

## **ATTACHMENT A**

### **PROFESSIONAL SERVICES AGREEMENT WITH ADMINSURE, INC. FOR GENERAL LIABILITY THIRD PARTY ADMINISTRATION SERVICES**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of this 1st day of July, 2019 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and ADMINSURE, INC., a California corporation ("Consultant"), whose address is 3380 Shelby Street, Ontario, California 91764, and is made with reference to the following:

#### **RECITALS**

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City desires to engage Consultant to provide general liability third party administration services ("Project").
- C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the professional services described in this Agreement.
- D. City has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, it is mutually agreed by and between the undersigned parties as follows:

#### **1. TERM**

The term of this Agreement shall commence on the Effective Date, and shall terminate on June 30, 2024, unless terminated earlier as set forth herein.

#### **2. SERVICES TO BE PERFORMED**

Consultant shall diligently perform all the services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). City may elect to delete certain Services within the Scope of Services at its sole discretion.

#### **3. TIME OF PERFORMANCE**

3.1 Time is of the essence in the performance of Services under this Agreement and Consultant shall perform the Services in accordance with the schedule included in Exhibit A. In the absence of a specific schedule, the Services shall be performed to completion in a diligent and timely manner. The failure by Consultant to strictly adhere to

the schedule set forth in Exhibit A, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

3.2 Notwithstanding the foregoing, Consultant shall not be responsible for delays due to causes beyond Consultant's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice within two (2) calendar days of the occurrence causing the delay to the other party so that all delays can be addressed.

3.3 Consultant shall submit all requests for extensions of time for performance in writing to the Project Administrator as defined herein not later than ten (10) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Consultant's control.

3.4 For all time periods not specifically set forth herein, Consultant shall respond in the most expedient and appropriate manner under the circumstances, by hand-delivery or mail.

#### **4. COMPENSATION TO CONSULTANT**

4.1 City shall pay Consultant for the Services on a flat rate fee, not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **Five Hundred Sixty Five Thousand Fifteen Dollars and 34/100 (\$565,015.34)**, without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City.

4.2 Consultant shall submit monthly invoices to City describing the Work performed the preceding month. City shall pay Consultant no later than thirty (30) calendar days after approval of the monthly invoice by City staff.

4.3 City shall reimburse Consultant only for those costs or expenses specifically identified in Exhibit B to this Agreement or specifically approved in writing in advance by City.

4.4 Consultant shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any Work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with the Schedule of Billing Rates as set forth in Exhibit B.

## **5. PROJECT MANAGER**

5.1 Consultant shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Consultant has designated Michael Reed to be its Project Manager. Consultant shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

5.2 Consultant, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of Services upon written request of City. Consultant warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

5.3 If Consultant is performing inspection services for City, the Project Manager and any other assigned staff shall be equipped with a cellular phone to communicate with City staff. The Project Manager's cellular phone number shall be provided to City.

## **6. ADMINISTRATION**

This Agreement will be administered by the Human Resources Department. City's Human Resources Director or designee shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

## **7. CITY'S RESPONSIBILITIES**

To assist Consultant in the execution of its responsibilities under this Agreement, City agrees to provide access to and upon request of Consultant, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Consultant's Work schedule.

## **8. STANDARD OF CARE**

8.1 All of the Services shall be performed by Consultant or under Consultant's supervision. Consultant represents that it possesses the professional and technical personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with community professional standards and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances. All Services shall be performed by qualified and experienced personnel who are not employed by City. By delivery of completed Work, Consultant certifies that the Work conforms to the requirements of this Agreement, all applicable federal, state and local laws, and legally recognized professional standards.

8.2 Consultant represents and warrants to City that it has, shall obtain, and shall keep in full force and effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Consultant to practice its profession. Consultant shall maintain a City of Newport Beach business license during the term of this Agreement.

8.3 Consultant shall not be responsible for delay, nor shall Consultant be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, acts of God, or the failure of City to furnish timely information or to approve or disapprove Consultant's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

## **9. HOLD HARMLESS**

9.1 To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim. collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Agreement, any Work performed or Services provided under this Agreement including, without limitation, defects in workmanship or materials or Consultant's presence or activities conducted on the Project (including the negligent, reckless, and/or willful acts, errors and/or omissions of Consultant, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable, or any or all of them).

9.2 Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorneys' fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Consultant.

## **10. INDEPENDENT CONTRACTOR**

It is understood that City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City. The manner and means of conducting the Work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Consultant or its employees. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any of Consultant's employees or agents, to be the agents or employees of City. Consultant

shall have the responsibility for and control over the means of performing the Work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of the performance of the Work or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the Services.

