



REQUEST FOR PROPOSAL

FOR

Third Party Administration of the Workers' Compensation Program



Human Resources Division

CITY OF COSTA MESA

Released on August 10, 2012

Workers' Compensation Third Party Administrator
REQUEST FOR PROPOSAL (RFP)

Dear Proposers:

The City of Costa Mesa (hereinafter referred to as the "City") is requesting proposals from a qualified public entity or private firm, to establish a contract for workers' compensation third party administration services. The term is expected to be for three (3) years with two (2) one-year options to renew. Longer initial and extended terms may be considered depending upon the Proposer's submission.

1. ABOUT THE CITY

The City of Costa Mesa is a general law city, which operates under the council/manager form of government with a General Fund budget of over \$94 million and a total of over \$107 million of fiscal year 2010-2011.

The City of Costa Mesa, incorporated in 1953, has an estimated population of 116,479 and has a land area of 16.8 square miles. It is located in the southern coastal area of Orange County, California, and is bordered by the cities of Santa Ana, Newport Beach, Huntington Beach, Fountain Valley and Irvine.

The City is a "full service city" and provides a wide range of services. These services include: police and fire protection; animal control; emergency medical aid; building safety regulation and inspection; street lighting; land use planning and zoning; housing and community development; maintenance and improvement of streets and related structures; traffic safety maintenance and improvement; and full range of recreational and cultural programs. The City employs 427 full-time employees and approximately 142 part-time employees. The City's worker's compensation program is self-insured for \$2,000,000 per occurrence. The City's claims history, as shown in its annual reports submitted to the Department of Industrial Relations is as follows:

	FY 08-09	FY 09-10	FY 10-11	FY 11-12
Number of Medical-Only Cases Reported in FY	46	29	28	25
Number of Indemnity Cases Reported in FY	46	45	38	52
Total Number of Indemnity Cases From All Years Open In FY	143	138	155	147
Number of Cases in Which Notices of Legal Representation Received in FY	4	14	9	9

2. SCHEDULE OF EVENTS

This request for proposal will be governed by the following schedule:

Release of RFP	08/10/2012
Deadline for Written Questions	08/31/2012
Responses to Questions Posted on Web	09/07/2012
Proposals are Due	09/21/2012
Interview (if held)	10/22/2012 – 10/26/2012
Approval of Contract	12/04/2012

All dates are subject to change at the discretion of the City.

3. SCOPE OF WORK

INTRODUCTION

Through this Request for Proposals the City of Costa Mesa (hereinafter referred to as the “City”) is seeking professional services proposals from qualified and licensed Third Party Administrators (hereinafter referred to as the “Administrator or TPA”) to provide workers compensation claims administration services for the self-insured Workers’ Compensation Program. The City’s Human Resources Division is responsible for management of the workers’ compensation program including administering the TPA contract. The TPA contract includes: reporting injuries; employee contact; providing lost time and salary information; training for managers, supervisors, and employees; assisting with early return to work program; claimant service evaluation and maintenance of the City workers’ compensation claim files.

GENERAL DESCRIPTION OF WORK

The Administrator shall provide effective and efficient claims administration services to the City of Costa Mesa in accordance with all California laws. The objective is to provide the City’s employees with appropriate benefits and medical treatment in a prompt and efficient manner.

MINIMUM QUALIFICATIONS

The proposal shall clearly demonstrate that the Administrator has the training, required licensing, experience, relevant expertise and a thorough knowledge of the professional services, functions, activities and related responsibilities to successfully perform their role in providing worker’s compensation administration services. The successful Administrator shall have at a minimum the following qualifications:

- Must be licensed by the State of California as a Third-Party Administrator (TPA).

- Have a claim administration office within reasonable proximity to the City of Costa Mesa.
- Have a minimum of five (5) years experience administering claims as a claim administrator for a public entity.
- Have sufficient means and/or resources to conduct field investigations, provide prompt reporting and adjudication of medical and indemnity payments.
- Have an electronic database capable of producing specialized and ad hoc reports in addition to those required by the State of California.
- Have not received sanctions for nonconforming performance by the California Department of Industrial Relations (DIR) in the past three years. (Subject to verification with the State).

The Administrator shall provide sufficient information in the proposal on how it will perform the required professional services in accordance with the specifications presented in this RFP. The respondent shall provide adequate information and supporting documentation for the evaluation of its ability to successfully provide the services as described in the Scope of Work.

The goal of this RFP process is to secure a Third Party Administrator (TPA) to provide appropriate workers' compensation claims administration and related services. In addition, the TPA is expected to analyze loss data, identify trends and develop methods to reduce costs for the City, and at the same time, improve program efficiency and effectiveness.

To be considered, the TPA shall demonstrate that the firm has the personnel and capital resources, knowledge, expertise, experience, creativity, innovation, insight and customer service skills to serve as a third party administrator handling the City's claims. The TPA must respond to all the required items in this RFP. The TPA shall demonstrate that all services will be performed in a manner commensurate with the highest standards of professionals in the industry.

The respondent's management system shall have the capacity to transition all workers' compensation claims and related payment and file data from the existing system into data in the respondent's system within 30 days of awarding the contract. The City's claim payment data must remain intact.

The City reserves the right to select the Administrator that the City, in its sole discretion, will determine will best serve its Workers' Compensation Program.

Records

The Administrator shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by the City that relates to the performance of services under this agreement. The Administrator shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. The Administrator shall provide free access to the representatives of the City or its designees at all proper times to such books and records, and give the City the right to examine and audit same, and to make transcripts therefrom as

necessary, and to allow inspection of all work, data, documents, proceedings and activities related to this agreement. Such records, together with supporting documents, shall be kept separate from other documents and records and shall be maintained for a period of no less than three (3) years after receipt of final payment.

All original books, manuals, films or any other patentable or copyrightable material developed with contract funds, reproduced, prepared or caused to be prepared by the Administrator pursuant to or in connection with this agreement shall be the exclusive property/rights of the City. The Administrator shall not copyright any report required by this agreement. Any report, information and data acquired or required by this agreement shall become the property of the City, and all publication rights are reserved to the City.

All records, files, transcripts, computer tapes, and other material or workers' compensation adjusting activity reports prepared by the Administrator shall be the property of the City and must be relinquished by the Administrator to the City at the conclusion of this contract. The City shall not be required to pay any additional costs for the retrieval of such information, documentation, and software.

