

City of Los Alamitos

Agenda Report Consent Calendar

May 19, 2014
Item No: 8J

To: Mayor Gerri L. Graham-Mejia & Members of the City Council

From: Bret M. Plumlee, City Manager
Cary S. Reisman, City Attorney

Subject: Ratify Professional Service Agreement with AdminSure, Inc., for Workers' Compensation Management

Summary: The City of Los Alamitos self-insures its Worker's Compensation obligation. On May 1, 2014, the City Manager entered into a Professional Service Agreement with AdminSure, Inc. to administer a Workers' Compensation Self-Insurance Program. Staff is requesting City Council ratify that agreement.

Recommendation: Ratify the Professional Services Agreement with AdminSure, Inc., in for the term of May 1, 2014, to June 30, 2017.

Background

AdminSure is a Third Party Administrator (TPA) of Workers' Compensation and Liability programs. They provide claims administration and other essential services to all types of organizations in both the private and public sectors. The City Manager entered into an agreement with Adminsure for an amount up to \$10,000.00, which is unlikely to be sufficient. Therefore, the Agreement contains a provision to the effect that the \$10,000.00 limitation will be removed if the City Council ratifies the Agreement. If the City Council fails to ratify the Agreement, it may be unilaterally cancelled by Adminsure.

Discussion

The City uses York Administrators to administer its Workers' Compensation claims and related services. However earlier this year, CIPA insisted that we switch to AdminSure for the claims it was responsible for (prior to July, 2007) in order to reduce costs and increase oversight regarding those old, but active claims. After several telephone negotiations and e-mail clarifications (including the City Attorney), we came to an agreement with Adminsure. Due to timing constraints (the need to make the transition by May 1st) the City Manager entered into the agreement within his discretionary spending authority. Ratification of the Agreement will allow for payment of Adminsure's expenses even if they exceed \$10,000.00. Adminsure will work closely with Staff to

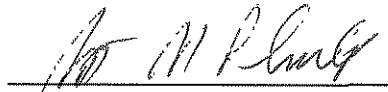
keep the Workers' Compensation program on an even keel, and to make the City's program more efficient and effective. Staff expects (and York acknowledged) that the agreement with Adminsure will result in savings to the City.

Fiscal Impact

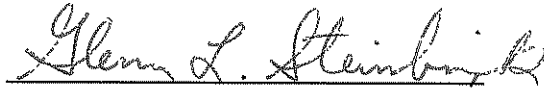
The Agreement will save the City administration expenses in an as yet to be determined amount.

Submitted & Approved By:

Fiscal Impact Reviewed By:



Bret M. Plumlee
City Manager



Glenn L. Steinbrink
Interim Administrative Services Director

Attachment: 1. Professional Services Agreement (AdminSure)

**PROFESSIONAL SERVICES AGREEMENT FOR WORKERS' COMPENSATION
ADMINISTRATION
(City of Los Alamitos/AdminSure Inc.)**

1. IDENTIFICATION

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into by and between the City of Los Alamitos, a California municipal corporation ("City"), and AdminSure, Inc., a California Corporation ("Consultant").

2. RECITALS

- 2.1 City has determined that it requires the following professional services from a consultant: administration of City's Workers' Compensation Self-Insurance Program ("Program").
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

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

3. DEFINITIONS

- 3.1 "Scope of Services": Such professional services as are set forth in Consultant's proposed Service Agreement attached hereto as Exhibit A ("Service Agreement") and incorporated herein by this reference.
- 3.2 "Approved Fee Schedule": Such compensation rates as are set forth in paragraph 12 of the Service Agreement, Exhibit A.
- 3.3 "Commencement Date": May 1, 2014.
- 3.4 "Expiration Date": June 30, 2017.

4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 17 ("Termination") below.

5. CONSULTANT'S SERVICES

- 5.1 Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. Until this Agreement has been approved or ratified by the City Council of City, the total compensation and costs payable to Consultant under this Agreement exceed the sum of ten thousand Dollars (\$10,000.00) unless specifically approved in advance and in writing by City. In the event that the City Council fails to approve or ratify this Agreement, it may be unilaterally cancelled by Consultant.
- 5.2 Consultant shall perform all work to the highest professional standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.3 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.
- 5.4 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Alithia Vargas-Flores shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.

