

**CITY OF WEST COVINA
PROFESSIONAL SERVICES AGREEMENT
WITH
YORK RISK SERVICES GROUP, INC.**

THIS AGREEMENT is made and entered into this 1st day of September, 2015 ("Effective Date"), by and between the CITY OF WEST COVINA, a municipal corporation ("City"), and YORK RISK SERVICES GROUP, INC., a New Jersey Corporation ("Consultant").

WITNESSETH:

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to City, as more fully described herein; and

B. WHEREAS, Consultant represents that it has that degree of specialized expertise contemplated within California Government Code Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and

C. WHEREAS, City and Consultant desire to contract for the specific services described in Exhibit A and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. WHEREAS, no official or employee of City has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

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

1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Services. Consultant shall provide the professional services as described in the Scope of Services and in the Consultant's proposal to the City to provide workers' compensation third party administration services, both of which are attached hereto as "Exhibit A" and incorporated herein by this reference (Exhibit A).

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant's performance of this Agreement. Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. Officers and employees shall not be liable at law or in equity occurring by failure of the Consultant to comply with this section.

1.3. Performance to Satisfaction of City. Consultant agrees to perform all the work to the reasonable satisfaction of the City. Evaluations of the work will be conducted by the City

Manager or his or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;
- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement.

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

1.6. Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

1.8 Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

2.0. COMPENSATION AND BILLING

2.1. Compensation. Consultant shall be paid in accordance with the Fee Schedule set forth in "Exhibit B", attached hereto and incorporated herein by this reference (Exhibit B). Consultant's total compensation for program administration shall not exceed One-Hundred Eight Thousand, Four-Hundred and Sixteen Dollars (\$ 108,416) in year one, One-Hundred Twenty-Six Thousand, Five-Hundred and Eighty-Eight Dollars (\$126,588) in year two, and One-Hundred Thirty Thousand, Three-Hundred and Eighty-Five Dollars (\$130,385) in year three of the agreement. Consultant's year one administration fee shall be prorated to commensurate with the actual commencement date of the agreement and be inclusive of the Consultant's Fifty-Five Hundred Dollar (\$5,500) data conversion fee.

Consultant's total compensation for managed care and Medical Provider Network (MPN) services shall be based on program volume and the fee schedule set forth in Exhibit B. Consultant's managed care and MPN service fees shall be capped at the "Not to Exceed" limits as set forth in Exhibit B. Should the Consultant's true costs for managed care and MPN services exceed the "Not to Exceed" limits set forth in Exhibit B by more than 15%, then the costs to the City shall be adjusted to account for actual program volume and utilization.

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Consultant's Proposal unless the City, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable. Should the City request in writing additional services that increase the hereinabove described "SCOPE OF SERVICES", an additional fee based upon the Consultant's standard hourly rates shall be paid to the Consultant for such additional services. Such increase in additional fees shall be limited to 25% of the total contract sum or \$25,000 whichever is greater. The Department Head or City Manager is authorized to approve a Change Order for such additional services.

2.3. Method of Billing. Consultant shall submit invoices and make payments for program fees and costs in accordance with the Payment Provisions set forth in "Exhibit C", attached hereto and incorporated herein by this reference (Exhibit C). Said invoices shall be based on the total of all Consultant's administrative services which have been completed to City's sole satisfaction and any expenses which are authorized under this Agreement. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail the services performed, the date of performance, and the associated time for completion. Each invoice shall also describe in detail any allowable expenses incurred pursuant to Exhibit B during the service period. Any additional services approved and performed pursuant to Section 2.2 of this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City for inspection and/or audit at mutually convenient times for a period of three (3) years from the Effective Date.

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. If a delay beyond the control of the Consultant is encountered, a time extension may be mutually agreed upon in writing by the City and the Consultant. The Consultant shall present documentation satisfactory to the City to substantiate any request for a time extension.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on September 1, 2015 and continue for a period of two (2) years and ten (10) months ending on June 30, 2018, with two (2) one-year renewal options. The option to renew shall be agreed upon mutually by both parties and made by written notice given at least 30 days prior to the agreement ending date. The City reserves the right to terminate the contract any time prior to June 30, 2018 and takes no obligation to renew the agreement or purchase any specified amount of goods or services. All renewal options shall be incorporated via a contract amendment, signed and executed by both parties.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing at least fifteen (15) days prior written notice to Consultant. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City. If the City suspends, terminates or abandons a portion of this Agreement such suspension, termination or abandonment shall not make void or invalidate the remainder of this Agreement.

