15. Set appropriate reserves and review for adequacy at least every 30 days.
16. Obtain and evaluate medical expert opinion as to the nature, extent, and duration of temporary disability and the amount of any residual permanent disability to be anticipated.
17. Review, compute, recommend, and authorize payment of temporary disability and permanent disability benefits due an injured employee whether paid

voluntarily or under Decisions, Orders, or Findings and Awards of Workers' Compensation Appeals Board (WCAB). Relative to permanent disability, this includes informal advisory ratings and consultative evaluations.

18. Refer litigated cases to attorneys utilizing legal firms acceptable to the City of San Clemente. Assist the attorneys in the preparation of litigated cases, negotiations of compromise and release settlements, and subrogation actions.
19. Participate in strategy sessions with the City of San Clemente, defense counsel, and employers for same employee workers' compensation and employer liability issues.
20. Investigate or arrange for investigation of, as necessary and appropriate, questionable cases and the status of disabled employees in order to adjust all cases and to assist in the trial or settlement of litigated cases.
21. Maintain records on, and effect collections from, excess reinsurer on behalf of the City of San Clemente.
22. Maintain all payroll and loss records as is done by the California Inspection Rating Bureau.
23. Adjust liens and attend hearings as requested by the City of San Clemente.
24. Conduct supervisory file reviews to ensure timely file closure, reserving, and oversight of settlement strategies.
25. Report to the Excess Insurance Carriers in accordance with the Excess Carriers policy-reporting requirements, including any and all subsequent reporting with copies to the City of San Clemente. Provide appropriate documentation and demands for reimbursement by the excess carriers on all applicable cases in accordance with the excess carrier policy.
26. Utilize the following procedures in the settlement of claims:
 - a. The claims administrator shall be granted settlement authority up to ten thousand dollars (\$10,000) after agreement with written approval from the Human Resources Manager of the City of San Clemente.
 - b. Any lump-sum voluntary settlement of \$10,000 requires a written, caption report with copies of necessary medical reports and/or legal evaluations mailed to, and telephone consultation with, the City of San Clemente prior to making the offer.
 - c. The claims administrator shall be required to obtain approval from the City of San Clemente for claims over ten thousand dollars (\$10,000).

C. Return-to-Work Program

1. Support the City of San Clemente RTW Program.
2. Submit to the City of San Clemente a completed data spreadsheet to report Temporary Disability and Work Restriction information.
3. Actively communicate (Phone/Fax/Email) with the City of San Clemente to review new claims (as needed), and discuss possibility of modified assignments for employees continuing on temporary disability.
4. Forward to the City of San Clemente copies of all necessary medical reports and other information that relate to the coordination of returning injured employees to work in regular or modified work assignments.
5. Claims examiner to participate in meetings with the City of San Clemente regularly (Minimum of 2 times per year) to review temporary disability files

and Return-to-Work issues.

D. Medical Administration and Control

1. Submit to the City of San Clemente a copy of the contracted Medical Provider Network for review by the City of San Clemente. The City of San Clemente may choose not to participate in the offered Medical Provider Network and may choose to create their own or none at all. The administrator agrees to utilize the City of San Clemente's designated medical care providers for the treatment of injured employees in accordance with statutory guidelines and shall recommend a panel of specialists as may be required for long term or other disabilities requiring special treatment.
2. Monitor treatment programs for injured employees, including review of all "Doctor's First Report of Work Injury," to assure that treatment is related to a compensable injury or illness
3. Maintain close liaison with treating physicians to assure that employees receive proper care and to identify and prevent over treatment.
4. Authorize hospitalization, surgery, and other types of approved treatment as required after determination of liability in conformance with Labor Code Sections 4600 and 4601.
5. Submit to the City of San Clemente a copy of the administrators state submitted Utilization Review process for review by the City of San Clemente and make changes accordingly to adhere to established rules and regulations as well as policies and procedures of the City of San Clemente. Request for treatment overrides by the City of San Clemente shall be considered by the administrator.
6. Review, audit, compute, and authorize payment of all medical bills in conformance with the Recommended Minimum Fee Schedule as set forth by the Division of Industrial Accidents. Penalties assessed in conjunction with late payments of bills due to the fault of the administrator shall not be the responsibility of the City of San Clemente. Any and all bill reductions as recommended by the bill reviewers shall be defended by the administrator and or third party vendor used to reduce the bills.
7. Complete administration and processing of all lifetime medical cases awarded or ordered by the Workers' Compensation Appeals Board.