The Administrator shall take all steps necessary to safeguard any data, files, reports or other information from confidentiality breaches, loss, destruction or erasure. Liability for any costs or expense of replacing or damages resulting from the loss of such data shall be borne by the Administrator unless at the time of loss, said data was in the exclusive custody of the City.

Administrator will cooperate with City and make available any and all claim files and records available for audits. The City will have reasonable access to the necessary portions of Administrator facilities, records and files for review or audit purposes.

The City, at its option, shall have the right to have a claims audit(s) performed. The audit(s) will be directed to, including but not limited to, the following areas: Staffing; Examiner Caseloads; Reporting; Supervision; Case Reserves; File Documentation; Medical Payments; Disability Benefit Delivery; Fines & Penalties; Diary System; Claimant, Employer and Doctor Contact; Case Administration & Investigation; and Contract for Claim Administration Services; application of current WCAB rules and regulations and case law.

Dedicated Claims Unit and Assigned Personnel

The objective of this RFP is the establishment of a dedicated claims unit to service and manage the City's account exclusively. The respondent shall establish a dedicated claims office, or a segregated unit whose sole responsibility is the handling of the City's workers' compensation claims. Please provide staffing plan as requested in this document.

Administrator shall designate a full time Claims Supervisor to be assigned to this account who will act as the primary contact for the City and will be selected with the concurrence of the City. The Claims Supervisor must possess a State of California Self-Insurance Plan Certificate.

If for any reason the City finds, in its sole discretion, that the service provided by any assigned personnel is unsatisfactory, the Administrator will agree to assign replacement personnel that must also be approved by City.

Caseloads

Caseload for the purpose of this RFP and the resulting contract are defined as all open claims, indemnity and medical only, to calculate "Total Caseload." Claims that are designated as companion files will be counted with the master claim file as one claim file.

The maximum caseload for the assigned personnel shall be as follows:

Claims Assistant:	Medical only claims
Claims Examiner:	175 open claims
Claims Supervisor:	20 open claims

If at any time during the term of the agreement the number of all open claims exceeds 175 per Examiner and 20 for the Supervisor, the Administrator shall, with the City's concurrence, assign additional staff to the City's account.

Program Administration

The City is seeking a TPA who shall meet the following minimum Program Administration objectives:

- Develop policies and procedures relating to the workers compensation claims program, as well as provide information and guidance regarding the workers compensation program and specified claims.
- Inform the City of current changes or proposed changes in statutes, rules and regulations and case law affecting the workers compensation program.
- Represent City in all matters related to the set-up, investigation, adjustment, processing, negotiation and resolution of workers compensation claims against the City.
- Facilitate risk management and other related seminars for department heads and/or City's staff at request of City.
- Represent administrator at quarterly meetings with departments on-site at City, including the preparation of claim narratives for those attending the meetings.
- Provide copies of file correspondence and documentation as requested.
- Maintain and store all hardcopy files for five (5) years after file is closed.
- Destroy any claim records by shredding. There will be no additional cost to City for destruction of claim records. Provide Certificate of Destruction for all documents.
- Administrator shall provide to City, at no additional cost, within five (5) business days of the date of termination of an Agreement, all claims, reports, files and electronic data of City's self-insured workers' compensation annual reports.

Claims Administration

The City is seeking a TPA who shall meet the following minimum Claims Administration objectives:

- Administer worker's compensation benefits in accordance with the California State Labor Code.
- Within twenty four (24) hours of receipt of the Employer's First Report of Injury the claims administrator will make initial contact with the injured employee and establish a claims file.
- All claim files, within the laws regarding medical information, are to be made available for review by the City anytime during the administrator's regular business hours.
- Maintain Utilization Review process as governed by Labor Code section 4610 to review treatment recommended by physicians to determine if it is medically necessary, either in-house or with the respective City's contracted vendor.
- Monitor treatment programs for injured employees to ensure that they receive proper care and to avoid over treatment situations.
- Investigate and recommend special, outside independent investigations for questionable claims with the consent, coordination and assistance of the City.
- Serve all medical reports on interested parties to a claim and file with the appropriate State agency within five (5) days of receipt.
- Complete a thorough analysis of relevant factors and coordinate recommendations with the City for settlement/disposition of claims. Final settlement authority shall rest with the City.
- Respond to City staff inquiries within twenty four (24) hours and on the same day involving critical issues.
- Provide Medicare Agent Services and the required reporting (including Section 111 of the Medicare, Medicaid & SCHIP Extension Act (MMSEA) of 2007).

Medical Service and Expenditures

With respect to medical services provided to employees who incur job-related injuries or illnesses, the Administrator shall:

- Develop and recommend, as requested by City, a panel of physicians for the first treatment of employee injury or illness and recommend a panel of medical specialists for treatment requiring long-term or specialty care, utilizing those that are approved by the City.
- Monitor treatment programs for injured or ill employees including review of all doctors' reports, referring as necessary to a State-approved and City-approved utilization review management program for required determinations.

- Recommend referral and with the consent of City, submit a claim for nurse case management services for assistance in medical control of the claim or for consultation to a City-approved nurse case management company.
- Maintain close liaison with treating physicians.
- Provide guidance in the evaluation of physical capacity of injured employees and their ability to return to work.
- Determine eligibility for and authorize payment of medical benefits, and arrange and authorize examinations to determine the nature and extent of disability.
- Arrange and advise all interested parties to a claim of all medical appointments, including Agreed or Independent Medical Evaluations, using the panel list agreed upon between Administrator and City or as required by the State agency.
- File and serve all medical reports on interested parties of a claim and with the appropriate State agency within five (5) days of receipt.
- Review all billings for reasonableness using the State Medical Fee Schedules and submit for medical auditing as necessary to a City-approved bill review service.
- Assist City, as requested, with establishing a Medical Provider Network (MPN) to treat injured workers.

