

**CITY OF FULLERTON  
PROFESSIONAL SERVICES AGREEMENT  
WITH  
ADMINSURE, INC.**

THIS AGREEMENT is made and entered into this 19<sup>th</sup> day of November, 2024, by and between the CITY OF FULLERTON, a California municipal corporation ("City"), and ADMINSURE, INC. a local California corporation ("TPA").

**W I T N E S S E T H :**

A. City proposes to utilize the services of TPA as a Third-Party Administrator (TPA) to provide Workers' Compensation Claims Administration, which includes (but not limited to): program assessment and review, renewal analysis and negotiation, claim utilization review, performance monitoring, support and consultation of claims to City.

B. TPA 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.

C. City and TPA desire to contract for the specific services described herein, and desire to set forth their rights, duties and liabilities in connection with the services to be performed.

D. 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 THIRD-PARTY ADMINISTRATOR**

1.1. Scope of Services. TPA shall provide the professional services described in the Services & Fees Schedule attached hereto as Exhibit "A" and incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by TPA 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 third-party administrators in similar fields and circumstances in accordance with sound professional practices. TPA also warrants that it is familiar with all laws and regulations that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect TPA's performance of this Agreement.

1.3. Performance to Satisfaction of City. TPA agrees to perform all the work to the reasonable satisfaction of the City, in accordance with the applicable professional standard of care and City specifications and within the hereinafter specified. Evaluations of the work will be done by the City Manager or his designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Meet with TPA to review the quality of the work and resolve the matters of concern;
- (b) Require TPA 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. TPA warrants that it shall perform the services required by this Agreement in compliance with all applicable and non conflicting 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. TPA 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 TPA's performance under this Agreement.

1.5. Non-discrimination. In performing this Agreement, TPA shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code.

1.6. Reserved.

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. TPA may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at TPA's sole cost and expense.

1.8. Confidentiality. Employees of TPA in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. TPA covenants that all data, documents, discussion, or other information developed or received by TPA or provided for performance of this Agreement are deemed confidential and shall not be disclosed by TPA 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. TPA's covenant under this Section shall survive the termination of this Agreement.

## 2.0. COMPENSATION AND BILLING

2.1. Compensation. TPA shall be paid in accordance with the following schedule which represents the maximum compensation for the periods set forth:

Year	Agreement Term	Amount
1	November 1, 2024 – June 30, 2025 (Pro-Rated)	\$147,712
2	July 1, 2025 – June 30, 2026	\$221,568
3	July 1, 2026 – June 30, 2027	\$228,215
4	July 1, 2027 – June 30, 2028	\$235,061
5	July 1, 2028 – June 30, 2029	\$242,112
6	July 1, 2029 – June 30, 2030 (Option Period 1)	TBD
7	July 1, 2030 – June 30, 2031 (Option Period 2)	TBD

For Option Period renewals, the maximum compensation may be increased must be requested in writing and by an amount in mutual agreement by both parties.

2.2. Additional Services. TPA shall not receive compensation for any services provided outside the scope of services specified in Exhibit A unless the City or the Project Manager for this Project, prior to TPA 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. TPA may submit invoices to the City for approval on a monthly basis. City shall pay TPA's invoice within forty-five (45) days from the date City receives said invoice.

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times from the Effective Date of this Agreement until three (3) years after the termination date.

2.5. W-9. TPA must provide City with a current W-9 form prior to the commencement of work under this Agreement. It is the TPA's responsibility to provide to the City any revised or updated W-9 form during the term of this Agreement.

### **3.0. TIME OF PERFORMANCE**

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

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

### **4.0. TERM AND TERMINATION**

4.1. Term. The Term of the Agreement shall commence on November 1, 2024 and continue for five years until expiring on June 30, 2029, with two one year options to renew upon mutual written agreement of the parties, unless terminated sooner as provided herein.

