

SERVICE AGREEMENT FOR ADMINISTRATION OF THE CITY OF FULLERTON WORKERS' COMPENSATION PROGRAM

This agreement is entered into this 1st day of July, 2018, between CITY OF FULLERTON, with its principal place of business located at 303 West Commonwealth Avenue, Fullerton, California 92832, hereinafter, called CITY, and ADMINISURE, INC., with its principal place of business located at 3380 Shelby Street, Ontario, California 91764-5566, hereinafter, called TPA.

City and TPA agree as follows:

I. The period of the agreement shall be from July 1, 2018 through June 30, 2021, a period of thirty-six months, 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.

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 \$10.00 per reviewed bill. For bills reduced based upon Preferred Provider Organization (PPO) discounts, MedReview, Inc. shall be paid the cost of the review service, which is currently 18-23%. The CITY will be reimbursed on a monthly basis at the rate of \$5.00 of the \$10.00 charge for every reviewed bill that does not generate a savings;
5. Utilization Review Fees will be incorporated into all medical bill review invoices at a rate of 4% of billed medical charges up to a maximum fee of \$750. Utilization Review Physician time will be billed separately at \$200 per hour. CITY approval will be obtained prior to a physician's review that may exceed one hour;
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.

IV. FEES AND PAYMENTS

CITY agrees to pay TPA the service fee listed below:

July 1, 2018 – June 30, 2019	\$197,740
------------------------------	-----------

July 1, 2019 – June 30, 2020	\$199,717
July 1, 2020 – June 30, 2021	\$203,711

Service fee will be paid in 36 monthly installments issued within 30 days of receipt of TPA’s monthly invoice.

V. CONTRACT TERMS

- A. This agreement is for a period of 36 months for rates quoted, commencing at 12:01 a.m., July 1, 2018, and ending at midnight, June 30, 2021 (hereinafter referred to as TERM);
- B. After the initial TERM, this agreement may be renewed upon approval by the Fullerton City Council. However, any proposed revisions must be submitted in writing, no later than 60 days preceding the expiration date;
- C. This agreement may be extended on a month-to-month basis by a “letter of agreement”, which shall include any modification of terms or provisions during the period of extension. However, the period of extension shall not exceed six months;
- D. Either party may terminate this agreement, with or without cause, upon service of a 60-day prior written notice to the other party; and
- E. All claims files, records, Reports, data tapes and other documents and material pertaining to the CITY’s claim shall be the sole property of the CITY and shall be delivered to the CITY or its designee by TPA upon termination of the agreement.

VI. INDEMNIFICATION AND INSURANCE

A. HOLD HARMLESS AND INDEMNIFICATION AGREEMENT

As respects negligent or wrongful acts, errors or omissions in the performance of professional services, TPA shall indemnify and hold harmless the CITY, its elected officials, officers, agents, employees and volunteers from and against any and all loss, claims, demands, suits, actions or proceedings of any kind or nature, defense costs, liability or consequential damages of any kind or nature arising directly out of TPA’s acts, errors or omissions in the performance of professional services under the terms of this agreement.

As respects all acts or omissions which do not arise directly out of the performance of professional services, TPA shall indemnify, defend and hold harmless the CITY, its elected officials, officers, agents, employees and volunteers from and against any and all loss, claims, demands, suits, actions or proceedings of any kind or nature, defense costs, liability, consequential damages of any kind or nature arising out of the negligence or willful misconduct of the TPA or any subcontractor selected at the discretion of the TPA. This article does not apply to losses arising from the sole negligence or willful misconduct of the CITY.

City agrees to indemnify, defend and hold harmless TPA for all claims arising out of the sole negligence or willful misconduct of the CITY, its elected officials, officers, agents, employees or volunteers.

B. INSURANCE AND BONDS

TPA shall procure and maintain, as its sole cost and expense, for the duration of the contract, 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 furnish the CITY with current evidence, acceptable to the CITY, of the required insurance.

1. Minimum Scope and Limits of Insurance

TPA shall maintain coverage at least as broad as:

- a. Commercial General Liability Insurance. Said insurance shall have a minimum limit of \$2,000,000 combined single limit per occurrence and \$4,000,000 aggregate for bodily injury, personal injury and property damage.
- b. Business Automobile Liability Insurance to include all autos owned or hired. Said insurance shall have a minimum limit of \$2,000,000 combined single limit per accident for bodily injury and property damage.
- c. Workers Compensation Insurance as required by the Labor Code of the State of California and Employer's Liability Insurance with a minimum limit of \$1,000,000 per accident.
- d. Professional Liability Insurance to include coverage for damages or claims for damages arising out of the rendering or failure to render any professional services. Said insurance shall have a minimum limit of \$2,000,000 per occurrence. TPA shall maintain policy for a minimum of three years from the termination date of this agreement.
- e. Employee/Officers Fidelity Bond. Said bond shall have a minimum limit of \$2,000,000 and shall provide protection from acts of all employees, including the principals of TPA.
- f. Cyber Liability Insurance with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as undertaken by TPA in the 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 and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

2. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the CITY. At the option of the CITY, the insurer shall reduce or eliminate such deductibles or

self-insured retentions as respects the CITY, its elected officials, officers, agents, employees and volunteers.