Consultation

With respect to consultation provided to City and/or employees who incur job-related injuries or illnesses, the Administrator shall:

- Provide information and guidance to injured employees regarding the benefits they will receive in accordance with City policies.
- Attend appointments, including but not limited to meetings, conferences, court appearances, and scene investigations at the request of City staff.
- Provide information, guidance and assistance to injured employees regarding permanent disability ratings, Qualified Medical and Agreed Medical Examiner process, delay process, conditional denial process and settlement of claims.
- Assist the City in solving employee non-legal problems arising out of industrial injury cases.
- Work with the injured employees, City personnel and other agencies to provide rehabilitation, retraining or reassignment of employees with physical or performance limitations arising out of industrial injuries.
- Assist in developing policies and procedures to insure that the return to work by, or reassignment of, injured employees is consistent with the medical findings.
- Assist the City, as requested, with cost containment and incentive programs.

Litigation Management

Litigation management services by the Administrator shall, at a minimum, include the following:

- Refer litigated cases to attorneys using a listing of legal firms provided by the City.
- Assist in the preparation of litigated cases.
- Assist in negotiation of Compromise and Release settlements.
- Monitor all cases for potential subrogation recoveries, prepare correspondence to effect collection, and assist legal counsel where litigation is required to affect recovery.
- Ensure that, for employees who are represented by legal counsel, their attorneys receive copies of reports and correspondence as appropriate/required.
- Maintain a litigation management budget for each litigated file and provide litigation status reports on a monthly basis for each litigation file.
- Cooperate fully with all attorneys chosen by the City, including the City Attorney.

Information Management and Reports

The City is seeking a TPA who shall meet the following minimum Information Management and Reports objectives:

- Provide City's management with computerized reports at specified intervals on new claims, closed claims, paid losses, incurred costs, the progress of individual claims and the effectiveness of safety and other cost control programs.
- Administer and provide a comprehensive annual statistical summary survey customized to meet the City's needs, and if requested by the City, a narrative report to serve as the basis for evaluation of City programs.
- Prepare the City's annual Cal-OSHA Log 300 and the annual Public Entities Self-Insurers Report as required by the Department of Industrial Relations, Self Insurance Plans. Reports are to be submitted to the City no later than 30 days prior to the due date.
- Provide a written status of cases, as selected by the City, and meet with the City representatives to discuss these cases at established intervals.
- Upon request by the City, Administrator shall provide on-line usage of Administrator's computer system at designated individual agency sites.
- Upon request by the City, Administrator shall provide secure, electronic reports to allow performance of certain routine data analysis by the City. It is recommended that this data and similar reporting be accessible to the City via the proposer's software system and that reports be run by the end user (City).
- Upon request by the City, provide narrative or analytical reports regarding major cases.
- Provide the City with copies of initial and quarterly reporting to Medicare.

Financial Management

The City shall establish a Workers' Compensation Trust Fund, of which the Workers' Compensation Administrator shall be designated co-trustee. The purpose of this fund shall be to pay medical/legal and other expenses incurred as a result of accepted industrial injuries/illnesses, as well as payment of Workers' Compensation benefits to which eligible employees are entitled. With respect to the Trust Fund, it shall be the responsibility of the Workers' Compensation Administrator to:

- Report to the City at least monthly, or as needed, of charges against the fund, and obtain reimbursement to maintain the fund at an appropriate level determined by the City.
- Manage the Trust Fund in a reasonable and prudent manner and in compliance with City policies.
- Issue vouchers to the City from the Trust Fund in those instances where an employee is paid benefits directly by the City, i.e. Labor Code 4850 pay, temporary total disability benefits or salary continuation in lieu of temporary disability benefits.
- Actively collect any overpayment of benefits.
- Reimburse the City for any penalties assessed against the City which is found to be the result of Administrator's lack of proper claims handling or the holding of checks due to insufficient funds in the bank account.
- Establish procedures and necessary documentation enabling the City to write checks for payment of benefits or to have the Administrator draw checks for payment of benefits on an appropriate account of the City.
- Absorb any costs for the printing of any checks. The City's name will appear on the check, and be imprinted on all check copies. All checks shall be printed in numerical order, locked and controlled by the Administrator's accounting department. All checks must be accounted for as payments, voids, etc.
- Use a separate check register for the City. Daily entries will be made on all checks disbursed on the account. Credits, if any, shall be entered, as well as all deposits made on checks, received on reimbursement requests made from Administrator's office. Administrator shall provide City with a check register, mailed to City.
- Provide City's accounting office, if requested, with one (1) copy of each check register, all voided checks, etc.
- Review periodically all Trustee accounts to determine if initial deposit is adequate for handling the dollar volume for the month so that the holding of checks waiting for a deposit does not occur. In such instances where it is determined that deposit is inadequate, the Administrator's accounting office shall submit a report with a recommendation for an increase to the Trustee account based on this review. Prompt payments on the Administrator's reimbursement requests are a major factor in the efficiency of a Trustee account. The City's reimbursement payments should reach the Administrator's office within ten (10) days from the date of Administrator's request in order to maintain a continuous flow of checks issued throughout the month.

4. PROPOSAL FORMAT GUIDELINES

Interested entities or contractors are to provide the City of Costa Mesa with a thorough proposal using the following guidelines:

Proposal should be typed and should contain no more than 20 typed pages using a 12-point font size, including transmittal letter and resumes of key people, but excluding Index/Table of Contents, tables, charts, and graphic exhibits. Each proposal will adhere to the following order and content of sections. Proposal should be straightforward, concise and provide “layman” explanations of technical terms that are used. Emphasis should be concentrated on conforming to the RFP instructions, responding to the RFP requirements, and on providing a complete and clear description of the offer. Proposals which appear unrealistic in terms of technical commitments, lack of technical competence or are indicative of failure to comprehend the complexity and risk of this contract may be rejected. The following proposal sections are to be included in the Proposer’s response:

- **Vendor Application Form and Cover Letter**

Complete Appendix A, “Request for Proposal-Vendor Application Form” and attach this form to the cover letter. A cover letter, not to exceed three pages in length, should summarize key elements of the proposal. An individual authorized to bind the consultant must sign the letter. The letter must stipulate that the proposal price will be valid for a period of at least 180 days. Indicate the address and telephone number of the contractor’s office located nearest to Costa Mesa, California and the office from which the project will be managed.

- **Background and Project Summary Section**

The Background and Project Summary Section should describe your understanding of the City, the work to be done, and the objectives to be accomplished. Refer to Scope of Work of this RFP.

