

AGREEMENT FOR PROFESSIONAL SERVICES FOR PLAN ADMINISTRATION FOR WORKERS' COMPENSATION PROGRAM

This Agreement is made and entered into this 1st day of February 2005, by and between the City of Redlands, a municipal corporation (hereinafter "City") and Dynamic Claims Services, Inc. (hereinafter "Consultant").

ARTICLE 1 - ENGAGEMENT OF CONSULTANT

- 1.1 City hereby engages Consultant and Consultant hereby accepts the engagement, to perform professional services which are more particularly described in Exhibit "A," attached hereto and incorporated herein by this reference (the "Services").
- 1.2 The Services shall be performed by Consultant in a professional manner, and Consultant represents that it has the skill and the professional expertise necessary to provide the Services to City at a level of competency presently maintained by other practicing professional consultants in the industry providing like and similar types of services.
- 1.3 Consultant shall comply with all applicable Federal, State and local rules, laws and regulations in the performance of this Agreement.

ARTICLE 2 - RESPONSIBILITIES OF CITY

- 2.1 City shall make available to Consultant information in its possession that is pertinent to the performance of Consultant's Services.
- 2.2 City designates Marjie Pettus, Administrative Services Director, to act as its representative with respect to the Services.

ARTICLE 3 - DURATION OF AGREEMENT

- 3.1 The term of this Agreement shall be from February 1, 2005 through January 31, 2008.

ARTICLE 4 - PAYMENTS TO THE CONSULTANT

- 4.1 Compensation. City shall pay Consultant monthly compensation for the Services, payable in advance, in the following amounts:
 - Year 1 - \$3,325.00 per month
 - Year 2 - \$3,785.42 per month
 - Year 3 - \$4,125.00 per month
- 4.2 Conversion. The compensation sums described above include the cost of summary claims data conversion, completion of the administrator's portion of the self insured annual report, check printing and processing fees, and transporting the current open

claims from the current administrator.

- 4.3 Invoices. Consultant shall bill City within ten days following the close of each month by submitting an invoice describing the Services performed and written verification of the actual compensation earned, which written verification shall be in a form satisfactory to City. Payments by City to Consultant shall be made within thirty (30) days after receipt and approval of Consultant's invoice, by warrant payable to Consultant.
- 4.5 Notices. All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills and payments sent by mail shall be addressed as follows:

City
Marjie Pettus, Director
Administrative Services
Department
PO Box 3005
Redlands, CA 92373

Consultant
Mr. David Erickson
Dynamic Claims Services, Inc.
2 Corporate Park, Suite 201
Irvine, CA 92606

When so addressed, such notices shall be deemed given upon deposit in the United States Mail. Changes may be made in the names and addresses of the person to whom notices and payments are to be given by giving notice pursuant to this section.

ARTICLE 5 - INSURANCE AND INDEMNIFICATION

5.1 Consultant's Insurance to be Primary

All insurance required by this Agreement is to be maintained by Consultant for the duration of the Services and shall be primary with respect to City and non-contributing to any insurance or self-insurance maintained by the City. Consultant shall not perform any Services unless and until all required insurance listed below is obtained by Consultant. Consultant shall provide City with Certificates of Insurance and endorsements evidencing such insurance prior to commencement of the Services. All insurance policies shall include a provision prohibiting cancellation of the policy except upon thirty (30) days prior written notice to City.

5.2 Workers' Compensation and Employer's Liability

- A. Consultant shall secure and maintain Workers' Compensation and Employer's Liability insurance throughout the duration of this Agreement in amounts which meet statutory requirements with an insurance carrier acceptable to City.
- B. Consultant expressly waives all rights to subrogation against City, its officers, employees and volunteers for losses arising from work performed by Consultant for City by expressly waiving Consultant's immunity for injuries to Consultant's employees and agrees that the obligation to indemnify, defend and hold harmless provided for in this Agreement extends to any claim brought by or on

behalf of any employee of Consultant. This waiver is mutually negotiated by the parties. This subsection shall not apply to any damage resulting from the sole negligence of City, its agents and employees. To the extent any of the damages referenced herein were caused by or resulted from the concurrent negligence of City, its agents or employees, the obligations provided herein to indemnify, defend and hold harmless is valid and enforceable only to the extent of the negligence of Consultant, its officers, agents and employees.

