

**CITY OF COSTA MESA  
PROFESSIONAL SERVICES AGREEMENT  
WITH  
CARL WARREN & COMPANY**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 1st day of October, 2017 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and CARL WARREN & COMPANY, a California corporation ("Consultant").

**WITNESSETH:**

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to provide third party liability claims administration services, as more fully described herein; and

B. WHEREAS, Consultant represents that it has that degree of specialized expertise contemplated within California Government Code section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and

C. WHEREAS, City and Consultant desire to contract for the specific services described in Exhibit "A" 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 sections 1090-1092 of the California Government Code, 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, 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. 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. Performance to Satisfaction of City. Consultant agrees to perform all the work to the complete satisfaction of the City and within the hereinafter specified. Evaluations of the work will be done by the City Manager or his or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;
- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. 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.

1.5. 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, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status, except as permitted pursuant to section 12940 of the Government Code.

1.6. 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.

1.7. 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.

1.8. Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

## **2.0. COMPENSATION AND BILLING**

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set

forth in Exhibit A. Consultant's total annual compensation shall not exceed Fifty Thousand Dollars (\$50,000.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Consultant's Proposal unless the City or the Project Manager, 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 the City 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 Consultant's 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, the date of performance, 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 from the Effective Date until three (3) years after termination of this Agreement.

### **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. 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 (3) years, ending on September 30, 2020, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. This Agreement may be extended by two (2) additional one (1) year periods upon mutual written agreement of both parties.

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. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant.

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, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, 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, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (b) Business 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 for bodily injury and property damage.
- (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, its officers, agents, employees, and volunteers arising from work performed by Consultant for 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. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. 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 commercial general liability insurance policy and business automobile liability 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, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant."
- (b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City."
- (c) Other insurance: "The Consultant's insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.
- (e) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self Insured Retention. 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. The certificates of insurance shall be attached hereto as Exhibit "B" and incorporated herein by this reference.

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 or her 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 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, and (b) 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:

Carl Warren & Company  
17862 East 17th Street, Suite 111  
Tustin, CA 92780  
Tel: (602) 485-8228 ext. 101  
Attn: Richard McAbee

IF TO CITY:

City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
Tel: (714) 754-5359  
Attn: Ruth Wang

Courtesy copy to:

City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
Attn: Finance Dept. | 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 "C" 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. Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

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 have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. Consultant shall secure, at its sole 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. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

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. Cooperation. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

6.13. 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.

6.14. Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code section 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.15. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code sections 81000, *et seq.*) and Government Code section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.16. 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.

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

6.18. 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 any document, 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 document referenced.

6.19. 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.

6.20. 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.

6.21. 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.

6.22. 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.

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

6.24. 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.

6.25. 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 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.

6.26. 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.

6.27. 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.

[Signatures appear on following page.]

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.

**CONSULTANT**

Richard McAfee  
Signature  
Richard McAfee - Chief  
[Name and Title] Marketing Office

Date: 9/14/17  
[Redacted] [Redacted] [Redacted]  
Social Security or Taxpayer ID Number

**CITY OF COSTA MESA**

Thomas R. Hatch  
Thomas Hatch  
City Manager

Date: 9/26/17

**ATTEST:**

Brenda Green 10/5/17  
Brenda Green  
City Clerk



**APPROVED AS TO FORM:**

Thomas Duarte  
Thomas Duarte  
City Attorney

Date: 09/22/17


**APPROVED AS TO INSURANCE:**

Ruth Wang  
Ruth Wang  
Risk Management

Date: 9/21/17

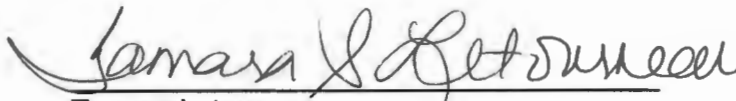


APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Ruth Wang  
Project Manager

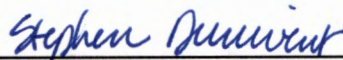
Date: 9/24/17

DEPARTMENTAL APPROVAL:

  
\_\_\_\_\_  
Tamara Letourneau  
Assistant City Manager and  
Administrative Services Director

Date: 9/29/17

APPROVED AS TO PURCHASING:

  
\_\_\_\_\_  
Stephen Dunivent  
Interim Finance Director

Date: 9.22.17



**EXHIBIT A**  
**CONSULTANT'S PROPOSAL**



## COVER LETTER

February 8, 2017

City of Costa Mesa  
City Hall, Office of the Clerk  
77 Fair Drive  
Costa Mesa, California 92628-1200

Attention: Terri Combs, RFP Facilitator  
Regarding: Request For Proposal (RFP) No. 17-09  
Third Party Liability Claims Administration

Dear Evaluation Committee,

On behalf of the employee-owners of Carl Warren, I would like to thank you for the opportunity to respond and to hopefully continue on as a trusted partner of the City of Costa Mesa, hereinafter referred to as "the City".

As we set the course for our continued growth, we reflect on what has gotten us to where we are today: our strong client focus. As an employee-owned company each of our employees has a vested interest in our success; this is reflected in our work product.

### **OUR EXPERIENCE**

Carl Warren has been administering liability claims for the City for close to 40 years! We have a strong presence in Southern California and strive to build long-term relationships with our clients in the public sector. Our current client base also includes the cities of Newport Beach, Huntington Park, Garden Grove and Placentia. Our team meets with the City on a regular basis and performs an annual stewardship report. We recently started handling subrogation for the City and obtained our first recovery earlier this month!

### **OUR TEAM**

We propose continuing to handle the City's account from our corporate office in Orange County. We recently merged offices and are now headquartered in Tustin so are less than 10 miles away from the City of Costa Mesa.

17862 East 17<sup>th</sup> Street, Suite 111, Tustin, California 92780  
Tel: 657-622-4200





We recommend the technical staff on the account remain the same. There has been minimal turnover on the account. All team members have extensive experience handling claims for the public sector. We propose Kelly Ogle to continue on as the Claims Manager with Jaclyn Marquez as the primary adjuster, Kathy Brown as the subrogation specialist, Steven Rolon as the senior/back-up adjuster and Reta Lewis, who recently joined Carl Warren, as the Claims Supervisor.

#### **OUR TECHNOLOGY**

Through our Risk Management Information System, MyCarlWarren, the City has significant data resources.. Authorized City staff members have the ability to capture and analyze multiple data points and create and print a multitude of customized, purposeful, accurate and timely reports inclusive of the program costs. Additionally, we have an in-house IT Department that creates customized reports when needed and can provide RMS training and refresher courses for City staff.

#### **DISCLOSURES**

We have read the Request for Proposal in its entirety and have no exceptions to the content contained herein. We accept the Professional Service Agreement/Appendix A and propose no changes. We meet all minimum requirements outlined in the RFP. As the incumbent, Carl Warren has Certificates of Insurance listing the City as an additional insured. Our proposal constitutes a firm offer to the City for a minimum of one hundred and eighty (180) calendar days from February 15, 2017. We are in receipt of Addendum #1 released on February 3<sup>rd</sup>, 2017. As the incumbent TPA, Carl Warren employees do have business relationships with the following individuals: Lance Nakamoto, Ruth Wang, Stephanie Urueta, Ray Hull, Karen Fukayto and Colleen O'Donoghue.

I, Richard McAbee, am an officer of Carl Warren and am authorized to bind the Company to the terms of the proposal.

Our goal is to continue to improve on the services that we have provided the City as a partner for the past forty years.

Kind Regards,

A handwritten signature in black ink that reads "Richard McAbee".

Richard McAbee, Chief Marketing Officer  
Tel: 888-858-2807 ext. 101 | Cell: 602-723-5610  
[rmcabee@carlwarren.com](mailto:rmcabee@carlwarren.com)



**VENDOR APPLICATION FORM  
FOR  
RFP NO. 17-09  
THIRD PARTY LIABILITY CLAIMS ADMINISTRATION**

TYPE OF APPLICANT:             NEW             CURRENT VENDOR

Legal Contractual Name of Corporation:            Carl Warren & Company

Contact Person for Agreement: Richard McAbee

Corporate Mailing Address:            17862 East 17th Street, Suite 111

City, State and Zip Code:            Tustin, California 92780

E-Mail Address: rmcabee@carlwarren.com

Phone: 602-485-8228 x101

Fax: 866-254-4423

Contact Person for Proposals: Richard McAbee

Title: Chief Marketing Officer

E-Mail Address: rmcabee@carlwarren.com

Business Telephone: 602-485-8228 x101  
Cell: 602-723-5610

Business Fax: 866-254-4423

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 &amp; Titles of persons with written authorization/resolution to sign contracts)