6. COMPENSATION

- 6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payment in accordance with the Approved Fee Schedule and Section 5.1 of this Agreement above.
- 6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. Within ten business days of receipt of each invoice, City shall notify Consultant in writing of any disputed amounts included on the invoice. Within thirty calendar days of

receipt of each invoice, City shall pay all undisputed amounts included on the invoice. City shall not withhold applicable taxes or other payroll deductions from payments made to Consultant unless otherwise required by law.

- 6.3 Payments for any services requested by City and not included in the Scope of Services shall be made to Consultant by City on a time-and-materials basis using Consultant's standard fee schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies City in writing of an increase in that fee schedule nor to claim payment other than in compliance with this Agreement, including Section 5.1 above. Fees for such additional services shall be paid within sixty days of the date Consultant issues an invoice to City for such services

7. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon use or dissemination by City. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

8. RELATIONSHIP OF PARTIES

Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to 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 represent that it is, or that any of its agents or employees are, in any manner employees of City.

Under no circumstances shall Consultant look to the City as his employer. Consultant shall not be entitled to any benefits. City makes no representation as to the effect of this independent contractor relationship on Consultant's previously earned PERS retirement benefits, and Consultant specifically assumes the responsibility for making such a determination. Consultant shall be responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation.

9. CONFIDENTIALITY

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 prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

10. INDEMNIFICATION

- 10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, taxes, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.
- 10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and when the City requests with respect to a claim provide a deposit for the defense of, and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, and injury to any property arising out of or in connection with Consultant's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole active negligence or willful misconduct of the City. Such costs and expenses shall include reasonable attorneys' fees due to counsel of City's choice, expert fees and all other costs and expenses of litigation.
- 10.3 City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 10 and any amount due City from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.4 The obligations of Consultant under this Section 10 are not limited by the provisions of any workers' compensation statute or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.
- 10.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible and to indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or

expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.

- 10.6 City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies apply to the claim, demand, damage, liability, loss, cost or expense.

11. INSURANCE

- 11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:
- 11.1.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.
 - 11.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.
 - 11.1.3 Worker's Compensation insurance if and as required by the laws of the State of California.
 - 11.1.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).
- 11.2 Consultant shall require each of its subcontractors to maintain insurance coverages that meet all of the requirements of this Agreement.
- 11.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 11.4 Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out

the necessary insurance and pay the premium(s) thereon at Consultant's expense.

- 11.5 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the policies required by this Agreement are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds. Consultant shall file with City's Risk Manager such certificate(s) prior to commencement of work under this Agreement.
- 11.6 Consultant shall provide proof to the City's Risk Manager that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage at least two weeks prior to the expiration of the coverages.
- 11.7 The general liability and automobile policies of insurance required by this Agreement shall contain endorsements naming City and its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 11.8 The insurance provided by Consultant shall be primary to any other coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 11.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.
- 11.10 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.
- 11.11 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

12. MUTUAL COOPERATION

- 12.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.

12.2 If any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

13. RECORDS AND INSPECTIONS

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

14. PERMITS AND APPROVALS

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.

15. INCORPORATION BY REFERENCE

The following paragraphs of the Service Agreement are specifically incorporated herein by this reference: 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14. This agreement shall be interpreted in such a manner that it is consistent with the Service Agreement. In the event of any irreconcilable conflict between the terms of this Agreement and the Service Agreement, the terms of this Agreement shall prevail.

16. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing):

If to City:
City of Los Alamitos
3191 Katella Ave.
Los Alamitos, CA 90720
Attn: Bret Plumlee, City Manager
Telephone: (562) 431-3538
Facsimile: (562) 493-1255

If to Consultant:
AdminSure Inc.
1470 South Valley Vista Drive, Suite 230
Diamond Bar, CA 91765
Attn: Alithia Vargas, Flores, Vice President
Telephone: (909) 396-5814
Facsimile: (909) 978-1131

With courtesy copy to:
Cary S. Reisman, City Attorney
Wallin, Kress, Reisman & Kranitz, LLP
2800 28th Street, Suite 315
Santa Monica, CA 90405-6201

Telephone: (310) 450-9582
Facsimile: (320) 450-0506

17. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 9, Section 10, Paragraph 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

18. TERMINATION

- 17.1. City may terminate this Agreement for any reason on sixty calendar days' written notice to Consultant. Consultant may terminate this Agreement for any reason on sixty calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.
- 17.2 If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