- 5.3 **Comprehensive General Liability Insurance.** Consultant shall secure and maintain in force throughout the duration of the Services comprehensive general liability insurance with carriers acceptable to City. Minimum coverage of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for public liability, property damage and personal injury is required. Consultant shall obtain an endorsement that City shall be named as an additional insured.
- 5.4 **Professional Liability Insurance.** Consultant, shall secure and maintain professional liability insurance throughout the duration of the Services in the amount of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate.
- 5.5 **Business Auto Liability Insurance.** Consultant shall have business auto liability coverage, with minimum limits of one million (\$1,000,000) per occurrence, combined single limit for bodily injury liability and property damage liability. This coverage shall include all Consultant-owned vehicles used in connection with performance of the Services, hired and non-owned vehicles, and employee non-ownership vehicles. Consultant shall obtain an endorsement that City shall be named as an additional insured.
- 5.6 **Assignment and Insurance Requirements.** Consultant is prohibited from assigning any of the Services without the prior written consent of City. In the event of mutual agreement between parties to assign a portion of the Services, Consultant shall add the assignee as an additional insured and provide City with the insurance endorsements prior to any work being performed by the assignee. Assignment does not include printing or other customary reimbursable expenses that may be provided in connection with the Services.
- 5.7 **Hold Harmless and Indemnification.** Consultant shall defend, indemnify and hold harmless City, its elected officials, officers, employees and agents, from and against any and all actions, claims, demands, lawsuits, losses and liability for damages to persons or property, including costs and attorney fees, that may be asserted or claimed by any person, firm, entity, corporation, political subdivision or other organization arising out of or in connection with Consultant's negligent and/or intentionally wrongful acts or omissions in the performance of the Services, but excluding such actions, claims, demands, lawsuits and liability for damages to persons or property arising from the sole negligence or intentionally wrongful acts of City, its officers, employees or agents.

ARTICLE 6 - GENERAL CONSIDERATIONS

- 6.1 In the event any action is commenced to enforce or interpret any of the terms or conditions of this Agreement the prevailing party shall, in addition to any costs and other relief, be entitled to the recovery of its reasonable attorneys' fees.
- 6.2 All documents, records, drawings, designs, cost estimates, electronic data files, databases, and other documents developed by Consultant pursuant to this Agreement and any copyright interest in said above described documents, shall become the property of City and shall be delivered to City upon completion of the Services, or upon the request of City. Any reuse of such documents and any use of incomplete documents will be at City's sole risk.
- 6.3 Consultant shall allow City or its designated representatives access to all records and files in Consultant's possession pertaining to City. All records, reports and files, whether stored in hard copy or data processing media, are acknowledged to be the sole property of City and shall be returned to City upon request, expiration or termination of this Agreement.
- 6.4 Consultant is for all purposes an independent contractor. Consultant shall supply all tools and instrumentalities required to perform the Services. All personnel employed by Consultant are for its account only, and in no event shall Consultant or any personnel retained by it be deemed to have been employed by City or engaged by City for the account of or on behalf of City.
- 6.5 Unless earlier terminated, as provided for below, this Agreement shall terminate upon completion and acceptance of the Services by City.
- 6.6 This Agreement may be terminated by either party, with or without cause, by providing thirty (30) days prior written notice to the other Party (delivered by certified mail, return receipt requested).
- 6.7 If this Agreement is terminated by City, an adjustment to Consultant's compensation shall be made, but (1) no amount shall be allowed for anticipated profit or unperformed Services, and (2) any payment due Consultant at the time of termination may be adjusted to the extent of any additional costs to City occasioned by any default by Consultant.
- 6.8 Upon receipt of a termination notice, Consultant shall (1) promptly discontinue all Services, and (2) deliver or otherwise make available to City, copies (in both hard copy and electronic form, where applicable) of any data, reports, summaries and such other information and materials as may have been accumulated by Consultant in performing the Services. Consultant shall be compensated on a pro-rata basis for Services completed up until notice of termination.
- 6.9 This Agreement, including the exhibits incorporated herein by reference, represents the entire agreement and understanding between the parties as to the matters contained herein, and any prior negotiations, proposals or oral arguments are

superseded by this Agreement. Any amendment to this Agreement shall be in writing, approved by the City Council of City and signed by City and Consultant.