## **11. COOPERATION**

Consultant agrees to work closely and cooperate fully with City's designated Project Administrator and any other agencies that may have jurisdiction or interest in the Work to be performed. City agrees to cooperate with the Consultant on the Project.

## **12. CITY POLICY**

Consultant shall discuss and review all matters relating to policy and Project direction with City's Project Administrator in advance of all critical decision points in order to ensure the Project proceeds in a manner consistent with City goals and policies.

## **13. PROGRESS**

Consultant is responsible for keeping the Project Administrator informed on a regular basis regarding the status and progress of the Project, activities performed and planned, and any meetings that have been scheduled or are desired.

## **14. INSURANCE**

Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit C, and incorporated herein by reference.

## **15. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS**

Except as specifically authorized under this Agreement, the Services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Consultant is a partnership or joint-venture or syndicate or co-tenancy, which shall result in changing the control of Consultant. Control means fifty percent (50%) or more of the voting power or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

## **16. SUBCONTRACTING**

The subcontractors authorized by City, if any, to perform Work on this Project are identified in Exhibit A. Consultant shall be fully responsible to City for all acts and omissions of any subcontractor. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and City. Except as specifically authorized herein, the Services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

## **17. OWNERSHIP OF DOCUMENTS**

17.1 Each and every report, draft, map, record, plan, document and other writing produced, including but not limited to, websites, blogs, social media accounts and applications (hereinafter "Documents"), prepared or caused to be prepared by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Additionally, all material posted in cyberspace by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Consultant shall, at Consultant's expense, provide such Documents, including all logins and password information to City upon prior written request.

17.2 Documents, including drawings and specifications, prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by City or others on any other project. Any use of completed Documents for other projects and any use of incomplete Documents without specific written authorization from Consultant will be at City's sole risk and without liability to Consultant. Further, any and all liability arising out of changes made to Consultant's deliverables under this Agreement by City or persons other than Consultant is waived against Consultant, and City assumes full responsibility for such changes unless City has given Consultant prior notice and has received from Consultant written consent for such changes.

17.3 All written documents shall be transmitted to City in formats compatible with Microsoft Office and/or viewable with Adobe Acrobat.

## **18. CONFIDENTIALITY**

All Documents, including drafts, preliminary drawings or plans, notes and communications that result from the Services in this Agreement, shall be kept confidential unless City expressly authorizes in writing the release of information.

## **19. INTELLECTUAL PROPERTY INDEMNITY**

Consultant shall defend and indemnify City, its agents, officers, representatives and employees against any and all liability, including costs, for infringement or alleged infringement of any United States' letters patent, trademark, or copyright, including costs, contained in Consultant's Documents provided under this Agreement.

## **20. RECORDS**

Consultant shall keep records and invoices in connection with the Services to be performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such records and invoices shall be clearly identifiable. Consultant shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Consultant shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Consultant under this Agreement.

## **21. WITHHOLDINGS**

City may withhold payment to Consultant of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Consultant shall not discontinue Work as a result of such withholding. Consultant shall have an immediate right to appeal to the City Manager or designee with respect to such disputed sums. Consultant shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

## **22. ERRORS AND OMISSIONS**

In the event of errors or omissions that are due to the negligence or professional inexperience of Consultant which result in expense to City greater than what would have resulted if there were not errors or omissions in the Work accomplished by Consultant, the additional design, construction and/or restoration expense shall be borne by Consultant. Nothing in this Section is intended to limit City's rights under the law or any other sections of this Agreement.

## **23. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS**

City reserves the right to employ other Consultants in connection with the Project.

## **24. CONFLICTS OF INTEREST**

24.1 Consultant or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act") and/or Government Code §§ 1090 et seq., which (1) require such persons to disclose any financial interest that may foreseeably be materially affected by the Work performed under this Agreement, and (2) prohibit such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

24.2 If subject to the Act and/or Government Code §§ 1090 et seq., Consultant shall conform to all requirements therein. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Consultant shall indemnify and hold harmless City for any and all claims for damages resulting from Consultant's violation of this Section.

## **25. NOTICES**

25.1 All notices, demands, requests or approvals, including any change in mailing address, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided.