- **Methodology Section**

Provide a detailed description of the approach and methodology to be used to accomplish the Scope of Work of this RFP. The Methodology Section should include:

1. An implementation plan that describes in detail (i) the methods, including controls by which your firm or entity manages projects of the type sought by this RFP; (ii) methodology for soliciting and documenting views of internal and external stakeholders; (iii) and any other project management or implementation strategies or techniques that the respondent intends to employ in carrying out the work.
2. Detailed description of efforts your firm or entity will undertake to achieve client satisfaction and to satisfy the requirements of the "Scope of Work" section.

3. Detailed project schedule, identifying all tasks and deliverables to be performed, durations for each task, and overall time of completion.
4. Detailed description of specific tasks you will require from City staff. Explain what the respective roles of City staff and your staff would be to complete the tasks specified in the Scope of Work.
5. Proposers are also requested to identify any software systems that they will be using to manage the City's workers' compensation claims. Specifically, proposers should detail the capabilities of the system, including the ability to generate custom reports and the capability of operating "paperless".

- **Staffing**

Provide a list of individual(s) who will be working on this project and indicate the functions that each will perform and anticipated hours of service of each individual.¹ Include a resume for each designated individual.

Upon award and during the contract period, if the contractor chooses to assign different personnel to the project, the Contractor must submit their names and qualifications including information listed above to the City for approval before they begin work.

- **Qualifications**

The information requested in this section should describe the qualifications of the firm or entity, key staff and sub-contractors performing projects within the past five years that are similar in size and scope to demonstrate competence to perform these services. Information shall include:

Names of key staff that participated on named projects and their specific responsibilities with respect to this scope of work.

A summary of your firm's or entity's demonstrated capability, including length of time that your firm has provided the services being requested in this Request for Proposal.

Provide at least three references that received similar services from your firm. The City of Costa Mesa reserves the right to contact any of the organizations or individuals listed. Information provided shall include:

- Client Name
- Project Description
- Project start and end dates
- Client project manager name, telephone number, and e-mail address.

¹ Hourly rates for the proposed personnel shall be set forth on Appendix D.

Any public entity which submits a proposal should describe in detail how it currently performs services like those identified in the scope of work within its or other jurisdictions, including photographs, written policies and/or video of services provided. If you have performed these services under contract for another public entity, please provide references for those entities as set forth above for private Proposers.

- **Financial Capacity**

Provide the Proposer's latest audited financial statement or other pertinent information such as internal unaudited financial statements and financial references to allow the City to reasonably formulate a determination about the financial capacity of the Proposer. Describe any administrative proceedings, claims, lawsuits, or other exposures pending against the Proposer.

- **Fee Proposal**

All Proposers are required to use the form in Appendix D to be submitted with their proposal. Pricing instructions should be clearly defined to ensure fees proposed can be compared and evaluated. Proposals shall be valid for a minimum of 180 days following submission.

- **Disclosure**

Please disclose any and all past or current business and personal relationships with any current Costa Mesa elected official, appointed official, City employee, or family member of any current Costa Mesa elected official, appointed official, or City employee. *Any past or current business relationship may not disqualify the firm from consideration.*

- **Sample Agreement**

The firm selected by the City will be required to execute an Agreement for Services (Agreement) with the City. The form of the Agreement is enclosed as Appendix B, **but may be modified to suit the specific services and needs of the City. If a Proposer has any exceptions or conditions to the Agreement, these must be submitted for consideration with the proposal. Otherwise, the Proposer will be deemed to have accepted the form of Agreement.** See Section 13, below.

- **Checklist of Forms to Accompany Proposal**

As a convenience to Proposers, following is a list of the forms, included as appendices to this RFP, which should be included with proposals

- (1) Vendor Application Form
- (2) Ex Parte Communications Certificate
- (2) Price Proposal Form
- (3) Disclosure of Government Positions

(4) Disqualifications Questionnaire

5. PROCESS FOR SUBMITTING PROPOSALS**• Content of Proposal**

The proposal must be submitted using the format as indicated in the proposal format guidelines.

• Preparation of Proposal

Each proposal shall be prepared simply and economically, avoiding the use of elaborate promotional material beyond those sufficient to provide a complete, accurate and reliable presentation.

• Number of Proposals

Submit one original, Five (5) hard copies plus one disk copy of your proposal in sufficient detail to allow for thorough evaluation and comparative analysis. In the event of a conflict between the original and any hard copy or disk copy, the original shall control.

• Submission of Proposals

Complete written proposals must be submitted in sealed envelopes marked and received no later than 2:00 p.m. (P.S.T) on September 21, 2012 to the address below. Proposals will not be accepted after this deadline. Faxed or e-mailed proposals will not be accepted.

City of Costa Mesa

Attn: City Clerk

77 Fair Drive

Costa Mesa, CA 92626

RE: Workers' Compensation TPA RFP

• Inquiries

Questions about this RFP must be directed in writing, via e-mail to:

Kim Wilson, RFP Facilitator

Kimberly.Wilson@Costamesaca.gov

The City reserves the right to amend or supplement this RFP prior to the proposal due date. All amendments, responses to questions received, and additional information will be posted to the Costa Mesa Procurement Registry, [Costa Mesa - Official City Web Site -](#)

[Business - Bids & RFP's](#); Proposers should check this web page daily for new information. The City will endeavor to answer all written questions timely received no later than August 31, 2012. The City reserves the right not to answer all questions.

From the date that this RFP is issued until a firm or entity is selected and the selection is announced, firms or public entities are not allowed to communicate outside the process set forth in this RFP with any City employee other than the contracting officer listed above regarding this RFP. The City reserves the right to reject any proposal for violation of this provision. No questions other than written will be accepted, and no response other than written will be binding upon the City.

- **Conditions for Proposal Acceptance**

This RFP does not commit the City to award a contract or to pay any costs incurred for any services. The City, at its sole discretion, reserves the right to accept or reject any or all proposals received as a result of this RFP, to negotiate with any qualified source(s), or to cancel this RFP in part or in its entirety. The City may waive any irregularity in any proposal. All proposals will become the property of the City of Costa Mesa, USA. If any proprietary information is contained in the proposal, it should be clearly identified.

6. EVALUATION CRITERIA

The City's evaluation and selection process will be conducted in accordance with Chapter V, Article 2 of the City's Municipal Code (Code). In accordance with the Code, the lowest responsible bidder will be determined based on evaluation of qualitative factors in addition to price. At all times during the evaluation process, the following criteria will be used. Sub-criteria are not necessarily listed in order of importance. Additional sub criteria that logically fit within a particular evaluation criteria may also be considered even if not specified below.