3. Other Insurance Provisions

The required policies are to contain or be endorsed to contain the following provisions:

a. General Liability

- i. The CITY, its elected officials, officers, agents, employees and volunteers are to be names as additional insured as respects liability arising out of the activities performed by or on behalf of TPA; premises owned, lease or used by TPA; or automobiles owned, lease, hired or borrowed by TPA. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its elected officials, officers, agents, employees and volunteers.
- ii. TPA's insurance coverage shall be primary insurance and non-contributory as respects the CITY, its elected officials, officers, agents, employees and volunteers.
- iii. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the CITY, its elected officials, officers, agents, employees and volunteers.

b. Workers' Compensation and Employers' Liability

The insurer shall agree to waive all rights of subrogation against the CITY, its elected officials, officers, agents, employees and volunteers for losses arising from work performed by TPA for the CITY.

c. Employee/Officer Fidelity Bond

The CITY shall be names as a third-party beneficiary in the event funds are inappropriately taken or alleged to have been taken for the CITY's trust account.

d. All Coverages

Each insurance policy required herein shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the CITY.

e. Acceptability of Insurance

Insurance shall be placed with California licensed insurers with A.M. Best's ratings of no less than A, Class VII. Workers' Compensation coverage may be provided by the State Compensation Insurance Fund.

VII. INDEPENDENT CONTRACTOR

- A. TPA is an independent contractor and not an employee of the CITY, and all personnel to be utilized by TPA in the performance of this agreement shall be employees of TPA and not employees of the CITY. TPA shall pay all salaries and wages, employer's social

security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

- B. This agreement may not be sold, transferred, or assigned by either party, or by operation of law, to any other person or persons or business entity, without the other party's written permission. Any such sale, transfer or assignment, or attempted sale, transfer or assignment without written permission may be deemed by the other party to constitute a voluntary void.
- C. The validity in whole or in part of any provision of this agreement shall not void or affect the validity of any of the other provisions of this agreement.
- D. This agreement shall be governed by and construed in accordance with the laws of the State of California.
- E. This agreement supersedes any and all other agreements, whether oral or written, between the parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements between the parties with respect to said matter, and each party to this agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that any other agreement or modification of this agreement shall be effective only if executed in writing and signed by both the CITY and TPA.
- F. In the event any legal proceeding is instituted to enforce any term or provision of this agreement, the prevailing party in said legal proceeding shall be entitled to recover attorney's fees and costs from the opposing party in an amount determined by the court to be reasonable.
- G. The Fullerton City Manager or his designee shall be the representative of the 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.

Alithia Vargas-Flores, President, shall be the representative of TPA for purposes of this agreement and may issue all consents, approvals, directives and agreements on behalf of TPA, called for by this agreement, except as otherwise expressly provided in this agreement.

All notices and written communications sent by one party to the other (other than routine correspondence on CITY claims which shall be sent to the Risk Management Analyst) shall be personally delivered or sent by registered or certified U.S. Mail, postage prepaid, return receipt requested to the following addresses as indicated below:

To CITY: Director of Human Resources
Gretchen Beatty
City of Fullerton
303 West Commonwealth Avenue
Fullerton, CA 92832

To TPA: ADMINISURE, INC.
Attn: Alithia Vargas-Flores
3380 Shelby Street
Ontario, CA 91764-5566

The effective date of any notice or written communications sent by one party to the other shall be the date received if by personal service, or 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark.

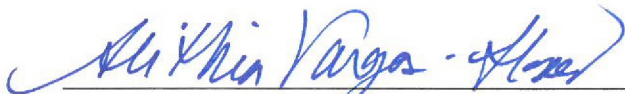
Either party may change its address by fibbing notice in writing to the other party.

- H. 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 referring expressly to this paragraph. 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, not shall any waiver constitute a continuing waiver.
- I. Section and subsection headings are not to be considered part of this agreement, are included solely for convenience and are not intended to modify or explain or to be a full or accurate description of the content thereof.
- J. This agreement may be executed in one or more counterparts by the parties hereto. All counterparts shall be construed together and shall constitute one agreement.

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.

AGREED TO AND ACCEPTED BY:

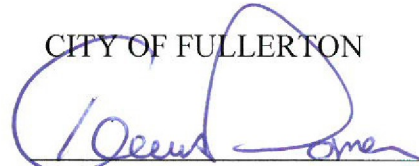
ADMINISURE



Alithia Vargas-Flores
President

Date: May 9, 2018

CITY OF FULLERTON



Kenneth A. Domer
City Manager

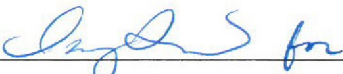
Date: 5-22-18

ATTEST:



Lucinda M. Williams
City Clerk

APPROVED:



Richard D. Jones
City Attorney