25.2 All notices, demands, requests or approvals from Consultant to City shall be addressed to City at:

Attn: Human Resources Director  
Human Resources Department  
City of Newport Beach  
100 Civic Center Drive  
PO Box 1768  
Newport Beach, CA 92658

25.3 All notices, demands, requests or approvals from City to Consultant shall be addressed to Consultant at:

Attn: Alithia Vargas-Flores  
Adminsure, Inc.  
3380 Shelby Street  
Ontario, CA 91764

## **26. CLAIMS**

Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under this Agreement, Consultant shall submit to City, in writing, all claims for compensation under or arising out of this Agreement. Consultant's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and

identified by Consultant in writing as unsettled at the time of its final request for payment. Consultant and City expressly agree that in addition to any claims filing requirements set forth in the Agreement, Consultant shall be required to file any claim Consultant may have against City in strict conformance with the Government Claims Act (Government Code sections 900 *et seq.*).

## **27. TERMINATION**

27.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

27.2 Notwithstanding the above provisions, City shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than seven (7) calendar days' prior written notice to Consultant. In the event of termination under this Section, City shall pay Consultant for Services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously paid. On the effective date of termination, Consultant shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

## **28. STANDARD PROVISIONS**

28.1 Recitals. City and Consultant acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement.

28.2 Compliance with all Laws. Consultant shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all Work prepared by Consultant shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator and City.

28.3 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

28.4 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

28.5 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

28.6 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

28.7 Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

28.8 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

28.9 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

28.10 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation, age or any other impermissible basis under law.

28.11 No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.

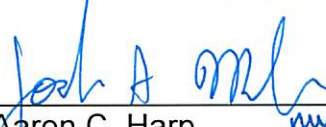
28.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

**[SIGNATURES ON NEXT PAGE]**

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed on the dates written below.

**APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE**

Date: 5.29.19

By:   
Aaron C. Harp  
City Attorney

**ATTEST:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Leilani I. Brown  
City Clerk

**CITY OF NEWPORT BEACH,**  
a California municipal corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Diane B. Dixon  
Mayor

**CONSULTANT:** Adminsure, Inc., a  
California corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Alithia Vargas-Flores  
Chief Executive Officer

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Ashley Sells  
Secretary

**[END OF SIGNATURES]**

Attachments:      Exhibit A – Scope of Services  
                         Exhibit B – Schedule of Billing Rates  
                         Exhibit C – Insurance Requirements

## **EXHIBIT A SCOPE OF SERVICES**

Consultant shall provide Third Party Administrator ("TPA") services related to the City's General Liability ("GL") program, in accordance with the following:

### **Responsibilities and Provisions**

#### **1. Program Administration**

- 1.1 Provide professional and technical staff to perform General Liability Claims Administration services.
- 1.2 Represent City in all matters related to the set-up, investigation, adjustment, processing, negotiation and resolution of liability claims against City.
- 1.3 Inform the City of changes or proposed changes in statutes, rules and regulations and case law affecting its general liability claims program.
- 1.4 Assist in the development of policies and procedures relating to the general liability claims program.
- 1.5 Provide information and guidance regarding the general liability claims program and specified claims.
- 1.6 Provide copies of file correspondence and documentation as requested by City.
- 1.7 Inform City of problem areas or trends, both potential and perceived, and provide recommendations and/or solutions to address problem areas or trends.
- 1.8 Attend appointments, including but not limited to meetings, conferences, Court appearances, and scene investigations at the request of City.
- 1.9 Provide 24-hour on-call service. This can be accomplished by providing City with a 24-hour phone number, pager, beeper or telephone number for key personnel. The 24-hour on-call service may include, but not limited to, responding to an incident scene, attending meetings, and conducting investigations.
- 1.10 Conduct risk management related seminars for department heads and/or City staff at the request of City.
- 1.11 Maintain and store all official files for five (5) years after each respective file is closed.

## **2. Assignment of Personnel**

The City must approve personnel assigned to the account. If for any reason, the services provided by assigned personnel are unsatisfactory to the City, the Consultant shall agree to assign replacement personnel approved by the City.