E. Legal Services

1. Retain a panel of attorneys, approved by the City of San Clemente, who are specialists in the defense of workers' compensation litigation for defense of cases before the Appeals Board. Monitor and manage all litigated cases from the time an application is filed with the Appeals Board until final disposition is rendered.
2. Ensure timely filing and serving of Answers to Applications and of medical records.
3. Review and consult with the City of San Clemente on proposed settlements and secure approval before a Compromise and Release or Stipulated

Settlement is filed with the Appeals Board for approval. All settlement authority must be authorized by designated City of San Clemente personnel.

4. Identify opportunities for subrogation and, at the City of San Clemente's direction, pursue them. Protect the interests of the City of San Clemente in third party cases, including filing of complaints in Subrogation, where appropriate.
5. The City of San Clemente shall be provided with copies of all correspondence and legal documents including hearing notices, applications, lawsuits, pleadings, motions, interrogations, dismissals, and correspondence between defense counsel and Administrator upon request.

F. Reporting Services and Record Retention

1. Provide the City of San Clemente with regular monthly and quarterly reports in the format and number requested by the City of San Clemente. Such reports include, but may not be limited to, the following:
 - Loss Experience Reports
 - Management Summary Reports
 - Weekly Claims Register
 - Monthly Claims Summary Reports
 - Monthly Claims Register Reports
 - Annual Report to the State
 - Annual Tax Statements, including Federal Form 1099 and State form 599 as appropriate
 - Large Loss Reports-Over \$25,000 and \$100,900
 - Required Excess Insurance carrier reporting in accordance with Excess Carrier's written policy and contract.
2. Monthly computer-produced claims information data will be required to be provided.
 - A detailed listing of open claims
 - Summaries of all open and closed claims
 - A monthly reconciliation of the Workers' Compensation checking account.
 - Specialized loss reports as requested by the City of San Clemente.

G. Workers' Compensation Trust Fund Checking Account

The City of San Clemente shall establish a trust fund checking account to cover payments and reimbursements applicable to the self-insured workers' compensation program. The trust fund checking account shall be established in the name of the contractor as agent of the City of San Clemente. Deposits shall be made to the account as required to ensure that funds are available for payment of claims for settlement and allocated loss expenses upon presentation of check or warrant. The administrator shall provide the bank checks stock. Checks shall be protected with state-of-the-art security features. Contractor shall not draw on the trust fund checking account for any purpose other than adjustment of

claims and payment of allocated loss expenses. Once each week, Contractor shall provide the City of San Clemente with a detailed accounting of all workers' compensation benefits and allocated loss expenses paid from the fund. The detailed accounting shall include the date and check number of all benefit and allocated loss payments and shall also include appropriate supporting documentation for allocated loss expense payments. A monthly check register summary shall be provided. Contractor is responsible for erroneous payments made from the account by their error. The amount of any such erroneous payments made from the account shall be deducted from administrative fee payments.

Contractor shall develop, implement, and maintain security procedures to ensure safeguard of funds in the account and the bank checks. Such procedures shall be approved by the City of San Clemente.

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EXHIBIT "B"
SCHEDULE OF SERVICES

Services under this agreement shall be for a term of 5 years as follows:

- Year 1: September 27, 2022 – September 30, 2023
- Year 2: October 1, 2023 – September 30, 2024
- Year 3: October 1, 2024 – September 30, 2025
- Year 4: October 1, 2025 – September 30, 2026
- Year 5: October 1, 2026 – September 30, 2027

See rate table for schedule of service fee structure.

Description	Type	Fees and Options	AdminSure
Per Claim Basis	Indemnity/Medical-Only		Year 1 - \$110 per month, per open claim
	Indemnity/Medical-Only		Year 2 - \$113 per month, per open claim
	Indemnity/Medical-Only		Year 3 - \$116 per month, per open claim
	Indemnity/Medical-Only		Year 4 - \$119 per month, per open claim
	Indemnity/Medical-Only		Year 5 - \$122 per month, per open claim
	Fees Years 1-5		
Additional Charges	Bill Review	1. PPO Discounts	\$12.50 flat fee per bill reviewed
		2. Fee Schedule	Plus not to exceed 25% of PPO savings, if any, no other fees
	Utilization Review	1. State Mandated	5% of all medical bill review charges, capped @ \$750
		2. Peer Review	Physician fee billed separately @ \$200 per hour. City approves reviews > 1 hour
	Vendor Fees	3. Field Case Manager	All at cost
		4. Telephonic Case Manager	All at cost

