

**AN AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF REDLANDS
AND
FLEMING & ASSOCIATES**

THIS AGREEMENT, shall be effective July 1, 2002, and is made and entered into by and between the CITY OF REDLANDS, a municipal corporation (hereinafter referred to as "City"), and FLEMING AND ASSOCIATES (hereinafter referred to as "Consultant").

The City and Consultant agree as follows:

1. RETENTION AS CONSULTANT

City hereby retains Consultant, and Consultant hereby accepts such engagement, to perform the services described in Paragraph 2. Consultant warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

2. DESCRIPTION OF SERVICES

The services to be performed by Consultant are as follows:

Professional services for Plan Administration of the City of Redlands Workers' Compensation Program set forth in the attached Exhibit "A" and incorporated herein.

3. COMPENSATION AND PAYMENT

(a) **Maximum and Rate.** Except for authorized extra services (pursuant to Paragraph 5), the total compensation payable to Consultant by City for the services under this Agreement **SHALL NOT EXCEED** the annual sum as outlined below for each fiscal year of the agreement.

Fiscal Year 2002-2003:	\$27,500
Fiscal Year 2003-2004:	\$28,000
Fiscal Year 2004-2005:	\$28,500

(b) **Payment.** All payments shall be made within 30 days after Consultant has provided City with written verification of the actual compensation earned, which written verification shall be in a form satisfactory to City's Project Manager. Invoices shall be made no more frequently than on a monthly basis, and describe the work performed.

4. CONSIDERATION

City hereby agrees to pay to Contractor and Contractor hereby agrees to accept in full satisfaction for its services provided for hereunder, compensation in the following amounts:

Contractor shall be compensated monthly (payable in advance) for its claims supervision, semi-annual claims management seminars and other necessary administrative duties as outlined below:

Fiscal Year 2002-2003:	\$2,291.66 per month
Fiscal Year 2003-2004:	\$2,333.33 per month
Fiscal Year 2004-2005:	\$2,375.00 per month

5. EXTRA SERVICES

City shall pay Consultant for those City authorized extra services, not reasonably included within the services described in Paragraph 2, such amounts as mutually agreed to advance. Unless City and Consultant have agreed in writing before the performance of extra services, no liability and no right to claim compensation for such extra services or expenses shall exist.

6. CITY PROJECT MANAGER AND SERVICES BY CITY

The services to be performed by Consultant shall be accomplished under the general direction of, and coordinate with, City's "Project Manager", as that staff person is designated by the City from time to time, and who presently is Karen Olsen, Personnel Director.

7. DURATION OF AGREEMENT

The term of this Agreement shall be from July 1, 2002 through June 30, 2005.

8. TERMINATION

This Agreement may be terminated by either party, with or without cause, at any time by the giving of at least thirty (30) days prior written notice of such election to terminate.

9. OWNERSHIP OF DOCUMENTS

Contractor 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 the Agreement.

10. PERSONAL SERVICES/NO ASSIGNMENT/SUBCONTRACTOR

This Agreement is for professional services which are personal to City. Jeff Seabrook is deemed to be specially experienced and is a key member of Consultant's firm, and shall be directly involved in performing, supervising, and assisting in the performance of this work. He shall communicate with, and periodically report to, City on the progress of the work.

11. HOLD HARMLESS AND INSURANCE

(a) **Hold Harmless for Consultant's Damages.** The Consultant holds the City, its elected officials, officers, and employees, harmless from all of Consultant's claims, demands, lawsuits, judgments, damages, losses, injuries or liability to the Consultant, to the Consultant's employees or to the owners of Consultant's firm, which damages, losses, injuries or liability occur during the work, or occur while Consultant is on City property, or are connected, directly or indirectly, with the Consultant's performance of the work.

(b) **Defense and Indemnity of Third Party Claims/Liability.** Consultant shall investigate, defend, and indemnify the City, its elected officials, officers and employees, from any claims, lawsuits, demands, judgments, and all liability including, but not limited to, monetary or property damage, lost profit, personal injury, wrongful death, general liability, automobile, infringement of copyright/patent/trademark, professional errors and omissions, investigation expenses, attorney fees, and court costs arising out of, directly or indirectly, an error, a negligent act, or omission of the Consultant, or the willful misconduct of the Consultant in performing the services described in, or normally associated with, this type of contracted work.