Names	Title	Phone
Tom Boylan (Carl Warren, Board Member)	President & CEO	657-622-4300
Allison Duncan (Carl Warren)	CFO	657-622-4320
Jeanette Hernandez (Carl Warren)	COO	657-622-4330
Richard McAbee (Carl Warren)	CMO	602-485-8228 x101
Board Members:		
John Q. Adams (Chairman of the Board)		
Suzanne Shank (Board Member)		
Raman Venkat (Board Member)		

Federal Tax Identification Number: [REDACTED]

City of Costa Mesa Business License Number: #51232

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

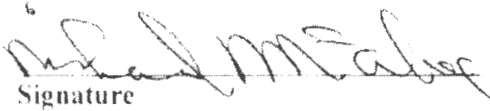
City of Costa Mesa Business License Expiration Date: 1/31/18



**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 **RFP No. 17-09 THIRD PARTY LIABILITY CLAIMS ADMINISTRATION** at any time after **January 25, 2017**.

  
Signature

Date: 2/9/17

Richard McAbee

Print

**OR**

I certify that Proposer or Proposer's representatives have communicated after **January 25, 2017** with a City Councilmember concerning **RFP No. 17-09 THIRD PARTY LIABILITY CLAIMS ADMINISTRATION**. A copy of all such communications is attached to this form for public distribution.

.....  
Signature

Date: .....

.....  
Print

## 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 X

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

**DISCLOSURE OF GOVERNMENT POSITIONS**

Each Proposer shall disclose below whether any owner or employee of Contractor 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."

None.

**COMPANY PROFILE & REFERENCES****Company Profile**Company Legal Name: Carl Warren & CompanyCompany Legal Status (corporation, partnership, sole proprietor etc.): Corporation/ESOP CompanyActive licenses issued by the California State Contractor's License Board: #2607296 (Independent Insurance Adjuster)Business Address: 17862 East 17th Street, Suite 111, Tustin, California 92780Website Address: www.carlwarren.comTelephone Number: 602-485-8228 x101 Facsimile Number: 866-254-4423Email Address: rmcabee@carlwarren.comLength of time the firm has been in business: 73 years Length of time at current location: 6 yearsIs your firm a sole proprietorship doing business under a different name: Yes  No

If yes, please indicate sole proprietor's name and the name you are doing business under: \_\_\_\_\_

Is your firm incorporated:  Yes  No If yes, State of Incorporation: CaliforniaFederal Taxpayer ID Number: [REDACTED]Regular business hours: 8AM - 5PM Pacific TimeRegular holidays and hours when business is closed: New Year's Day, President's Day, Memorial Day, July 4th,Labor Day, Thanksgiving Day and the following day, December 25th.Contact person in reference to this solicitation: Richard McAbeeTelephone Number: 602-485-8228 x101 Facsimile Number: 866-254-4423Email Address: rmcabee@carlwarren.comContact person for accounts payable: Deanna Maserjian, Staff AccountantTelephone Number: 657-622-4200 Facsimile Number: 855-683-3053Email Address: dmaserjian@carlwarren.comName of Project Manager: Kelly OgleTelephone Number: 657-622-4285 Facsimile Number: 855-683-3053Email Address: kogle@carlwarren.com



**COMPANY PROFILE & REFERENCES****(Continued)**

Submit the company names, addresses, telephone numbers, email, contact names, and brief contract descriptions of at least five clients, preferably other municipalities for whom comparable projects have been completed or submit letters from your references which include the requested information.