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 TPA. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, TPA 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 TPA for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by TPA 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 TPA, at no cost to City. Any use of uncompleted documents without specific written authorization from TPA shall be at City's sole risk and without liability or legal expense to TPA.

## **5.0. INSURANCE**

5.1. Insurance Required. TPA shall procure and maintain throughout the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by TPA, its agents, representatives, employees or subcontractors. TPA shall provide current evidence of the required insurance in a form acceptable to City and shall provide replacement evidence for any required insurance which expires prior to the completion, expiration, or termination of this Agreement.

Nothing in this section shall be construed as limiting in any way, the Indemnification and Hold Harmless clause contained herein in Section 6.8 or the extent to which TPA may be held responsible for payments of damages to persons or property.

### **5.2. Minimum Scope and Limits of Insurance**

A. Commercial General Liability Insurance. TPA shall maintain commercial general liability insurance coverage in a form at least as broad as ISO Form #CG 00 01, with a limit of not less than \$2,000,000 each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Agreement or shall be twice the required occurrence limit.

B. Business Automobile Liability Insurance. TPA shall maintain business automobile liability insurance coverage in a form at least as broad as ISO Form # CA 00 01, with a limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for owned, hired and non-owned automobiles.

C. Workers' Compensation and Employers' Liability Insurance. TPA shall maintain workers' compensation insurance as required by the State of California and employers' liability insurance with limits of not less than \$1,000,000 each accident.

D. Professional Liability Insurance. TPA shall maintain professional liability insurance appropriate to TPA's profession with a limit of not less than \$2,000,000. Architects' and engineers' coverage shall be endorsed to include contractual liability. If policy is written as a "claims made" policy, the retro date of the policy shall be prior to the start of the contract work.

E. Employee/Officer Fidelity Bond. TPA shall maintain a fidelity bond with a minimum limit of \$1,000,000, providing coverage for the acts of all employees, officers and directors of TPA.

F. Cyber Liability Insurance. TPA shall maintain cyber liability insurance coverage with a limit of not less than \$2,000,000 per claim and \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by TPA in this Agreement and shall include but not be limited to claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion

of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines, penalties and credit monitoring expenses with limits sufficient to respond to these obligations.

5.3. Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by City.

5.4. Other Insurance Provisions. The required insurance policies shall contain or be endorsed to contain the following provisions:

A. Commercial General Liability. City, its elected or appointed officials, officers, employees and volunteers are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of TPA, including materials, parts or equipment furnished in connection with such work or operations. Such coverage as an additional insured shall not be limited to the period of time during which TPA is conducting ongoing operations for City but rather, shall continue after the completion of such operations. The coverage shall contain no special limitations on the scope of its protection afforded to City, its officers, employees and volunteers.

B. Commercial General Liability. This insurance shall be primary insurance as respects City, its officers, employees and volunteers and shall apply separately to each insured against whom a suit is brought or a claim is made. Any insurance or self-insurance maintained by City, its officers, employees and volunteers shall be excess of this insurance and shall not contribute with it.

C. Professional Liability. If the Professional Liability policy is written on a "claims made" form, the Retroactive Date must be shown and must be before the date of the contract or beginning of contract work. The insurance must be maintained and evidence of insurance must be provided for at least (5) years after completion of the contract work. If the coverage is canceled or non-renewed and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the TPA must purchase "extended reporting coverage" for a minimum of five (5) years after completion of work.

D. Workers' Compensation and Employers' Liability Insurance. Insurer shall waive their right of subrogation against City, its officers, employees and volunteers for work done on behalf of City.

E. Employee/Officer Fidelity Bond, City shall be named as third party beneficiary for losses arising from work done on behalf of City.

F. All Coverages. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City.

If TPA maintains higher limits or has broader coverage than the minimums shown above, City requires and shall be entitled to all coverage, and to the higher limits maintained by TPA. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

G. Subcontractors. TPA shall require and verify that all subcontractors

maintain insurance meeting all the requirements stated herein and TPA shall ensure that City is an additional insured on insurance required from subconsultants.