## **3. Claims Administration**

- 3.1 Take in and retain claims filed against City.
- 3.2 Create and enter new claim files into the computer within 48 hours of receipt of a loss notice from the City Clerk's Office.
- 3.3 Maintain an official file for each claim.
- 3.4 At the direction of the City, contact claimants or their attorneys within five (5) business days of receipt of a claim and maintain appropriate contact with them until the claim is closed.
- 3.5 Obtain two (2) competitive estimates of automobile damage when the loss is under \$1,000. If over this amount, engage the services of a professional appraiser.
- 3.6 Review the status of claims and assist as directed with setting of adequate reserves on all active cases at least every ninety (90) calendar days.
- 3.7 Review all claims for liability and provide first Investigative Report within thirty (30) calendar days of receipt of claim to Risk Manager.
- 3.8 Provide narrative reports when recommending rejection or settlement of a claim, or other significant events that have occurred or may occur. Reports must be clear and concise.
- 3.9 Negotiate settlements within authority limits. Funding for the payment of any settlement is specifically excluded from this Agreement.
- 3.10 Obtain a fully executed release on all claim settlements and dismissals.
- 3.11 Obtain approval from City before agreement of a settlement above authority limit.
- 3.12 Report claims in compliance with Medicare, Medicaid, and SCHIP Extension Act (MMSEA) Section 111.
- 3.13 Process payments within authority level within fourteen (14) business days of receipt.

- 3.14 Review vendors, other than defense counsel, for appropriateness of work and cost effectiveness.
- 3.15 Diary dates shall be established to allow for timely completion of required activity and no less frequently than every sixty (60) calendar days. Administrator shall monitor the timely completion of diary reviews.
- 3.16 Content of all files will be in chronological order with correspondence in the designated section.
- 3.17 Files will clearly and concisely document action take on the claim.
- 3.18 Telephone calls will be returned within 24 hours. If the Consultant's staff member called is not available within this time frame, another designated staff member will return the call.
- 3.19 Emails shall be responded to within 48 hours of receipt, unless an immediate response is required.
- 3.20 Written responses to requests that cannot be emailed, shall be prepared and the hardcopy mailed within ten (10) business days of receipt, unless an immediate response is required.
- 3.21 Identify and notify possible co-defendants within thirty (30) calendar days of identification.
- 3.22 Tender claims to other potentially responsible parties within thirty (30) calendar days.
- 3.23 Process all claims in accordance with City's instructions and policies.
- 3.24 Have translators available to assist with non-English speaking claimants.

#### **4. Investigations**

- 4.1 Within ten (10) business days of receipt of claim, unless otherwise requested by Risk Manager, take statements of facts from claimants when not represented by an attorney. Statements will be preserved by recording or taking hand written signed statements.
- 4.2 Further investigate claims where the initial review indicates that it is warranted. Further investigation may include, but are not limited to, on-site investigation, photographs, interviewing witnesses and taking signed or recorded statements, verification of damage or loss, taking measurements, obtaining maps/diagrams from City or other sources, obtaining medical releases, police reports, internal

operations investigations, paramedic reports, marine department reports, building permits, or other records as required.

- 4.3 If an attorney is involved, direct all communication to the claimant's attorney regarding the investigation, negotiation, and evaluation of any claims leading to a settlement.
- 4.4 Report all Bodily Injury claims to Index Bureau. Conduct Index Bureau searches for repeat claimants. Conduct additional Index Bureau searches at request of City.
- 4.5 Obtain approval from City before engaging the services of an outside investigator for an investigative assignment.
- 4.6 At the request of the City, investigate inverse condemnation claims.
- 4.7 Arrange, with prior City approval, for expert services, other than defense counsel. Expert services include, but are not limited to, professional photography, independent medical examinations, professional engineering services, and laboratory services.

## **5. Litigation Management**

The City Attorney's Office shall be responsible for managing all litigation and selecting defense counsel. Consultant shall:

- 5.1 Provide City Attorney's Office with a transmittal letter outlining the status of the case, results of investigations, primary issues, requested action, a complete copy of the file and any documentation within fourteen (14) business days of receipt of lawsuit with a copy to Risk Manager.
- 5.2 Monitor and evaluate defense counsel based on quality of work product, timely communication of important issues, timely filings, timely written and telephone responses, obtaining required approval, accurate billings and timely case resolution. Deficiencies in performance will be reported to the City.
- 5.3 Maintain liaison with the City Attorney's Office and defense counsel and provide such investigation as required during the entire litigation process, including but not limited to, additional investigations for pretrial and trial that may be requested by either the City Attorney's Office or defense counsel.
- 5.4 Review defense counsel bills and advise the City Attorney's Office if there are any billing irregularities.
- 5.5 Maintain a copy of all outside counsel bills and track all expenditures related to each litigation matter.

- 5.6 Attend Settlement Conferences, mediation or arbitrations as requested.
- 5.7 Assist the City Attorney and defense counsel in preparing and/or answering discovery as requested.
- 5.8 Assist City personnel in Small Claims Court actions filed by and against City, including but not limited to, obtaining witness information, evidence, assistance in preparing the case for trial and appearance at the trial if deemed necessary by City.