18. GENERAL PROVISIONS

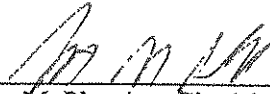
- 18.1 Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 18.2 In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability medical condition or any other unlawful basis.
- 18.3 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph at the head of which it appears, the section or paragraph, and not such heading, shall govern construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular and vice versa, in any place or places herein in which the context requires such substitution(s).
- 18.4 The waiver by City or Consultant of any breach of any term, covenant or condition of this Agreement shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition of this Agreement. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in a writing signed by one authorized to bind the party asserted to have consented to

the waiver.

- 18.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 18.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance from the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. If legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether or not reduced to judgment, shall be entitled to its reasonable court costs, including any accountants' and attorneys' fees incurred in such action. The venue for any litigation shall be Orange County, California and Consultant hereby consents to jurisdiction in Orange County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 18.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
- 18.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Consultant.

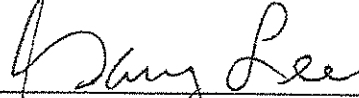
TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

“City”
City of Los Alamitos

By: 
Bret M. Plumlee, City Manager

Date: 5-8-14

“Consultant”
AdminSure Inc.

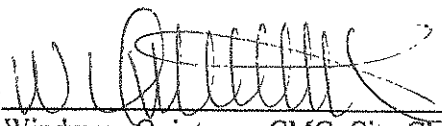
By: 
Gary Lee, President

Date: 5-8-2014

By: 
Alithia Vargas-Flores, Vice President

Date: 5/8/14

Attest:

By: 
Windmera Quintanar, CMC, City Clerk

Date: 5-8-14

Approved as to form:

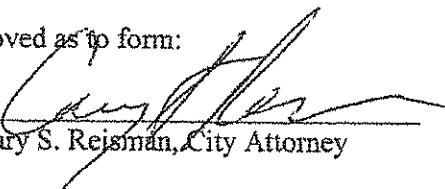
By: 
Cary S. Reisman, City Attorney

EXHIBIT A
SCOPE OF WORK

WORKERS' COMPENSATION ADMINISTRATION

SERVICE AGREEMENT

THIS AGREEMENT is entered into this day of , 2014, between the City of Los Alamitos, hereinafter referred to as the "Client," and AdminSure Inc., a California Corporation, hereinafter referred to as the "Administrator."

WHEREAS, the Client has undertaken to self-insure their Workers' Compensation obligation; and

WHEREAS, the Administrator is engaged in the business of administering Workers' Compensation Self-Insurance Programs; and

WHEREAS, the Client desires to retain the services of the Administrator to administer a Workers' Compensation Self-Insurance Program, hereinafter referred to as the "Program," for the Client;

NOW, THEREFORE, the Client hereby retains the services of the Administrator and the Administrator agrees to perform the services for the Client under the terms and conditions of this Agreement.

TERMS AND CONDITIONS

1. TERM: This Agreement shall become effective May 1, 2014 and shall continue unless terminated by the cancellation provision set forth herein.

2. PERIODIC MEETINGS: The Administrator shall meet with the Client and staff periodically to:
 - A. Assist in developing internal procedures.
 - B. Provide orientation and training to personnel involved in the administration of the Program.
 - C. Discuss specific claims and general trends in the Program.

3. ADVISORY SERVICES: The Administrator shall provide the Client information regarding the adoption, amendment or repeal of all Statutes, Rules and Regulations, et cetera, which may directly affect the Program.

4. REQUIRED FORMS: The Administrator shall provide the Client with all forms required by the State in connection with the Program.

5. COMPLIANCE WITH LAW: The Administrator shall administer the Program in full compliance with all laws, rules and regulations governing Workers' Compensation and Self-Insurance.