H. Special Risks or Circumstances. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

5.5 Acceptability of Insurers. All required insurance shall be placed with insurers acceptable to City with current BEST'S ratings of no less than A, Class VII. Workers' compensation insurance may be placed with the California State Compensation Insurance Fund. All insurers shall be licensed by or hold admitted status in the State of California. At the sole discretion of City, insurance provided by non-admitted or surplus carriers with a minimum BEST'S rating of no less than A- Class X may be accepted if TPA evidences the requisite need to the sole satisfaction of City.

5.6 Verification of Coverage. TPA shall furnish City with certificates of insurance which bear original signatures of authorized agents and which reflect insurers names and addresses, policy numbers, coverage, limits, deductibles and self-insured retentions. Additionally, TPA shall furnish copies of all policy endorsements required herein. All certificates and endorsements must be received and approved by City before work commences. City reserves the right to require at any time complete, certified copies of any or all required insurance policies and endorsements.

## **6.0. GENERAL PROVISIONS**

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

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

TPA shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of TPA 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 TPA in the performance of this Agreement.

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

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

the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO TPA:

AdminSure Inc.  
3380 Shelby Street,  
Ontario, CA 91764  
ATTN: Alithia Vargas-Flores, President  
MBA, SIA, WCCP, WCCA

IF TO CITY:

City of Fullerton  
303 W. Commonwealth Ave.  
Fullerton, CA 92832  
Attn: Eddie Manfro  
Director of Human Resources

6.5. 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.

6.6. 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.

6.7. Assignment. TPA shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of TPA'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 TPA of TPA's obligation to perform all other obligations to be performed by TPA hereunder for the term of this Agreement.

6.8. Indemnification and Hold Harmless. To the fullest extent of the law, TPA agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents, and employees, at TPA's sole expense, from and against 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 TPA, its employees, and/or authorized subcontractors, of the professional services undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the TPA, 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 TPA, 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 TPA, its employees, and/or authorized subcontractors under this Agreement, whether or not TPA, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the TPA shall not be liable for the defense or indemnification of the City for claims, actions, complaints, or suits arising out of the sole 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 TPA's Proposal, which shall be of no force and effect.

6.9. Independent Contractor. TPA is and shall be acting at all times as an independent contractor and not as an employee of City. TPA 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 TPA or any of TPA's employees, except as set forth in this Agreement. TPA shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. TPA 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 TPA and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. TPA 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. TPA further agrees to indemnify and hold City harmless from any failure of TPA to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to TPA under this Agreement any amount due to City from TPA as a result of TPA's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.10. PERS Eligibility Indemnification. In the event that TPA or any employee, agent, or subcontractor of TPA 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, TPA shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of TPA 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, TPA 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.

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

6.12. Ownership of Documents. All findings, reports, , documents, information and data, including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by TPA or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. TPA 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 TPA. City shall indemnify and hold harmless TPA 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 TPA. TPA shall deliver to City any findings, reports, documents, information, data, in any form,



including but not limited to, computer tapes, discs, files, audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

6.13. Public Records Act Disclosure. TPA 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 TPA, 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 TPA 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.

6.14. Conflict of Interest. TPA and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to TPA'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, TPA 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 TPA is not currently performing work that would require TPA or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.15. Responsibility for Errors. TPA shall be responsible for its work under this Agreement. TPA, 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 TPA occurs, without prejudice to any other remedy to which City may be entitled to at law or equity, TPA shall, at no cost to City, provide all necessary design drawings, estimates and other TPA 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. In addition, TPA shall reimburse City for any and all costs, expenses and/or damages, if any, that the City has incurred due to the aforementioned error or omission.

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

6.17. 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.

6.18. 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.

6.19. No Third Party Beneficiary Rights. This Agreement is entered into for the sole

benefit of City and TPA 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.

6.20. 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.

6.21. 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.