1. Qualifications of Entity and Key Personnel-----25%

Includes ability to provide the requested scope of services, the Proposer's financial capacity, recent experience conducting work of similar scope, complexity, and magnitude for other public agencies of similar size, references.

2. Approach to Providing the Requested Scope of Services-----10%

Includes an understanding of the RFP and of the project's scope of services, knowledge of applicable laws and regulations related to the scope of services.

3. Price Proposal-----50%

Price Proposals will be evaluated on the basis of the Total Estimated Annual Price submitted in Appendix D.

4. Innovative and/or creative approaches to providing the services that provide additional efficiencies or increased performance capabilities. ----15%

7. EVALUATION OF PROPOSALS AND SELECTION PROCESS

In accordance with its Municipal Code, the City will adhere to the following procedures in evaluating proposals. An Evaluation/Selection Committee (Committee), which may include members of the City's staff and possibly one or more outside experts, will screen and review all proposals according to the weighted criteria set forth above. While price is one basic factor for award, it is not the sole consideration.

A. **Responsiveness Screening**

Proposals will first be screened to ensure responsiveness to the RFP. The City may reject as non-responsive any proposal that does not include the documents required to be submitted by this RFP. At any time during the evaluation process, the City reserves the right to request clarifications or additional information from any or all Proposers regarding their proposals.

B. **Initial Proposal Review**

The Committee will initially review and score all responsive written proposals based upon the Evaluation Criteria set forth above. The Committee may also contact Proposer's references. Proposals that receive the highest evaluation scores may be invited to the next stage of the evaluation process. The City may reject any proposal in which a Proposer's approach, qualifications, or price is not considered acceptable by the City. An unacceptable proposal is one that would have to be substantially rewritten to make it acceptable. The City may conclude the evaluation process at this point and recommend award to the lowest responsible bidder. Alternatively, the City may elect to negotiate directly with one or more Proposers to obtain the best result for the City prior to making a recommendation or selection.

C. **Interviews, Reference Checks, Revised Proposals, Discussions**

Following the initial screening and review of proposals, the Proposers included in this stage of the evaluation process may be invited to participate in an oral interview. Interviews, if held, are tentatively scheduled for October 22-26, 2012 and will be conducted at City of Costa Mesa City Hall, 77 Fair Drive, Costa Mesa, CA 92626. This date is subject to change. The individual(s) from Proposer's firm or entity that will be directly responsible for carrying out the contract, if awarded, should be present at the oral interview. The oral interview may, but is not required to, use a written question/answer format for the purpose of clarifying the intent of any portions of the proposal.

In addition to conducting an oral interview, the City may during this stage of the evaluation process also contact and evaluate the Proposer's references, contact any Proposer to clarify any response or request revised or additional information, contact any current users of a Proposer's services, solicit information from any available source concerning any aspect of a proposal, and seek and review any other information deemed pertinent to the evaluation process.

Following conclusion of this stage of the evaluation process, the Committee will again rank all Proposers according to the evaluation criteria set forth above. The Committee may conclude the evaluation process at this point, and make a recommendation for award, or it may request Best and Final Offers from Proposers. The City may accept the proposal or negotiate the terms and conditions of the agreement with the highest ranked firm, which shall be determined to be the lowest responsible bidder. The City may recommend award without Best and Final Offers, so Proposers should include their best proposal with their initial submission.

Recommendation for award is contingent upon the successful negotiation of final contract terms. Negotiations shall be confidential and not subject to disclosure to competing Proposers unless an agreement is reached. If contract negotiations cannot be concluded successfully within a time period determined by the City, the City may terminate negotiations and commence negotiations with the next highest scoring Proposer or withdraw the RFP.

8. PROTEST PROCEDURES

Failure to comply with the rules set forth herein may result in rejection of the protest. Protests based upon restrictive specifications or alleged improprieties in the proposal procedure which are apparent or reasonably should have been discovered prior to receipt of proposals shall be filed in writing with the RFP Facilitator at least 10 calendar days prior to the deadline for receipt of proposals. The protest must clearly specify in writing the grounds and evidence on which the protest is based.

Protests based upon alleged improprieties that are not apparent or which could not reasonably have been discovered prior to submission date of the proposals, such as disputes over the staff recommendation for contract award, shall be submitted in writing to the RFP Facilitator, within forty-eight hours from receipt of the notice from the City advising of staff's recommendation for award of contract. The protest must clearly specify in writing the grounds and evidence on which the protest is based. The RFP Facilitator will respond to the protest in writing at least three days prior to the meeting at which staff's recommendation to the City Council will be considered. Should Proposer decide to appeal the response of the RFP Facilitator, and pursue its protest at the Council meeting, it will notify the RFP Facilitator of its intention at least two days prior to the scheduled meeting.

9. CONFIDENTIALITY

The California Public Records Act (Cal. Govt. Code Sections 6250 et seq.) mandates public access to government records. Therefore, unless information is exempt from disclosure by law, the content of any request for explanation, exception, or substitution, response to this RFP, protest, or any other written communication between the City and Proposer, shall be available to the public. The City intends to release all public portions of the proposals following the evaluation process at such time as a recommendation is made to the City Council.

If Proposer believes any communication contains trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position

if disclosed, the Proposer shall request that the City withhold from disclosure the proprietary information by marking each page containing such proprietary information as confidential. Proposer may not designate its entire proposal as confidential nor designate its Price Proposal as confidential.

Submission of a proposal shall indicate that, if Proposer requests that the City withhold from disclosure information identified as confidential, and the City complies with the Proposer's request, Proposer shall assume all responsibility for any challenges resulting from the non-disclosure, indemnify and hold harmless the City from and against all damages (including but not limited to attorney's fees that may be awarded to the party requesting the Proposer information), and pay any and all costs and expenses related to the withholding of Proposer information. Proposer shall not make a claim, sue, or maintain any legal action against the City or its directors, officers, employees, or agents concerning the disclosure, or withholding from disclosure, of any Proposer information. If Proposer does not request that the City withhold from disclosure information identified as confidential, the City shall have no obligation to withhold the information from disclosure and may release the information sought without any liability to the City.