If the Consultant defaults in the performance of any of the terms or conditions of this Agreement, it shall have ten (10) days after service upon it of written notice of such default in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled to at law, in equity, or under this Agreement.

The City also shall have the right, notwithstanding any other provisions of this Agreement, to terminate this Agreement, at its option and without prejudice to any other remedy to which it may be entitled to at law, in equity, or under this Agreement, immediately upon service of written notice of termination on the Consultant, if the latter should:

- a. Be adjudged a bankrupt;
- b. Become insolvent or have a receiver of its assets or property appointed because of insolvency;
- c. Make a general assignment for the benefit of creditors;

- d. Default in the performance of any obligation or payment of any indebtedness under this Agreement;
- e. Suffer any judgment against it to remain unsatisfied or unbonded of record for thirty (30) days or longer; or
- f. Institute or suffer to be instituted any procedures for reorganization or rearrangement of its affairs.

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the effective date of the City's written notice of termination, within forty-five (45) days after the effective date of the notice of termination or the final invoice of the Consultant, whichever occurs last. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein.

4.4. Documents. In the event of termination of this Agreement, all documents prepared, compiled, and produced by Consultant in its performance of this Agreement shall be delivered to the City within ten (10) days of the effective date of the notice of termination, at no cost to City.

4.5. Information Data. In the event of termination of this Agreement, all electronic and hard copy program data and reports prepared, compiled, and produced by Consultant in its performance of this Agreement shall be delivered to the City within ten (10) days of the effective date of the notice of termination, at no cost to City.

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Broad-form commercial general liability, in a form at least as broad as ISO form #CG 00 01 11 88, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. Consultant agrees to waive, and to obtain endorsements from its workers'

compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers for losses arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

Before execution of this Agreement by the City, the Consultant shall file with the City the following signed certification:

I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work.

The Consultant shall also comply with Section 3800 of the Labor Code by securing, paying for and maintaining in full force and effect for the duration of this Agreement, complete Workers' Compensation Insurance, and shall furnish a Certificate of Insurance to the City before execution of this Agreement by the City. The City, its officers and employees shall not be responsible for any claims in law or equity occasioned by failure of the consultant to comply with this section.

- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of West Covina and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant."
- (b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City."
- (c) Other insurance: "The Consultant's insurance coverage shall be primary insurance as respects the City of West Covina, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of West Covina shall be excess and not contributing with the insurance provided by this policy."

- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of West Covina, its officers, officials, agents, employees, and volunteers.
- (e) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City.

5.4. Certificates of Insurance. Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement.

5.5. Non-limiting. Nothing in this Section shall be construed as limiting in any way the indemnification provision contained in this Agreement.

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.

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

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Key Personnel. It is the intent of both parties to this Agreement that Consultant shall make available the professional services of Jon Lord, Managing Vice President, and Jody A. Moses, Senior Vice President, or his or her designee, who shall coordinate directly with City. Any substitution of key personnel must be approved in advance by City's Representative and the Agreement shall be amended to reflect the changes.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile, Email or by U.S. mail. If by U.S. mail, it shall be addressed as set forth below and placed in a sealed envelope, postage prepaid, and deposited in the United States Postal Service. 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 or by Email; and c) 72 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United

States mail.

IF TO CONSULTANT:

York Risk Services Group, Inc.
99 Cherry Hill Road, Suite 102
Parsippany, NJ 07054
Tel: (973) 404-1235
Fax: (973) 541-1464
Email:
Michael.Krawitz@yorkrsg.com

Attn: Michael Krawitz, GC, SVP

IF TO CITY:

City of West Covina
1444 West Garvey Ave. South
West Covina, CA 91790
Tel: (626) 939-8428
Fax: (626) 939-8606
Edward.Macias@westcovina.org

Attn: Edward Macias, MA II

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 Los Angeles County, California.

6.7. Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.8. Indemnification and Hold Harmless. Consultant agrees to defend, indemnify, hold free and harmless the City, its elected and appointed officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, demands, actions, suits or other legal proceedings brought against the City, its elected and appointed officials, officers, agents and employees arising out of the negligent performance, errors, omissions or other misconduct of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected and appointed officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede

and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect. City shall endeavor to provide notice to Consultant promptly, but no later than within thirty (30) days of: a) receipt of a claim for damages naming or alleging misconduct by Consultant; or b) City discovering that Consultant is involved in some manner in the facts and circumstances giving rise to a claim for damages.

6.9. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.10. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

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

6.12. 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 Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or

information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City. Consultant or Consultant's agents shall execute such documents as may be necessary from time to time to confirm City's ownership of the copyright in such documents.