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

6.23. 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.

6.24. 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.

6.25. 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.

6.26. 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.

6.27 Executive Order N-6-22. On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the City determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The City shall provide Contractor advance written

notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the City.

Contractor shall immediately notify City in writing upon being subjected to Economic Sanctions or upon being charged by an government agency of conducting prohibited transactions within the meaning of Executive Order N-6-22.

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

CITY OF FULLERTON

\_\_\_\_\_  
Eric J. Levitt, City Manager

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

ADMINSURE

  
\_\_\_\_\_  
AllITHIA Vargas-Flores, President

Date: 11/12/24

On File  
\_\_\_\_\_  
Social Security or Taxpayer ID Number

APPROVED AS TO FORM:

\_\_\_\_\_  
Richard D. Jones, City Attorney

**EXHIBIT A**  
**SCOPE OF SERVICES**  
**AGREEMENT TERMS**

<b>Year</b>	<b>Agreement Term</b>	<b>Amount</b>
1	November 1, 2024 – June 30, 2025 (Pro-Rated)	\$147,712
2	July 1, 2025 – June 30, 2026	\$221,568
3	July 1, 2026 – June 30, 2027	\$228,215
4	July 1, 2027 – June 30, 2028	\$235,061
5	July 1, 2028 – June 30, 2029	\$242,112
6	July 1, 2029 – June 30, 2030 (Option Period 1)	TBD
7	July 1, 2030 – June 30, 2031 (Option Period 2)	TBD

## **TPA-CITY SCOPE OF SERVICES**

### **ADMINISTRATION OF THE CITY OF FULLERTON WORKERS' COMPENSATION PROGRAM**

City and TPA agree as follows:

- I. The period or Term of the Agreement shall be from November 1, 2024 through June 30, 2029, for a total period of five years, except as provided herein.

#### II. TPA RESPONSIBILITIES:

##### A. CLAIMS ADMINISTRATION

TPA shall:

1. Consult with CITY personnel and assist in developing and maintaining the necessary procedures, practices, and coordination to operate a self-insured workers' compensation program and to meet the legal requirements of the State of California;
2. Conduct, or assist in conducting, orientation meetings for CITY personnel involved directly or indirectly in the processing of industrial injury cases;
3. Provide the CITY with written notices of changes or proposed changes in statutes or rules and regulations affecting the CITY's self-insured workers' compensation program;
4. Review with the CITY program progress, including identification of problem areas and recommendations for solutions;
5. Provide efficient and accurate systems for establishing financial reserves and payment of benefits and allocated expenses in accordance with sound claims practices;
6. Process all claims for workers' compensation benefits until conclusion in accordance with requirements of the Division of Workers' Compensation/State of California;
7. Conduct Meetings to report to CITY staff on program progress, including identification of problem areas and recommended solutions thereto; and to review all open claims. Said meetings shall occur every two weeks or less frequently if mutually agreed upon. Meetings shall alternate between the CITY and TPA offices;
8. Attend other meetings required by the CITY relative to the workers' compensation program;
9. Pay for a membership in the nationwide Index System; on the CITY's behalf, submit all indemnity claims to the Index System as regular practice;
10. Provide (at no additional cost to the CITY) informational pamphlets in appropriate languages to employees relative to their workers' compensation benefits as required by the State of California;

