

**CITY OF COSTA MESA
PROFESSIONAL SERVICES AGREEMENT
WITH
ADMINSURE, INC.**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 1st day of April, 2018 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and ADMINSURE, INC., a California corporation ("Consultant").

WITNESSETH:

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to provide third party workers' compensation 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 the Scope of Services, attached hereto as Exhibit "A," and Consultant's Proposal, attached hereto as Exhibit "B," both 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 B. Consultant may increase the monthly claims administration fee set forth in Exhibit B on an annual basis following the anniversary date of this Agreement. No annual increase to the monthly claims administration fee shall exceed three percent (3%). Consultant's

annual compensation for the first year of this Agreement shall not exceed One Hundred Seventy-Five Thousand Dollars (\$175,000.00).

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 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 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. Unless otherwise agreed to in writing by the parties, 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 four (4) years, ending on March 31, 2022, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. This Agreement may be extended by one (1) additional one (1) year period 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 "C" 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:

AdminSure, Inc.
3380 Shelby St.
Ontario, CA 91764
Tel: (909) 396-5814
Attn: Alithia Vargas-Flores

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-5061
Attn: Itzia Carvajal

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

“D” 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

Alithia Vargas-Flores
Signature
Alithia Vargas-Flores, President
[Name and Title]

Date: 3/23/18

[Redacted]
Social Security or Taxpayer ID Number

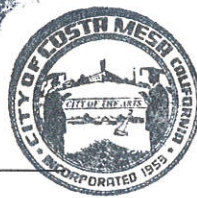
CITY OF COSTA MESA

Thomas Hatch
Thomas Hatch
City Manager

Date: 4/19/18

ATTEST:

Brenda Green 4-23-18
Brenda Green
City Clerk



APPROVED AS TO FORM:

[Signature]
Thomas Duarte
City Attorney

Date: 04/13/18

APPROVED AS TO INSURANCE:

[Signature]
Ruth Wang
Risk Management

Date: 4/2/18

APPROVED AS TO CONTENT:

[Signature]
Itzia Carvajal
Project Manager

Date: 4/2/18

DEPARTMENTAL APPROVAL:



Lance Nakamoto
Human Resources Manager

Date: 4/5/18

APPROVED AS TO PURCHASING:



Colleen O'Donoghue
Assistant Finance Director

Date: 4/11/18

EXHIBIT A
SCOPE OF SERVICES

SCOPE OF SERVICES

WORKERS' COMPENSATION THIRD PARTY ADMINISTRATOR SERVICES

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; utilization review, providing lost time and salary information; training for managers, supervisors, and employees; nurse case management program and assisting with early return to work program; claimant service evaluation and maintenance of the City workers' compensation claim files. The City has the right to award multiple contracts for the ancillary services.

GENERAL DESCRIPTION OF WORK

The City employs approximately 420 full-time employees and 245 part-time employees. The City workers' program is self-insured for \$2,000,000 per occurrence. The Administrator must 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.

SPECIFIC REQUIREMENTS – GENERAL RESPONSIBILITIES

The City of Costa Mesa is seeking a TPA who will be able to meet the minimum following service objectives:

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).

Administrator shall obtain information regarding specific restrictions from the doctors and work with the City to attempt and get the employee back to work in a light duty capacity when employee is able and approved by City Department.

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.

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.

Submit all billings for medical review for reasonableness, using the State Medical Fee Schedule 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.

Nurse Case Management

The City uses Nurse Case Management to assist with improving the return to work process and managing complex medical cases. 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.

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.

Assist with coordination of structured settlement expert(s) for complex 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.

EXHIBIT B
CONSULTANT'S PROPOSAL

EXHIBIT C
CERTIFICATES OF INSURANCE



ADMIINC-C1

MPEREZ

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/27/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| | | | |
|--|---|-------------------------------|--------|
| PRODUCER Bolton & Company 3475 E. Foothill Blvd., Suite 100 Pasadena, CA 91107 | CONTACT NAME: | | |
| | PHONE (A/C, No, Ext): (626) 799-7000 | FAX (A/C, No): (626) 441-3233 | |
| | E-MAIL ADDRESS: info@boltonco.com | | |
| INSURED AdminSure, Inc. 3380 Shelby Street Ontario, CA 91764 | INSURER(S) AFFORDING COVERAGE | | NAIC # |
| | INSURER A : Sentinel Insurance Co. | | 11000 |
| | INSURER B : Twin City Fire Insurance Co | | 29459 |
| | INSURER C : RLI Insurance Company | | 13056 |
| | INSURER D : United States Fire Insurance Co. | | |
| | INSURER E : | | |
| INSURER F : | | | |

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL SUBR INSD WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|--|--|---------------|-------------------------|-------------------------|---|
| A | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR | X | 72SBAUV7737 | 10/05/2017 | 10/05/2018 | EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 |
| | GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER: | | | | | |
| A | <input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY | | 72SBAUV7737 | 10/05/2017 | 10/05/2018 | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ |
| | <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY | | | | | |
| A | <input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB | <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE | 72SBAUV7737 | 10/05/2017 | 10/05/2018 | EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000 |
| | DED <input checked="" type="checkbox"/> RETENTION \$ 10,000 | | | | | |
| B | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below | Y/N <input type="checkbox"/> | 72WECNG7400 | 01/01/2018 | 01/01/2019 | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000 |
| C | Errors & Omissions | | RTP0011178 | 10/05/2017 | 10/05/2018 | Ded. \$25,000 \$ 5,000,000 |
| D | Crime | | 6260363478 | 10/13/2017 | 10/13/2018 | Ded. \$10,000 \$ 2,000,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Re: Operations of the Named Insured.

GL Blanket Additional Insured per SS00080405 attached, only if required by written contract/agreement. Primary & Non-Contributory wording applies.
Additional Insured: City of Costa Mesa

| | |
|--|--|
| CERTIFICATE HOLDER | CANCELLATION |
| City of Costa Mesa Attn: Ryan Thomas 77 Fair Drive Costa Mesa, CA 92626 | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Rebbie Crowder</i> |

(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

e. Unnamed Subsidiary

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

b. Coverage under this provision does not apply to:

(1) "Bodily injury" or "property damage" that occurred; or

(2) "Personal and advertising injury" arising out of an offense committed

before you acquired or formed the organization.

4. Operator Of Mobile Equipment

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Operator of Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written

BUSINESS LIABILITY COVERAGE FORM

contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section F. – Optional Additional Insured Coverages.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or

- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors Of Equipment

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

(6) When You Are Added As An Additional Insured To Other Insurance

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (a) and (b) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

8. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer Of Rights Of Recovery

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

EXHIBIT D

CITY COUNCIL POLICY 100-5

CITY OF COSTA MESA, CALIFORNIA

COUNCIL POLICY

| SUBJECT | POLICY NUMBER | EFFECTIVE DATE | PAGE |
|---------------------|---------------|----------------|--------|
| 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:

| SUBJECT | POLICY NUMBER | EFFECTIVE DATE | PAGE |
|---------------------|---------------|----------------|--------|
| DRUG-FREE WORKPLACE | 100-5 | 8-8-89 | 2 of 3 |

1. The dangers of drug abuse in the workplace;
 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;

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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.