6.13. Economic Interest Statement. Consultant hereby acknowledges that pursuant to Government Code Section 87300 and the Conflict of Interest Code adopted by City hereunder, Consultant is designated in said Conflict of Interest Code and is therefore required to file an Economic Interest Statement (Form 700) with the City Clerk, for each employee providing advise under this Agreement, prior to the commencement of work, unless waived by the City Manager.

6.14. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, *et seq.*) and Government Code Section 1090.

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

6.16. 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.

6.17. 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.

6.18. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.19. 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.

6.20. Amendments. Only a writing executed by the parties hereto or their respective

successors and assigns may amend this Agreement.

6.21. 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.

6.22. 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.

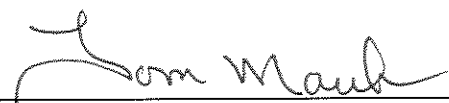
6.23. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.24. 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.

6.25. Taxpayer Identification Number. Consultant shall provide City with a complete Request for Taxpayer Identification Number and Certification, Form W-9, as issued by the Internal Revenue Service.

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 WEST COVINA,
A municipal corporation



Tom Mauk
Interim City Manager

Date: 8-4-15

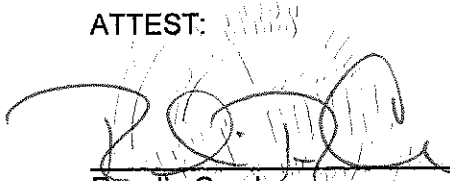
CONSULTANT



Name: Jody A. Moses
Title: Senior Vice President

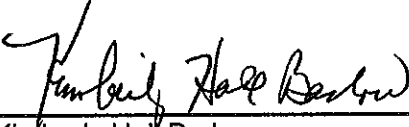
Date: July 21, 2015

ATTEST:



Rosalia Conde
Assistant City Clerk


APPROVED AS TO FORM:



Kimberly Hall Barlow
City Attorney

Date: 7-27-15

APPROVED AS TO INSURANCE:



Bob Franco
Risk Management

Date: 9/23/15

EXHIBIT A SCOPE OF SERVICES

Consultant Responsibilities

1. In accordance with the Consultant's submitted proposal dated May 7, 2015 in response to City RFP No. 0415-A, the Consultant shall provide the following services for the City's self-insured workers' compensation program:
 - Claims Administration (from claim inception to disposition)
 - Medical Provider Network (MPN)
 - Managed Care Services, which shall include:
 - Medical Billing Reviews
 - Utilization Reviews
 - Field Nurse Case Management
 - Telephonic Nurse Case Management
 - Pharmacy Card Services
2. Consultant shall maintain regular communications with the City and injured worker, from the inception to disposition of each claim.
3. Consultant shall emphasize outstanding customer services and treat all parties to each workers' compensation claim in an equitable and fair manner. This requirement shall include the on-going assistance of employees throughout the entire workers' compensation process and the facilitation of outstanding customer relations.
4. Consultant shall provide information and guidance to employees of the City, individually and through employee groups and safety committees, regarding workers' compensation benefits, inquiries on specific injuries, and permanent disability ratings in accordance with the City's policies.
5. Consultant shall examine, on behalf of the City, all reports of industrial injury to or disease of employees reported to it by the City and properly process each claim from its inception to resolution. Such procedures shall include, but not be limited to, determining the compensability of claimed injuries and illnesses under the State Workers' Compensation Law, eligibility for payments of medical benefits and medical examinations, coordinating rehabilitation efforts, recommending payment of temporary and permanent disability compensation, and utilizing, as necessary or desirable, the advisory rating of the Permanent Disability Rating Bureau.
6. Consultant shall provide, without delay, the City with requested copies of all documents, reports, communications, invoices, letters, checks, etc. from any and all vendors, claimants, parties, and/or administrators to the workers' compensation program.
7. Consultant shall only make payments of permanent disability compensation and death benefits in accordance with the Permanent Disability Ratings Bureau, orders of the Workers' Compensation Appeals Board (WCAB), or by approval of the City.
8. Consultant shall, with the approval of the City and at the City's expense, engage the services of persons or firms outside its organization for work not generally performed by claims examiners in connection with the investigation and adjustment of claims.