Company Name: City of Garden Grove Telephone Number: 714-741-5058

Contact Name: Ann Eifert Contract Amount: \$150K annually

Email: anne@ci.garden-grove.ca.us

Address: 11222 Acacia Parkway, Garden Grove, CA 92842

Brief Contract Description: Liability Claims Management

Company Name: City of Newport Beach Telephone Number: \_\_\_\_\_

Contact Name: Sheri Anderson Contract Amount: \$100K annually

Address: 3300 Newport Blvd. Newport Beach, CA 92658

Email: canderson@newportbeachca.gov

Brief Contract Description: Liability Claims Management

Company Name: City of Huntington Beach Telephone Number: 714-536-5290

Contact Name: Patti Williams Contract Amount: \$100K annually

Email: pwilliams@surfcity-hb.org

Address: 2000 Main Street, Huntington Beach, CA 96248

Brief Contract Description: Liability Claims Management

Company Name: City of Placentia Telephone Number: 714-993-8142

Contact Name: Stephen Pischel Contract Amount: \$18K annually

Address: 401 E. Chapman Avenue, Placentia, CA 92870

Email: spischel@placentia.org

Brief Contract Description: Liability Claims Management

Company Name: City of Fullerton Telephone Number: 714-738-6350

Contact Name: Gretchen Beatty Contract Amount: \$20K annually

Email: gretchenb@ci.fullerton.ca.us

Address: 303 W. Commonwealth Avenue, Fullerton, CA 92832

Brief Contract Description: Liability Claims Management

### STAFFING PLAN

1. **Primary Staff to perform Agreement duties**

<b>Name</b>	<b>Classification/Title</b>	<b>Years of Experience</b>
Kelly Ogle	Claims/Project Manager	35 years
Reta Lewis	Supervisor	25 years
Jaclyn Marquez	Lead Claims Adjuster	12 years
Kathy Brown	Subrogation Specialist	20+ years
Patti Moore	Support Specialist	25+ years
Robert MacLean	Support Specialist	25+ years

2. **Alternate staff (for use only if primary staff are not available)**

<b>Name</b>	<b>Classification/Title</b>	<b>Years of Experience</b>
Steve Rolon	Senior Adjuster/Back-Up	18 years

Substitution or addition of Proposer's key personnel in any given category or classification shall be allowed only with prior written approval of the City Project Manager.

The Proposer may reserve the right to involve other personnel, as their services are required. The specific individuals will be assigned based on the need and timing of the service required. Assignment of additional key personnel shall be subject to City Project Manager approval. City reserves the right to have any of Contractor personnel removed from providing services to the City under this Agreement. City is not required to provide any reason for the request for removal of any Contractor personnel.

**ATTACHMENT B**  
**COST PROPOSAL**  
**FOR**  
**THIRD PARTY LIABILITY CLAIMS ADMINISTRATION**

Provide hourly rates, along with estimated annual pricing in accordance with the City's current requirements, as set forth in section Scope of Work, Attachment A. Also provide your firm's proposed Staffing Plan on a separate sheet of paper. Proposer should use a separate form to state pricing for any added value.

Pricing shall remain firm for a minimum of two (2) years. Any and all requests for pricing adjustments for follow-on contract renewal periods shall be provided no later than sixty (60) days prior to the end of the contract period. Any such proposed price adjustments shall not exceed The Bureau of Labor Statistics Consumer Price Index (CPI) data for Los Angeles-Riverside-Orange County, CA, All Items, Not Seasonally Adjusted, "annualized change comparing the original proposal month and the same month in the subsequent year. (This information may be found on the U.S. Department of Labor's website at [www.bls.gov](http://www.bls.gov).)

Employee	Hourly Rate	Hours worked	Total Cost	Overtime rate
Not Applicable - Carl Warren is only submitting Fixed Annual pricing.	\$		\$	\$
	\$		\$	\$
	\$		\$	\$
	\$		\$	\$
	\$		\$	\$
	\$		\$	\$
	\$		\$	\$
	\$		\$	\$

<b>Total Estimated Annual Price</b>	\$
-------------------------------------	----

Carl Warren Fixed Annual Pricing*:	Year 1	\$44,000
	Year 2	\$44,000
	Year 3	\$45,540

Subrogation is additional and would be handled at 21% of net recovery for all 3 years.

\*not to exceed 75 claims per year. Claims over 75 will be charged the following:

- Bodily Injury           \$800/suffix
- Property Damage   \$400, plus cost of appraisal, if necessary