11. Assess liability of claimed injuries and illnesses on a timely basis and in accordance with the California Labor Code and make appropriate recommendations to the CITY;
12. Pay any and all penalties due in accordance with the reform legislation of 1989 and any subsequent amendments to the California Labor Code, as well as Medicare, Medicaid, and SCHIP Extension Act (MMSEA) Reporting. Such penalties shall be paid by the Administrator with liability for the action determined by the record unless such penalties were incurred as a result of the CITY's action or inaction;
13. Establish hard files containing medical and factual information and complete accounting records on each reported claim. In accordance with State requirements and in a form acceptable to the CITY. Maintain same in accordance with statutory time requirements;
14. Review, compute and, after approval by the CITY, pay all informal ratings, findings, and awards, settlements and life pensions. Arrange for informal disability ratings whenever possible to avoid unnecessary litigation;
15. After approval by the CITY, arrange for and supervise all necessary investigations to determine eligibility for compensation benefits and liability of negligent third parties;
16. Arrange and supervise rehabilitation services where indicated, in accordance with the California Labor Code;
17. Prepare and file, in a timely manner, all reports and forms required by the State of California for self-funded programs, including but not limited to the Self-Insurer's Annual Report required by the Department of Self-Insurance Plans and the OSHA Summary required by the Department of Industrial Relations;
18. Establish procedures to support the payment of all benefits and allocated expenses including appropriate documentation necessary to reconcile the trust fund checking account;
19. Identify all eligible claims and prepare the necessary documentation on behalf of the CITY for reimbursement from the California Subsequent Injuries Fund;
20. Assure compliance with Labor code Section 4906(g), by providing a declaration, under penalty of perjury, that claims personnel have not violated Labor Code Section 139.5 which prohibits compensation or inducement for any referred examinations;
21. Maintain a claims log in compliance with the State of California Workers' Compensation Rules and Regulations, 8 Cal. Code Regs. Section 10103;
22. Determine the eligibility for and recommend to the CITY payment of all temporary, permanent and rehabilitation disability compensation in coordination with medical advice, rehabilitation efforts and advisory ratings, as appropriate;
23. Upon CITY approval, refer litigated cases to selected attorneys as agreed upon by the CITY. Assist in the preparation of litigated cases, negotiations of settlement agreements and subrogation actions;
24. Identify all claims and timely report all losses as required to the CITY's excess workers' compensation insurance carrier(s). Request reimbursement of expenditures which pierce the CITY's self-insured retention level on a schedule mutually agreed upon with the CITY;

25. Assign to the CITY account a certified claims adjuster and claims supervisor, approved by the CITY, to properly and adequately handle the CITY's claims volume within the guidelines established by the State of California. The claims adjuster assigned to the CITY's account shall at no time handle an open caseload exceeding 150 indemnity claims and 200 claims overall. The CITY shall be notified of additional clients assigned to the adjuster;
26. Provide to the CITY duplicates of all correspondence relative to the administration of each claim file, including but not limited to, reserve changes and delay and denial notices;
27. Attend all hearings related to the CITY's cases where legal counsel is not assigned and any other cases that the CITY deems necessary;
28. Comply with all reporting requirements mandated by:
  - a. Division of Workers' Compensation or its equivalent;
  - b. Excess insurance carriers;
  - c. Third parties who may be liable in whole or part for liabilities incurred for any workers' compensation claim;
  - d. Internal Revenue Service (1099); and
  - e. MMSEA.
29. File and serve all medical reports, settlement documents and necessary rehabilitation documents and forms as required by Division of Workers' Compensation/State of California; and
30. Coordinate claims handling activities with the CITY's policies and procedures for modified job duties and early return to work.
31. Participate when necessary, in the interactive process or other medical legal assessments which may affect the open claims; and
32. Comply with the requirements of the Alternative Dispute Resolution Program.

## B. MEDICAL CONTROL

TPA shall:

1. Maintain, subject to CITY approval, a panel of physicians, dentists, chiropractors and other practitioners for the initial treatment (primary care) of injured employees, and of such specialist as may be required for long-term or other disabilities requiring special treatment;
2. Monitor treatment programs for injured employees, including review of all "Doctor's First Report of Work Injury", to ensure that the treatment rendered is appropriate and related to a compensable injury or illness;
3. Maintain close liaison with treating physicians to ensure that employees receive proper care, avoid over-treatment and ensure that employees are returned to work at the earliest reasonable date;
4. In accordance with the fee schedule promulgated and adopted by the Division of Workers' Compensation, adjust and pay all medical expenses using MedReview, Inc.,