9. Consultant shall decide, on behalf of the City, what benefits, if any, should be paid or rendered under the applicable State Workers' Compensation laws for each reported claim.
10. Consultant shall make timely payments and/or reimbursements of all duly payable program benefits, wages, medical expenses, and eligible costs covered under State Workers' Compensation law from the claim payment fund established and maintained by the City.
11. Consultant shall maintain, in accordance with California law, a claim file on each reported claim. Said claim file shall also be available to the City during normal business hours and include actual costs and estimated costs of all anticipated benefits and expenses related to the claim file.
12. Consultant shall keep the City informed of all program compliance matters and ensure the City meets all program reporting requirements and deadlines. This requirement shall include:
 - a. Providing the City with all forms necessary for the efficient and effective operation of the self-insurance program;
 - b. Preparing and submitting at least 15 days prior to the deadline, all legally required program forms and reports to their authorized agencies on behalf of the City;
 - c. Preparing and submitting to the City no later than 30 days prior to the due date, the Public Entities Self-Insurers' Annual Report, as required by the State of California Department of Industrial Relations, Workers' Compensation Division;
 - d. Providing the City with all tax forms necessary for the City's annual tax filings with the State Franchise Tax Board and Internal Revenue Service.
13. Consultant shall conduct quarterly program analyses and status meetings, or more frequently if requested, with the City to discuss case statuses, issues, and trends based on Consultant's analysis of the program. TPA shall also recommend loss controls and solutions to the City based on its quarterly program analyses.
14. Consultant shall attend City Council meetings, as necessary and requested, to respond to City Council inquiries and to keep the City Council and public informed of various program matters.
15. Consultant shall acquire the approval of the City to assign and refer cases to outside providers, such as medical examiners, physicians, specialists, investigators, and vocational rehabilitation services.
16. Consultant shall adhere to a City approved panel of legal counsel and acquire the approval of the City to assign all litigated matters and/or cases to legal defense counsel. The City's approval shall also be required for the selection and employment of attorneys and paralegals to appear before the Workers' Compensation Appeals Board (WCAB) on behalf of the City for claims made by an employee of the City. Said approved legal panel is set forth in "Exhibit D", attached hereto and incorporated herein by this reference (Exhibit D).
17. Consultant shall make all efforts to mitigate the escalation and litigation of workers' compensation claims.

18. Consultant shall make professional recommendations to the City concerning the escalation of cases, potential litigation, suspected and/or substantiated malfeasance, course of administrative action, treatment of claims, and program direction.
19. Consultant shall coordinate all litigated claims with the City and maintain on-going communications and correspondence with City staff, defense counsel, and claimant counsel in order to facilitate the resolution of issues and avoid unnecessary appearances and expenses of litigated claims.
20. Consultant shall closely monitor all active claims and make timely reports to the City of case statuses, pending issues, suspected malfeasance, and any other pertinent program information.
21. Consultant shall provide the City with regular loss reports, as requested by the City, and provide special reports for an additional expense, when requested.
22. The Consultant shall report claims to the City's excess insurance carriers in accordance with the claims reporting criteria of said carriers, and pursue the collection of covered losses on behalf of the City.
23. Consultant shall report any discrepancies or accounting errors it finds in connection with the claim payment fund.
24. Consultant shall provide the City with recommendations for year-to-date and projected reserve fund encumbrances.
25. Consultant shall provide the City, on an annual basis, a program improvement plan based on program utilization rates and cost-to-benefit analyses.