(c) **Insurance.** Consultant shall, at Consultant's sole cost and expense and throughout the term of this Agreement and any extensions thereof, secure and maintain workers' compensation and employer's liability insurance in an amount that meets the statutory requirements with an insurance carrier acceptable to the City. Consultant shall also, at Consultant's sole cost and expense and throughout the term of this Agreement and any extensions thereof, carry: Comprehensive General Liability insurance with limits of not less than \$1,000,000 per occurrence, and \$2,000,000 aggregate for public liability, property damage and for personal injury or death of a person or persons, and property damage; Business Auto Liability insurance with minimum limit of one million (\$1,000,000) per occurrence, combined single limit for bodily injury, liability and property damage liability; professional liability insurance in the amount of one million (\$1,000,000) per claim made. All insurance policies shall be issued by a financially responsible company or companies authorized to do business in the State of California. Consultant shall provide City with copies of certificates for all policies within 15 days of execution of this Agreement or prior to commencement of work, whichever occurs first, with the appropriate named additional insured coverage and an endorsement that they are not subject to cancellation without 30 days prior written notice to City prior to commencing work.

12. RELATION OF THE PARTIES

The relationship of the parties to this Agreement shall be that of independent contractors and that in no event shall Consultant be considered an officer, agent, servant or employee of City. Consultant shall be solely responsible for any workers' compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the described work.

13. CORRECTIONS

In addition to the above indemnification obligations, Consultant shall correct, at its expense, all errors in the work which may be disclosed during City's review of Consultant's report or plans. Should Consultant fail to make such correction in a reasonable timely manner, such correction shall be made by City, and the cost thereof shall be charged to Consultant. All insurance required by this agreement shall be primary and non-

contributory.

14. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE

The acceptance by Consultant of the final payment made under this Agreement shall operate as and be a release of City from all claims and liabilities for compensation to Consultant for anything done, furnished, or relating to Consultant's work or services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within ten (10) calendar days of the receipt of that check. However, approval or payment by City shall not constitute, nor be deemed, a release of the responsibility and liability of Consultant, its employees, subcontractors, agents and consultants for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by City for any defect or error in the work prepared by Consultant, its employees, subcontractors, agents and consultants.

15. AUDIT OF RECORDS

At any time during normal business hours and as often as it may deem necessary, Consultant shall make available to a representative of City for examination of all its records with respect to all matters covered by this Agreement and will permit City to audit, examine and/or reproduce such records. Consultant shall retain such financial records, time sheets, work progress reports, invoices, bills and project records for at least two years after termination or final payment under this Agreement.

16. WAIVER; REMEDIES CUMULATIVE

Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period to time specified. All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

17. CONFLICT OF INTEREST

Consultant is unaware of any City employee or official that has a financial interest in Consultant's business. During the term of this Agreement and/or as a result of being awarded this contract, the Consultant shall not offer, encourage or accept any financial interest in Consultant's business by any City employee or official.

If a portion of Consultant's services called for under this Agreement shall ultimately be paid for by reimbursement from and through an agreement with a developer of any land within City or with a City franchisee, Consultant warrants that it has not performed any work for such developer/franchisee within the last 12 months, and shall not negotiate, offer or

accept any contract or request to perform services for that identified developer/franchisee during the term of this Agreement.

18. CONSTRUCTION OF LANGUAGE OF AGREEMENT

The provisions of this Agreement shall be construed as a whole according to their common meaning or purpose of providing a public benefit and not strictly for or against any party, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.

19. MITIGATION OF DAMAGES

In all situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

20. GOVERNING LAW is Agreement, and the rights and obligations of the parties, shall be governed by and interpreted in accordance with the laws of the State of California.

21. NONDISCRIMINATION

Consultant shall comply with the Federal Americans with Disability Act, Public Law 101-336, and observe the disability discrimination prohibitions of such laws in the performance of the work required under this Agreement.

22. CAPTIONS

The captions or headings in this Agreement are for convenience only and in no other way define, limit or describe the scope or intent of any provision of this Agreement.

23. AUTHORIZATION

Each party has expressly authorized the execution of this Agreement on its behalf and bind said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint venturers, insurance carriers and any others who may claim through it to this Agreement.

24. NOTICES

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO CITY:	Attention:	Ms. Karen Olsen Personnel Director 35 Cajon St., Suite #10 Redlands, CA 92373
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TO CONSULTANT:

Attention: Mr. Jeff Seabrook
Vice President
Fleming & Associates
4250 Pennsylvania Avenue
Glendale, CA 91214

In concurrence and witness whereof, this Agreement has been executed by the parties effective on the date and year first above written.

CITY OF REDLANDS

DATED: June 20, 2002

By: 
KARL N. HAWS, MAYOR

ATTEST:


LORRIE POYZER
CITY CLERK

DATED: 6-14-02

CONTRACTOR
By: 
JEFF SEABROOK, VICE PRESIDENT
FLEMING & ASSOCIATES

EXHIBIT "A"

PLAN ADMINISTRATION SERVICES

EXAMINING SERVICES

1. Contractor 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's 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 Compromise 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 Redlands 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 Redlands 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 our fee in the compensation to Contractor 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. Contractor 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, Contractor shall attempt to settle the claim directly with the employee's attorney without litigation. If litigation becomes 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, Contractor shall provide all information and files concerning said attorney.