- a subsidiary of AdminSure, Inc. Whenever possible, adjust medical expenses further using MedReview, Inc., utilizing preferred provider organizations and/or hospital network providers. For bills reduced based upon the Official Medical Fee Schedule of the State of California, MedReview, Inc. shall be paid \$12.00 per reviewed bill, when applicable, plus .75 cents for e-bill or OCR. For bills reduced based upon Preferred Provider Organization (PPO)/Negotiated discounts, MedReview, Inc. shall be paid the cost of the review service, up to 25%, if there are no applicable savings, there are no fees. 3% annual increase for each service;
5. Utilization Review Fees will be incorporated into all medical bill review invoices at a rate of 5% of billed medical charges up to a maximum fee of \$750. Utilization Review Physician time will be billed separately at \$300 per hour. CITY approval will be obtained prior to a physician's review that may exceed one hour. 3% annual increase for each service;
  6. Consult frequently with appropriate CITY personnel and provide guidance and evaluations on the physical capabilities of injured employees, including those cases in which partial disabilities might involve work restrictions; and
  7. Arrange for medical/legal opinions in disputed cases, conferring with medical examiners, professional personnel, the CITY and legal counsel, when warranted.

#### C. EMPLOYEE COMMUNICATION

TPA shall:

1. Provide information and guidance to CITY employees, when unrepresented, on the process necessary to obtain permanent partial disability ratings and awards;
2. Provide pamphlets advising the injured employees of benefits available to them;
3. Contact all employees by phone within 48 working hours of notice of injury, regardless of whether or not the claim is compensable, unless prohibited by law. Contact all ongoing lost time employees at least semi-monthly thereafter; and
4. Assist with potential vocational rehabilitation cases by referring the employee early for evaluation and determination of qualified injured worker status.

#### D. ACCOUNTING CONTROLS

TPA shall:

1. Establish procedures and necessary documentation to enable TPA to issue payment of benefits as required by law on the CITY's behalf from the trust account maintained by the CITY;
2. Utilize the funds within the trust account maintained by the CITY for the purpose of issuing checks for the payment of:
  - a. Medical bills (copies of all medical bills shall be sent to the CITY along with the daily pending payable);
  - b. Temporary disability benefit payments, including salary continuance and 4850 benefits;



- c. Permanent disability advances and payments pursuant to Findings and Awards, CITY approved Stipulations with Findings and Awards and Compromise and Release;
- d. Payment of all CITY approved services, including: court costs; fees and expenses; fees for service of process; fees to attorneys; fees for copy service not performed by TPA; fees of independent adjusters or attorneys or investigation or adjustment of claims not performed by TPA; cost of employing experts for the purpose of preparing maps, photographs, diagrams, chemical or physical questions; costs for copies of transcripts of testimony at coroner's inquests or private costs or expenses properly chargeable to the defense of a particular CITY claim;
- e. Under no circumstances pay penalties from the trust account without written authorization from the CITY.

Penalties are defined in accordance with the Workers' Compensation Laws of the State of California and MMSEA. Responsibility for payment of penalties will be borne by the party assessed by the Audit Unit or Centers for Medicare and Medicaid Services (CMS) regarding MMSEA reporting.

TPA shall not be liable for penalties arising from the actions of any party other than the TPA.