6. CLAIMS ADMINISTRATION: The Administrator shall comply with all performance standards of the Client's excess insurer. The Administrator shall also comply with the Administrator's Workers' Compensation Claims Administration Standards, but under no circumstances are they to be construed as having precedence over the performance standards of the Client's excess insurer. The Administrator shall also have the authority and responsibility to provide claims administration services, which include:

- A. Establishing an electronic claim file and computer database record upon receipt of an injury report.
- B. Setting and updating reserves.
- C. Initiating and maintaining contact with injured workers or their attorneys.
- D. Arranging for investigation.
- E. Determining compensability.
- F. Preparing and issuing benefit notices, if applicable.
- G. Arranging for medical treatment and medical services from clinics, facilities, pharmacies, hospitals, specialists, and other vendors as necessary.
- H. Performing all utilization review services through MedReview, communicating decisions to approve, modify, delay or deny medical treatment in accordance with State law.
- I. Monitoring disability status by reviewing medical reports and contacting doctors for updates.
- J. Auditing and reviewing all medical bills through MedReview and paying all properly adjusted medical bills in a timely and accurate manner.
- K. Paying mileage or medical reimbursements to injured workers.
- L. Paying temporary disability compensation when appropriate to do so or advising the Client of the need to adjust payroll records when salary continuation is applicable.

- M. Arranging medical exams in conformance with State law to determine whether an injured worker's medical condition is permanent and stationary (reached Maximum Medical Improvement/MMI) and what, if any, permanent disability exists.
- N. Paying the permanent disability compensation in accordance with the law.
- O. Arranging for attorney representation of the Client whenever the need arises.
- P. Monitoring attorneys and assisting them in preparing cases.
- Q. Auditing and paying legal expenses.
- R. Arranging for vocational rehabilitation services when appropriate, monitoring vocational rehabilitation consultants and assisting them as necessary.
- S. Auditing and paying vocational rehabilitation expenses.
- T. Attending all hearings that are required by law.
- U. Preparing and issuing Vocational Rehabilitation/Supplemental Job Displacement Benefits (SJDB) notices.
- V. Preparing and issuing the permanent disability compensation notices.
- W. Pursuing subrogation when there is a viable third party.
- X. Notifying the Client and excess insurers of all claims which exceed or may exceed the self-insurance retention; maintaining a liaison among the Client and their excess insurers on matters affecting the handling of such claims and arranging for reimbursement to the Client of losses in excess of its self-insurance retention.
- Y. Obtaining settlement authority and negotiating settlement on appropriate claims.
- Z. Closing claim files when appropriate to do so.

7. OBLIGATIONS OF THE CLIENT: The Client shall:

- A. Submit all reports of work injury to the Administrator in a timely manner not to exceed two business days of the Client's knowledge of the injury.
- B. Respond to the Administrator's requests for information and authority within five days of such requests.
- C. Provide information that is accurate and is in a form specified by the Administrator.

- D. Grant settlement authority to the Administrator in advance of WCAB, Rehabilitation, and legal hearings, or be available by phone or in person during same.

8. CHECKING ACCOUNT: The client and the Administrator agree that:

- A. The Client shall establish and maintain a checking account from which all Workers' Compensation benefits and expenses are to be paid.
- B. The Administrator shall prepare checks and issue those checks directly to payees without delay.
- C. The Administrator shall sign checks with a facsimile signature or manually.
- D. The Administrator shall secure checks in a locked area accessible to a limited number of personnel.
- E. The Client shall maintain an adequate balance in their checking account to meet all Workers' Compensation obligations without delay.
- F. The checking account may be used to pay penalties in which case the Administrator shall reimburse the Client within fifteen (15) working days for any amount of the penalty which the Administrator caused.

9. ELECTRONIC DATA PROCESSING: The Administrator shall provide the Client with electronic data processing services that will allow for the production of loss experience and transaction reports within ten (10) days following the close of each calendar month.

10. REGULATORY REPORTING: The Administrator shall prepare all reports required by State and Federal regulatory agencies (if any) in connection with the Program, including the Self-Insurer's Annual Report required by the Department of Self-Insurance Plans.

11. RECORDS: The Administrator shall establish and maintain electronic claim files, claim logs, transaction documents and all other records associated with the Program. These records shall be the property of the Client. Unless this Agreement is cancelled, closed hard files, if any, shall be stored by the Administrator for five (5) years and shall thereafter become the responsibility of the Client. Upon cancellation of this Agreement,

the Client shall be responsible for maintaining and storing all data, records, et cetera. The Administrator shall not dispose of or destroy hard files without the prior, written authorization of the Client.

12. CONSIDERATION: The Client shall pay the Administrator as follows: A one-time, at-cost data conversion fee reimbursement and at-cost reimbursements for the pick-up, delivery, and storage of hard claim files.