**EXHIBIT B
FEE SCHEDULE**

	FY 15-16		FY 16-17		FY 17-18		TOTAL 3-YR COST
	Rate/Unit	Not to Exceed Annual Cost	Rate/Unit	Not to Exceed Annual Cost	Rate/Unit	Not to Exceed Annual Cost	
Program Administration	\$ 102,916	\$ 102,916	\$ 126,588	\$ 126,588	\$ 130,385	\$ 130,385	\$ 359,889
Data Conversion (one time fee)	\$ 5,500	\$ 5,500	N/A	\$ -	N/A	\$ -	\$ 5,500
Medical Provider Network (MPN)	\$ 60	\$ 2,100	\$ 61	\$ 2,135	\$ 62	\$ 2,170	\$ 6,405
MPN Application (one time fee)	\$ 1,500	\$ 1,500	N/A	\$ -	N/A	\$ -	\$ 1,500
Medical Billing Reviews	\$ 17	\$ 51,000	\$ 17	\$ 52,260	\$ 18	\$ 53,595	\$ 156,855
Utilization Reviews	\$ 125	\$ 8,523	\$ 128	\$ 8,750	\$ 131	\$ 8,986	\$ 26,259
Field Nurse Case Management	\$ 98	\$ 7,000	\$ 99	\$ 7,081	\$ 99	\$ 7,097	\$ 21,178
Telephonic Nurse Case Management	\$ 98	\$ 10,316	\$ 99	\$ 10,405	\$ 99	\$ 10,503	\$ 31,224
Pharmaceutical Services (Included in Bill Rev)	N/A	\$ -	N/A	\$ -	N/A	\$ -	\$ -
Physician Review (Peer Review)	\$ 235	\$ 7,990	\$ 241	\$ 8,194	\$ 247	\$ 8,398	\$ 24,582
*Medicare Reporting (No Charge)	N/A	\$ -	N/A	\$ -	N/A	\$ -	\$ -
*Standard MSA Prep & Filing	\$ 2,750	\$ -	\$ 2,818	\$ -	\$ 2,888	\$ -	\$ -
*Final Settlement Document Prep		\$ -		\$ -		\$ -	\$ -
Submission (flat rate)	\$ 75	\$ -	\$ 77	\$ -	\$ 79	\$ -	\$ -
SSA and SSDI Checks (per hour)	\$ 125	\$ -	\$ 128	\$ -	\$ 131	\$ -	\$ -
Medicare Check (flat rate)	\$ 50	\$ -	\$ 51	\$ -	\$ 52	\$ -	\$ -
Conditional Payment Investigation (flat rate)	\$ 150	\$ -	\$ 154	\$ -	\$ 158	\$ -	\$ -
Conditional Payment Resolution (per hour)	\$ 125	\$ -	\$ 128	\$ -	\$ 131	\$ -	\$ -
Index Fee (per index)	\$ 10	\$ -	\$ 11	\$ -	\$ 12	\$ -	\$ -
*Investigative Services (per hour)	\$ 81	\$ -	\$ 82	\$ -	\$ 83	\$ -	\$ -
TOTAL ANNUAL AMOUNT		\$ 196,845		\$ 215,413		\$ 221,134	\$ 633,392

*Other proposed services not included in the annual costs of the agreement.

EXHIBIT C PAYMENT PROVISIONS

City's Responsibilities

The City shall establish and maintain the following:

Workers' Compensation Claim Fund – This fund shall be used by the Consultant to make direct payments on all managed care services, Medical Provider Network (MPN) services, legal services, and other required services rendered for workers' compensation claims made by City employees.

Workers' Compensation Reserve Fund – This fund shall be established to meet all current and future workers' compensation liabilities.

City shall pay Consultant's invoices for administrative services rendered within forty-five (45) days from the date City receives said invoices.

The City, in cooperation with the Consultant, shall establish, maintain, and act as the fiduciary agent of the City's workers' compensation claims fund.

Consultant's Responsibilities

Consultant shall bill and be compensated by the City for services rendered according to the following program categories:

Program Administration – Consultant shall directly invoice the City on a quarterly basis for program administration fees. Invoices shall be paid directly by the City via the City's accounts payable division. Quarters are defined as follows:

1 st Quarter:	July 1 – September 30
2 nd Quarter:	October 1 – December 31
3 rd Quarter:	January 1 – March 31
4 th Quarter:	April 1 – June 30

Managed Care Services – Consultant shall make direct payments for managed care services rendered from the workers' compensation claim fund (i.e., claim file) to providers rendering said services. These payments shall include legal fees directly attributable to workers' compensation claims. These payments shall also be recorded in the compulsory fiscal reports the Consultant is required to prepare and submit to the City on a weekly, monthly, and annual basis (e.g., weekly payment register).

Medical Provider Network – Consultant shall provide the City with access and utilization of a credible Medical Provider Network (MPN). Consultant shall make direct payments for services rendered by the MPN from the workers' compensation claim fund (i.e., claim file).

The Consultant, in cooperation with the City, shall act as the fiduciary manager of the workers' compensation claims fund and make regular fund reconciliations and submit monthly reconciliations to the City. Consultant shall also report all fund discrepancies it finds to the City.

**EXHIBIT D
LEGAL PANEL**

The Consultant shall use the following panel for special workers' compensation legal matters, including defense, upon the specific referral and direction of the City:

Goldman Magdalin Krikes
Lewis Brisbois Bisgaard & Smith
Laughlin Falbo Levy Moresi
Samuelson Gonzalez Valenzuela & Brown

The preceding panel shall be incorporated into this service agreement. This panel has been ratified by the City Council for use on special workers compensation legal matters and can only be deviated from upon the direction and authorization of the City. The City shall make referrals to the panel on a case-by-case basis and utilize each firm upon its sole will, prerogative, and discretion.