10. EX PARTE COMMUNICATIONS

Proposers and Proposers' representatives should not communicate with the City Council members about this RFP. In addition, Proposers and Proposers' representatives should not communicate outside the procedures set forth in this RFP with an officer, employee or agent of the City, including any member of the evaluation panel, with the exception of the RFP Facilitator, regarding this RFP until after Contract Award. Proposers and their representatives are not prohibited, however, from making oral statements or presentations in public to one or more representatives of the City during a public meeting.

A "Proposer" or "Proposer's representative" includes all of the Proposer's employees, officers, directors, consultants and agents, any subcontractors or suppliers listed in the Proposer's proposal, and any individual or entity who has been requested by the Proposer to contact the City on the Proposer's behalf. Proposers shall include the Ex Parte Communications form (Appendix C) with their proposals certifying that they have not had or directed prohibited communications as described in this section.

11. CONFLICT OF INTEREST

The Proposer warrants and represents that it presently has no interest and agrees that it will not acquire any interest which would present a conflict of interest under California Government Code sections 1090 et seq., or sections 87100 et seq., during the performance of services under any Agreement awarded. The Proposer further covenants that it will not knowingly employ any person having such an interest in the performance of any Agreement awarded. Violation of this provision may result in any Agreement awarded being deemed void and unenforceable.

12. DISCLOSURE OF GOVERNMENTAL POSITION

In order to analyze possible conflicts that might prevent a Proposer from acting on behalf of the City, the City requires that all Proposers disclose in their proposals any positions that they hold as directors, officers, or employees of any governmental entity. Additional disclosure may be required prior to contract award or during the term of the contract. Each Proposer shall disclose whether any owner or employee of the firm currently hold positions as elected or appointed officials, directors, officers, or employees of a governmental entity or held such positions in the past twelve months using the attached "Disclosure of Government Positions Form." (See Appendix F)

13 CONDITIONS TO AGREEMENT, IF ANY.

The selected Proposer will execute an Agreement for Services with the City describing the Scope of Services to be performed, the schedule for completion of the services, compensation, and other pertinent provisions. The contract shall follow the sample form of Agreement provided as Appendix B to this RFP, which may be modified by City. All Proposers are directed to particularly review the indemnification and insurance requirements set forth in the sample Agreement.

The terms of the agreement, including insurance requirements have been mandated by the City and can be modified only if extraordinary circumstances exist. Submittal of a proposal shall be deemed acceptance of all the terms set forth in this RFP and the sample Agreement for Services unless the Proposer includes with its proposal, in writing, any conditions or exceptions requested by the Proposer to the proposed Agreement. In accordance with the Municipal Code, the City may consider the scope and number of conditions in evaluation proposals and determining the lowest responsible bidder.

14. DISQUALIFICATION QUESTIONNAIRE

Proposers shall complete and submit, under penalty of perjury, a standard form of questionnaire inquiring whether a Proposer, any officer of a proposer, or any employee of a Proposer who has a proprietary interest in the Proposer, has ever been disqualified, removed, or otherwise prevented from proposing on, or completing a federal, state, or local government project because of a violation of law or safety regulation and if so, to explain the circumstances. A proposal may be rejected on the basis of a Proposer, any officer or employee of such Proposer, having been disqualified, removed, or otherwise prevented from proposing on, or completing a federal, state, or local project because of a violation of law or a safety regulation. See Appendix E.

15. STANDARD TERMS AND CONDITIONS

Amendments

The City reserves the right to amend or supplement this RFP prior to the proposal due date. All amendments and additional information will be posted to the Costa Mesa Procurement Registry, [Costa Mesa - Official City Web Site - Business - Bids & RFP's](#); Proposers should check this web page daily for new information.

Cost for Preparing Proposal

The cost for developing the proposal is the sole responsibility of the Proposer. All proposals submitted become the property of the City.

Insurance Requirements

City requires that licensees, lessees, and vendors have an *approved* Certificate of Insurance (not a declaration or policy) or proof of legal self-insurance on file with the City for the issuance of a permit or contract. Within ten (10) consecutive calendar days of award of contract, successful Proposer must furnish the City with the Certificates of Insurance proving coverage as specified within Appendix B.

APPENDIX A



REQUEST FOR PROPOSAL

Workers' Compensation Third Party Administration

VENDOR APPLICATION FORM

TYPE OF APPLICANT: NEW CURRENT VENDOR

Legal Contractual Name of Corporation: _____

Contact Person for Agreement: _____

Corporate Mailing Address: _____

City, State and Zip Code: _____

E-Mail Address: _____

Phone: _____ Fax: _____

Contact Person for Proposals: _____

Title: _____ E-Mail Address: _____

Business Telephone: _____ Business Fax: _____

Is your business: (check one)

NON PROFIT CORPORATION FOR PROFIT CORPORATION

Is your business: (check one)

CORPORATION LIMITED LIABILITY PARTNERSHIP

INDIVIDUAL SOLE PROPRIETORSHIP

PARTNERSHIP UNINCORPORATED ASSOCIATION

Names & Titles of Corporate Board Members

(Also list Names & Titles of persons with written authorization/resolution to sign contracts)

Names	Title	Phone
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Federal Tax Identification Number: _____

City of Costa Mesa Business License Number: _____

(If none, you must obtain a Costa Mesa Business License upon award of contract.)

City of Costa Mesa Business License Expiration Date: _____

APPENDIX B

PROFESSIONAL SERVICES AGREEMENT

CITY OF COSTA MESA

THIS AGREEMENT is made and entered into this __ day of ____, 2012 (“Effective Date”), by and between the CITY OF COSTA MESA, a municipal corporation (“City”), and consultant, a California corporation (“Consultant”).

WITNESSETH:

- A. WHEREAS, City proposes to have Consultant provide third party administrative services for City’s self-insured workers compensation program as described herein below; and
- B. WHEREAS, Consultant represents that it has that degree of specialized expertise necessary to practice and perform the services herein contemplated; and
- C. WHEREAS, City and Consultant desire to contract for specific services in connection with the project described below (the “Project”) and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and
- D. WHEREAS, no official or employee of City has a financial interest, within the provisions of California Government Code, Sections 1090-1092, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Services. Consultant shall provide the professional services described in Consultant’s Proposal (the “Proposal”). A copy of said Proposal is attached hereto as Exhibit “A” and incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. It is understood that in the exercise of every aspect of its role, within the scope of work, consultant will be representing the City, and all of its actions, communications, or other work, during its employment, under this contract is under the direction of the City. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant’s performance of this Agreement.