		5. Manager	All at cost
		1. Legal Fees	All at cost
		2. Expert Fees	All at cost
		3. Investigation Fees	All at cost
		4. Other Fees	All at cost
		1. Annual Other	Included in per claim fee rate
	System Fees	1. System Access	No fees
		2. Data Transfer	No fees
		3. Conversion Fees	No fees
Medical Provider Network (MPN)	Provider Name – Annual Costs		MPN services at cost. Blue Cross 25% savings OR Interplan 20% of savings
Excluded Costs	List all Excluded Costs		All vendor costs will be at-cost and no additional fees will be added.
Termination	Terms of Cancellation		Pro-rated monthly service fee.
	Cancellation Fees		Pro-rated monthly service fee.
	File Transfer		No cost.
	End of Contract Claims Handling Fees	1. Medical Only 2. Indemnity	Pro-rated monthly service fee.

EXHIBIT "C"
INSURANCE REQUIREMENTS

3.2.12 Insurance.

3.2.12.1 Time for Compliance. Contractor shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section.

3.2.12.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Contractor, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Contractor agrees to amend, supplement or endorse the policies to do so.

(A) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, or the exact equivalent, with limits of not less than \$1,000,000 per occurrence and no less than \$2,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions (1) limiting coverage for contractual liability; (2) excluding coverage for claims or suits by one insured against another (cross-liability); or (3) containing any other exclusion(s) contrary to the terms or purposes of this Agreement.

(B) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities with limits of not less than \$1,000,000 combined limit for each occurrence.

(C) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

(D) Professional Liability (Errors & Omissions): Professional Liability insurance or Errors & Omissions insurance appropriate to Contractor's profession with limits of not less than \$1,000,000 per claim. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.). If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

3.2.12.3 Insurance Endorsements. Required insurance policies shall contain the following provisions, or Contractor shall provide endorsements on forms approved by the City to add the following provisions to the insurance policies:

(A) Commercial General Liability:

(1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement.

Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Contractor; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Contractor shall provide endorsements in the form of ISO CG 20 10 10 01 (or endorsements providing the exact same coverage) to effectuate this requirement.

(2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) Automobile Liability:

(1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

3.2.12.4 Professional Liability (Errors & Omissions):

(A) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) Contractual Liability Exclusion Deleted: This insurance shall include contractual liability applicable to this Agreement. The policy must "pay on behalf of" the insured and include a provision establishing the insurer's duty to defend.

3.2.12.5 Workers' Compensation:

(A) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

3.2.12.6 Primary and Non-Contributing Insurance. All policies of Commercial General Liability and Automobile Liability insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.2.12.7 Waiver of Subrogation. All policies of Commercial General Liability and Automobile Liability insurance shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against the City, its officials, officers, employees, agents, and volunteers, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

3.2.12.8 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention greater than \$5,000 must be approved in writing by the City and shall protect the City, its officials, officers, employees, agents, and volunteers in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.2.12.9 Evidence of Insurance. The Contractor, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates on forms approved by the City, together with all endorsements affecting each policy. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.2.12.10 Failure to Maintain Coverage. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced immediately so as to avoid a lapse in the required coverage, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Contractor or City will withhold amounts sufficient to pay premium from Contractor payments. In the alternative, City may cancel this Agreement effective upon notice.

3.2.12.11 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A- VII and authorized to transact business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.2.12.12 Enforcement of Agreement Provisions (non estoppel). Contractor acknowledges and agrees that actual or alleged failure on the part of the City to inform Contractor of non-compliance with any requirement imposes no additional obligation on the City nor does it waive any rights hereunder.

3.2.12.13 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this Appendix are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance.

3.2.12.14 Insurance for Subcontractors. Contractor shall include all subcontractors engaged in any work for Contractor relating to this Agreement as additional insureds under the Contractor's policies, or the Contractor shall be responsible for causing subcontractors to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City, its officials, officers, employees, agents, and volunteers as additional insureds to the subcontractor's policies. All policies of Commercial General Liability insurance provided by Contractor's subcontractors performing work relating to this Agreement shall be endorsed to name the City, its officials, officers, employees, agents and

volunteers as additional insureds using endorsement form ISO CG 20 38 04 13 or an endorsement providing equivalent coverage. Contractor shall not allow any subcontractor to commence work on any subcontract relating to this Agreement until it has received satisfactory evidence of subcontractor's compliance with all insurance requirements under this Agreement, to the extent applicable. The Contractor shall provide satisfactory evidence of compliance with this section upon request of the City.

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