For the first year, May 1, 2014 through June 30, 2015, of this Agreement, the Client shall pay the Administrator \$96 per open claim per month for Claims Administration Services rendered under this Agreement.

For the second year, July 1, 2015 through June 30, 2016, of this Agreement, the Client shall pay the Administrator \$98 per open claim per month for Claims Administration Services rendered under this Agreement.

For the third year, July 1, 2016 through June 30, 2017, of this Agreement, the Client shall pay the Administrator \$99 per open claim per month for Claims Administration Services rendered under this Agreement.

Subsequent annual terms from July 1 to June 30 may be mutually agreed upon between the parties. The Administrator may adjust the Claims Administration Service fee with prior approval from the Client. The Agreement shall automatically renew from year to year subject to termination by either party during the life of the Agreement upon sixty (60) days written notice.

The Client shall allow the Administrator to perform all Bill Review Services through MedReview. Bill review fees are \$9 per bill and Preferred Provider Organization (PPO) fees shall not exceed 23% of savings when applicable.

The Client shall allow the Administrator to perform all Utilization Review Services through MedReview. Utilization review fees are \$85 flat fee per Request for Authorization (RFA) Decision. Physician fees are billed separately at \$200 per hour in 10-minute increments.

13. ALLOCATED EXPENSES: The Client shall pay for field investigation, defense attorneys, legal costs, remote photocopy, engineering experts, accident reconstruction experts, process servers, messenger service, court reporters, vocational rehabilitation consultants, structured settlement consultants, translators, and any other vendor necessary to administer claim files.

14. PENALTIES: The Administrator shall be responsible for paying or appealing penalties that are caused by the Administrator. The Administrator shall not be responsible for penalties that are caused by the Client or any third parties.

15. INDEMNIFICATION: The Administrator shall indemnify, hold harmless, and defend the Client from all claims, legal actions, losses, expenses, injuries, or damages arising out of the Administrator's negligence or intentional wrongdoing incident to the performance of this Agreement.

16. INSURANCE: The Administrator shall:

- A. Maintain in force at all times General and Professional Liability Insurance in the amount of one million (\$1,000,000) dollars.
- B. Maintain in force at all times a Fidelity Bond in the amount of one million (\$1,000,000) dollars.
- C. Maintain in force at all times Workers' Compensation Insurance for employees of the Administrator, as required by law.
- D. Notify the Client in writing sixty (60) days prior to any cancellation or reduction in the above coverages.
- E. Maintain evidence of the above coverages on file with the Client throughout the term of this Agreement.

17. NOTICES: All notices, demands, requests, or approvals which are required under this Agreement, or which either the Client or the Administrator may desire to serve upon the other, shall be in writing and shall be conclusively deemed served when delivered personally, or forty-eight (48) hours after the deposit thereof in the United States Mail with postage pre-paid.

18. CANCELLATION: This Agreement may be cancelled by the Client, or the Administrator, giving to the other, in writing, notice of its intention to cancel this Agreement at least sixty (60) days prior to the date of termination. Upon the date of termination of this Agreement, or the date on which records are transferred to another custodian, whichever occurs first, the Administrator shall no longer have the authority or responsibility to administer claims or perform any service on behalf of the Client.
19. PARTIAL INVALIDITY: If any provision of this Agreement is held by a competent court to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.
20. GOVERNING LAW: The validity of this Agreement and of any of its terms and provisions shall be interpreted pursuant to the Laws of the State of California.
21. INTERPRETATION: The terms and conditions of this Agreement shall be construed pursuant to their plain, ordinary meaning and shall not be interpreted against the maker.
22. ASSIGNMENT: The Administrator shall not assign, sublet, transfer by operation of law, or otherwise any or all of its rights, burdens, duties, or obligations of this Agreement without the prior, written consent of the Client.
23. CONFLICT OF INTEREST: The Administrator shall avoid all conflicts of interest or appearance of conflicts of interest in performance of this Agreement. If the Administrator receives compensation from the Client for services not included in this Agreement, the Administrator shall disclose such fees received on an annual basis to the Client. Such disclosure shall be in the form of a letter and shall be received by the Client on or before July 15th of each year.
24. ENTIRE CONTRACT: This instrument contains the entire Agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force or effect. Subsequent modifications shall be made in writing with the agreement of the parties.