1.3. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws including, but not limited to, those laws related to minimum hours and wages; occupational health and

safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

1.4. Non-discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code. Violation of this provision may result in the imposition of penalties referred to in Labor Code, Section 1735.

1.5. Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.6. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

2.0. COMPENSATION AND BILLING

2.1. Compensation. [TBD]

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Proposal unless the City or the Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. Consultant may submit invoices to City's affected supervisor for approval on a progress basis, but no more often than two times a month. Said invoice shall be based on the total of all Consultants' services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be

made available to City or its Project Manager for inspection and/or audit at mutually convenient times for a period of three (3) years from the date of payment for services rendered.

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Said services shall be performed in strict compliance with the Project Schedule approved by City as set forth in Exhibit “D,” attached hereto and incorporated herein by this reference. The Project Schedule may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of three year, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. At the end of the term period, the City may determine, in its sole discretion, to exercise an option to renew the contract for up to two periods of one (1) year each. The City shall give notice to Consultant of its intention to exercise such option at least 30 days prior to expiration of the base, or option, term.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City.

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City’s written notice of termination.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, all workers compensation claim files, reports, logs, etc., shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City’s sole risk and without liability or legal expense to Consultant.

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain and maintain during the life of this Agreement all of the following insurance coverages:

- (a) Comprehensive general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.
- (b) Automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.
- (c) Workers' compensation insurance as required by the State of California. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving, subrogation rights under its workers' compensation insurance policy against the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

5.2. Endorsements. The comprehensive general liability insurance policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to this subject project and contract with City."
- (b) Notice: "Said policy shall not terminate, nor shall it be cancelled, nor the coverage reduced, until thirty (30) days after written notice is given to City."
- (c) Other insurance: "Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."

5.3 If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance: Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement.

5.5. Non-limiting: Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

6.0. GENERAL PROVISIONS

6.1. Entire Agreement: This Agreement constitutes the entire Agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The City Manager or his designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. City shall designate a Project Manager to work directly with Consultant in the performance of this Agreement.

Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices: Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48

hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

Consultant
 12345 Jefferson Rd.
 Costa Mesa, CA 92626
 Tel: 555-555-5555
 Fax: 555-555-5555
 Attn:

IF TO CITY:

City of Costa Mesa
 77 Fair Drive
 Costa Mesa, CA 92626
 Tel: 714-754-5156
 Fax: 714-754-5330
 Attn: Purchasing

6.5. Drug-free Workplace Policy. Consultant shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Exhibit "B" and incorporated herein by reference. Consultant's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.

6.6. Attorneys' Fees: In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.7. Governing Law: This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

6.8. Assignment: Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.9. Indemnification and Hold Harmless:

To the fullest extent permitted by law, the Consultant assumes liability for and shall save and protect, hold harmless, indemnify, and defend the City and its elected and appointed officials, officers, and employees (all the foregoing, hereinafter collectively, "Indemnitees") from and against all claims, suits, demands, damages, losses, expenses, and liabilities of any kind whatsoever (all the foregoing, hereinafter collectively "Claims") including, without limitation, attorneys' fees, arising out of, resulting from, relating to, or claimed to have arisen out of, resulted from or related to the engagement of Consultant or the performance of this Agreement by the Consultant (including its subcontractors and suppliers)

It is expressly intended by the parties that Consultant's indemnity and defense obligations shall apply, and Indemnitees shall be fully indemnified without offset, deduction or contribution, regardless of any negligence or other fault of Indemnitees, or any of them, and whether or not such Indemnitee negligence or other fault caused or contributed to the arising of the Claims.

"Claims" as used in this section shall include, without limitation, those for personal injuries, wrongful death, mental or emotional distress, loss of consortium, damage to or loss of use of real, personal or intangible property of any kind, loss of income, loss of earning capacity, and business, financial, commercial or pecuniary losses of any kind whatsoever, and attorneys fees, and costs and expenses of any kind whatsoever.

Consultant's indemnity and defense obligations shall cover the acts or omissions of any of Consultant's subcontractors, and suppliers, and the employees of any of the foregoing.

The Consultant's indemnity and defense obligation under this Section includes, without limitation, any claims, suits, demands, damages, losses, expenses, and liabilities arising from allegations of violations of any federal, State, or local law or regulation, and from allegations of violations of Consultant's or its subcontractor's personnel practices or from any allegation of an injury to an employee of the Consultant or subcontractor performing work or labor necessary to carry out the provisions of this Contract.

The indemnification obligations in this Section shall not be construed to negate, abridge or otherwise reduce any other obligation of indemnity the Consultant may have with respect to the City which may otherwise exist. If any judgment is rendered against the City or any of the other individuals enumerated above in any such action, the Consultant shall, at its expense, satisfy and discharge the same. This indemnification shall survive termination or expiration of this Agreement.

6.10. Independent Contractor: Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall secure, at his expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder.

6.11. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.12. Ownership of Documents: All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

6.13. Confidentiality: Any City materials to which the Consultant has access, information that reasonably might be construed as private or containing personal identifiable information, or materials prepared by the Consultant during the course of this Agreement (collectively referred to as "confidential information") shall be held in confidence by the Consultant, who shall exercise all reasonable precautions to prevent the disclosure of confidential information to anyone except the officers, employees and agents of the Consultant as necessary to accomplish the rendition of services set forth in this Agreement. Consultant shall not release any reports, information, private or promotional information or materials, whether deemed confidential or not, to any third party without the approval of the City.

6.14. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design

drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

6.15. Prohibited Employment: Consultant will not employ any regular employee of City while this Agreement is in effect.

6.16. Order of Precedence: In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of the Proposal, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the Proposal.