**NO PENALTIES SHALL BE PAID, REGARDLESS OF RESPONSIBILITY, WITHOUT PRIOR DISCLOSURE TO THE CITY; and**

- f. All services performed by TPA shall not be considered as an expense for the purpose of this section. At no time shall any check be issued through this trust account to the TPA.
3. Provide for separation of the following duties in a manner approved by the CITY:
    - a. Authorization of payment(s);
    - b. Preparation or running of checks; and
    - c. Signing of checks.
  4. Provide checks at no cost to the CITY;
  5. Staple check copies onto original support documents (e.g., invoices from doctors, attorneys, hospitals, etc.) immediately upon preparation, prior to signing of the applicable check and before returning it to the person authorizing the payment;
  6. Use an original date-stamped document for support documentation for authorization of a payment;
  7. Not sign checks in advance or issue checks payable to cash. All original checks and copies of voided checks will be forwarded to the CITY;
  8. Use checks in sequence. Supplies of unused checks shall be safeguarded to the extent that unauthorized access is precluded;
  9. Furnish to the CITY, on a daily basis, reports of all checks issued, and on a monthly basis, reports of all checks issued for the entire month. These reports shall include information on canceled, voided, or refunded checks, as well as any recoveries received

- from third parties. The monthly register shall also include payee, amount, date, check number, case number, and type of expense (indemnity, medical, legal, or other);
10. Include on the face of all checks the language "VOID AFTER 180 DAYS". Checks outstanding in excess of 60 days shall be investigated by the CITY;
  11. Issue checks exceeding \$1500 with two authorized signatures. The two-signature requirement shall be printed on the face of all checks;
  12. Declare those individuals who are designated to be authorized as signatories on the account for approval by the CITY. At no time shall an individual sign a check without CITY approval and an approved signature on file; and
  13. Notify the CITY immediately when any authorized signatory on the trust account leaves the employment of the TPA.

#### E. INFORMATION SYSTEM SERVICES

TPA shall:

1. In a timely manner, prepare and file all reports, forms and other documents which are now or will be required by the State of California or other governmental agencies relating to workers' compensation claims, including, but not limited to, the Self-Insurer's Annual Report, the annual OSHA Summary as required by the Department of Industrial Relations, Division of Labor Statistics and Research and MMSEA reporting;
2. Maintain computer capability to produce reports as specified by the CITY, including but not limited to:
  - a. Historical financial summary;
  - b. Claims history by cost allocation center;
  - c. Current month opened/closed claims;
  - d. Claims with subrogation potential;
  - e. Safety analyses designated by cost center, indicating statistical data regarding the cause, nature, body part and the accident description of current claims with costs incurred and payments made to date;
  - f. Frequency and severity reports by cost center for current claims indicating nature and body part;
  - g. Annual detailed register of all claims for all years (open and closed) with reported incurred losses (paid losses and case reserves) that are \$50,000 and above;
  - h. Listing of all litigated claims by fiscal year, open and closed;
  - i. OSHA log; and
  - j. Additional reports as requested by the CITY at a cost of no more than \$125 per hour of development time.
3. Supply, prepare and submit electronically IRS 1099 forms on the CITY's behalf;
4. Act as the CITY's Reporting Agent (RA) for MMSEA reporting purposes;
5. Maintain and support all software and hardware to provide continuing capability;

6. Provide CITY personnel appropriate and necessary training for utilization of the system; and
7. Provide an electronic link allowing the CITY to access the TPA claims management system.

### III. RIGHTS AND RESPONSIBILITIES OF CITY

CITY shall:

- A. Submit all reports of work injuries to TPA within one business day of CITY's knowledge of the injury;
- B. Respond to TPA's requests for information and authority within five days of such a request;
- C. Grant settlement authority to the Administrator in advance of legal hearings or be available by phone or in person during such hearings;
- D. Have input and final approval of TPA personnel assigned to CITY's account;
- E. Have final approval on all vendors and subcontractors utilized on CITY claims, including but not limited to attorneys, investigators, rehabilitation consultants, doctors and facilities retained on CITY claims;
- F. Have final approval on the resolution of CITY claims, including but not limited to settlement amounts and structure;
- G. Periodically audit trust account and claim files, whether by Risk Management staff or contract auditors, at a frequency and duration as specified by the CITY. TPA will provide auditors work space and assistance to locate files; and
- H. Establish and maintain a trust account for payment of claims and related expenses and designate TPA as signatory.

**EXHIBIT B**  
**CERTIFICATES OF INSURANCE**