## **6. Subrogation**

- 6.1 Consultant shall: Place the tortfeasor on notice of the City's subrogation rights.
- 6.2 Work with the City Attorney's Office to draft the legal documents to recover monies spent on a claim.

## **7. Statistical Reports**

- 7.1 Provide specified standard loss reports within ten (10) business days after the end of the month/quarter, and/or as agreed upon.
- 7.2 Provide special reports as needed by the City.
- 7.3 Submit monthly reports during the term of the agreement. The monthly reports shall indicate the status and detail of every open claim assigned to Consultant, including but not limited to, the server assigned for each claim, summary of each loss by type, department, year, litigation status, and coded as to cause.
- 7.4 Consultant will enter into its computer any and all files handled in-house by City. City will provide Consultant with all information necessary for such input.

## **8. Excess Insurance Reporting**

- 8.1 Report to any excess insurance carrier(s) in accordance with policy provisions. City will provide the names and addresses of excess insurance carriers. Provide City with written notification that the required notice has been made to the excess carrier within ten (10) business days of the notice of claim.
- 8.2 Comply and meet with any excess carrier claims administration requirements.

**EXHIBIT B**  
**SCHEDULE OF BILLING RATES**

Consultant shall provide TPA services related to the City's GL program, as described in Exhibit A, in accordance with this Schedule of Billing Rates:

<b>General Liability Third Party Claims Administration Services – Flat Rate Fee</b>	
Year 1:	\$109,000.00
Year 2:	\$109,000.00
Year 3:	\$112,270.00
Year 4:	\$115,638.10
Year 5:	\$119,107.24
<b>TOTAL CONTRACT TERM:</b>	<b>\$565,015.34</b>

<b>Misc. &amp; Ancillary Services</b>	
Data Conversion	Included – No Additional Fee
Transition & Implementation	Included – No Additional Fee
Online Access (All Data & Reports)	Included – No Additional Fee (Unlimited Number of Read-Only Users)
All Reports & Custom/Ad Hoc Reports	Included – No Additional Fee
MMSEA, ISO/EDEX & 1099s	Included – No Additional Fee
Training & Development of Special Account Instructions/Procedures	Included – No Additional Fee
All Mileage, Reprographics, Meetings, Claims Reviews & Checks	Included – No Additional Fee

## EXHIBIT C

### INSURANCE REQUIREMENTS – PROFESSIONAL SERVICES

1. Provision of Insurance. Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Consultant agrees to provide insurance in accordance with requirements set forth here. If Consultant uses existing coverage to comply and that coverage does not meet these requirements, Consultant agrees to amend, supplement or endorse the existing coverage.
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
3. Coverage Requirements.
  - A. Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers and employees.
  - B. General Liability Insurance. Consultant shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate. The policy shall cover liability arising from premises, operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
  - C. Automobile Liability Insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

- D. Professional Liability (Errors & Omissions) Insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the Effective Date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the Services required by this Agreement.

The policy shall contain an affirmative coverage grant for bodily injury and property damage emanating from the failure of the technology services or an error or omission in the content/information provided.

- E. Cyber Liability Insurance. Consultant shall maintain cyber liability insurance with limits of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate covering (1) all acts, errors, omissions, negligence, infringement of intellectual property. (2) network security and privacy risks, including but not limited to unauthorized access, failure of security, breach of privacy perils, wrongful disclosure, collection, or negligence in the handling of confidential information, privacy perils, including coverage for related regulatory defense and penalties. (3) data breach expenses payable whether incurred by City or Consultant, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services in the performance of services for City or on behalf of City hereunder.

4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

- A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers and employees or shall specifically allow Consultant or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subconsultants.
- B. Additional Insured Status. All liability policies including general liability, excess liability, pollution liability, and automobile liability, if required, but not including professional liability, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers and employees shall be included as insureds under such policies.

- C. Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.
  - D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.
5. Additional Agreements Between the Parties. The parties hereby agree to the following:
- A. Evidence of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.
  - B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant sixty (60) calendar days' advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.
  - C. Enforcement of Agreement Provisions. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
  - D. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
  - E. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-

insurance will not be considered to comply with these requirements unless approved by City.

- F. City Remedies for Non-Compliance. If Consultant or any subconsultant fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Consultant's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Consultant or reimbursed by Consultant upon demand.
- G. Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- H. Consultant's Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.