6.17. Costs: Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.18. No Third Party Beneficiary Rights: This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.19. Headings: Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.20. Construction: The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.21. Amendments: Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.22. Waiver: The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.23. Severability: If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party is materially impaired, which determination as made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.24. Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.25. Corporate Authority: The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so, the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF COSTA MESA,

A municipal corporation

Date: _____

City Manager of Costa Mesa

CONSULTANT

Date: _____

Signature

Name and Title

Social Security or Taxpayer ID Number

APPROVED AS TO FORM:

Date: _____

City Attorney

APPROVED AS TO INSURANCE:

Date: _____

Risk Management

APPROVED AS TO CONTENT:

Date: _____

Project Manager

EXHIBIT A

CONSULTANT'S PROPOSAL

EXHIBIT B

CITY COUNCIL POLICY 100-5

SUBJECT	POLICY	EFFECTIVE	PAGE
	NUMBER	DATE	
DRUG-FREE WORKPLACE	100-5	8-8-89	1 of 3

BACKGROUND

Under the Federal Drug-Free Workplace Act of 1988, passed as part of omnibus drug legislation enacted November 18, 1988, contractors and grantees of Federal funds must certify that they will provide drug-free workplaces. At the present time, the City of Costa Mesa, as a sub-grantee of Federal funds under a variety of programs, is required to abide by this Act. The City Council has expressed its support of the national effort to eradicate drug abuse through the creation of a Substance Abuse Committee, institution of a City-wide D.A.R.E. program in all local schools and other activities in support of a drug-free community. This policy is intended to extend that effort to contractors and grantees of the City of Costa Mesa in the elimination of dangerous drugs in the workplace.

PURPOSE

It is the purpose of this Policy to:

1. Clearly state the City of Costa Mesa's commitment to a drug-free society.
2. Set forth guidelines to ensure that public, private, and nonprofit organizations receiving funds from the City of Costa Mesa share the commitment to a drug-free workplace.

POLICY

The City Manager, under direction by the City Council, shall take the necessary steps to see that the following provisions are included in all contracts and agreements entered into by the City of Costa Mesa involving the disbursement of funds.

1. Contractor or Sub-grantee hereby certifies that it will provide a drug-free workplace by:
 - a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Contractor's and/or sub-grantee's workplace, specifically the job site or location included in this contract, and specifying the actions that will be taken against the employees for violation of such prohibition;
 - b. Establishing a Drug-Free Awareness Program to inform employees about:
 1. The dangers of drug abuse in the workplace;

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2. Contractor's and/or sub-grantee's policy of maintaining a drug-free workplace;
 3. Any available drug counseling, rehabilitation and employee assistance programs; and
 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- c. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph A;
- d. Notifying the employee in the statement required by subparagraph 1 A that, as a condition of employment under the contract, the employee will:
1. Abide by the terms of the statement; and
 2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- e. Notifying the City of Costa Mesa within ten (10) days after receiving notice under subparagraph 1 D 2 from an employee or otherwise receiving the actual notice of such conviction;
- f. Taking one of the following actions within thirty (30) days of receiving notice under subparagraph 1 D 2 with respect to an employee who is so convicted:
1. Taking appropriate personnel action against such an employee, up to and including termination; or
 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency;
 3. Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 1 A through 1 F, inclusive.

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- g. Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 1 A through 1 F, inclusive
2. Contractor and/or sub-grantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:
 - a. Contractor and/or sub-grantee has made a false certification under paragraph 1 above;
 - b. Contractor and/or sub-grantee has violated the certification by failing to carry out the requirements of subparagraphs 1 A through 1 G above;
 - c. Such number of employees of Contractor and/or sub-grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor and/or sub-grantee has failed to make a good faith effort to provide a drug-free workplace.
 3. Should any contractor and/or sub-grantee be deemed to be in violation of this Policy pursuant to the provisions of 2 A, B, and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, and local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a contractor and/or sub-grantee, the contractor and/or sub-grantee shall be ineligible for award of any contract, agreement or grant from the City of Costa Mesa for a period specified in the decision, not to exceed five (5) years. Upon issuance of any final decision recommending against debarment of the contractor and/or sub-grantee, the contractor and/or sub-grantee shall be eligible for compensation as provided by law.

EXHIBIT C

CERTIFICATES OF INSURANCE

APPENDIX C

EX PARTE COMMUNICATIONS CERTIFICATION

Please indicate by signing below one of the following two statements. **Only sign one statement.**

I certify that Proposer and Proposer's representatives have not had any communication with a City Councilmember concerning the Workers' Compensation Third Party Administrator RFP at any time after August 10, 2012

OR

I certify that Proposer or Proposer's representatives have communicated after August 10, 2012 with a City Councilmember concerning the Workers' Compensation TPA RFP. A copy of all such communications is attached to this form for public distribution.

APPENDIX D

PROPOSAL PRICING

Pricing quote must be proportionate based on each City's respective workloads as indicated in the Background section on page 11 of the RFP document.

All fees for service must be clearly identified in the response to this RFP. For each item listed that is not included in the base price, provide the annual charge (if applicable) and the basis for the fee.

	City of Costa Mesa
<p>Base Price: Specify how the base price is computed, i.e. flat fee or price per claim. Please attach a staffing cost breakdown. Include any minimums and maximums, and any special services included in the base price.</p>	
Fiscal Year 2013	\$
Fiscal Year 2014	\$
Fiscal Year 2015	\$
<p>Adjustments: Adjustments to base price or optional services. Include any one-time costs, if any, for additional services, including data transfer.</p>	\$
Medical Provider Network, (if not included in base price).	\$
Any services considered to be allocated expenses and not covered under the base price.	\$

Program Implementation: Include one time costs, if any, for administration of existing claims (runoff of old claims)	\$
Data Conversion	\$
Customization of reports	\$
On-site computer terminal access	\$
Special reports	\$
Preparation of 1099's	\$
Storage of claims	\$
Total Annual Admin Fees	\$

This pricing grid is offered as a guideline. Respondents are is encouraged to submit proposals in as many ways and/or formats as possible, or as needed, to effectively communicate their pricing structure.

APPENDIX E

DISQUALIFICATION QUESTIONNAIRE

The Contractor shall complete the following questionnaire:

Has the Contractor, any officer of the Contractor, or any employee of the Contractor who has proprietary interest in the Contractor, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or safety regulation?

Yes _____ No _____

If the answer is yes, explain the circumstances in the following space.

APPENDIX F

DISCLOSURE OF GOVERNMENT POSITIONS

Each Proposer shall disclose below whether any owner or employee of the firm currently hold positions as elected or appointed officials, directors, officers, or employees of a governmental entity or held such positions in the past twelve months. List below or state "None."