- 6.10 This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, duly authorized representatives of the City and Consultant have signed in confirmation of this Agreement.

City of Redlands

Dynamic Claims Service

By: 
Mayor Susan Pepler

By: 
David Erickson

Attest:


City Clerk, City of Redlands

EXHIBIT "A"
PLAN ADMINISTRATION SERVICES

EXAMINING SERVICES

1. Consultant shall provide complete administration services including, but not limited to:
 - a. Review and process all claims for workers' compensation benefits in accordance with the requirements of the California Department of Industrial Relations for reporting and notification.
 - b. Determine the compensability of claimed injuries and illnesses in accordance with the California Workers' Compensation laws.
 - c. Determine eligibility and authorize payments of medical benefits and authorize examinations to determine the nature and extent of disability when appropriate.
 - d. Determine the eligibility for and authorize payment of temporary disability compensation in coordination with medical advice and rehabilitation efforts.
 - e. Determine the degree of permanent disability, if any, of injured workers utilizing, as necessary and desirable, advisory ratings of the Permanent Disability Rating Bureau.
 - f. Authorize the payment of permanent disability compensation and death benefits in accordance with advisory ratings, orders of the Workers' Compensation Appeals Board, Compromise and Release settlements and Litigation Avoidance Programs.
 - g. When appropriate, refer litigated cases to attorneys utilizing an agreed listing of legal firms, assist in the preparation of litigated cases, negotiations of Compromises and Release settlements and subrogation actions.
 - h. Maintain current estimates of costs of all anticipated benefits and related expenses on each case.
 - i. Investigate or arrange for investigation of, as necessary and appropriate, questionable cases and the status of disabled employees in order to adjust all cases and to assist in the trial or settlement of litigated cases. Authorization for outside investigation is subject to approval by the City of Redlands.
 - j. When medically appropriate, develop rehabilitation programs for injured employees for approval by the City of Redlands, the employee and other agencies to provide rehabilitation, retraining, or reassignment for employees with physical or performance limitation resulting from industrial injuries.
 - k. Provide monthly reports to the City of Redlands that will set forth requested accounting and statistical data to allow the City of Redlands to interpret and evaluate their claims and safety programs. Reports shall be delivered within 20 days of the close of each calendar month.
 - l. Notification of the City of Redlands excess insurers of all claims which exceed the City of Redland self-insurance retention limit. Maintain liaison between the insurance carriers and the City of Redlands on matters affecting the adjustment of such claims.
 - m. Prepare the City of Redland Self-insured Annual Report in a timely fashion for submission to the Department of Self-Insurance Plans prior to the October 1st deadline.
2. Non-staff expenses such as legal costs and fees, investigations and rehabilitation

vendor fees, the cost of employing experts for professional advice, opinion or testimony, and similar costs normally considered as Allocated Loss Expenses are not included in the compensation to Consultant as hereinafter set forth. Such expenses are chargeable as part of the claims cost, as is the custom under insured plans when computing losses for experience rating, retrospective rating, or dividend computation, and are paid by the City of Redlands.

3. Consultant shall provide at least the following legal support services on each claim wherein the claimant has commenced litigation.,

Upon notification by the City of Redlands that an Application for Adjudication has been filed, Consultant shall attempt to settle the claim directly with the employee's attorney without litigation. If litigation become imminent, an attorney specializing in the defense of Workers' Compensation claims shall be retained to represent the City of Redlands. Upon request of the City of Redlands, Consultant shall provide all information and files concerning said attorney.