

AGREEMENT TO PERFORM PROFESSIONAL SERVICES

This agreement for the provision of workers' compensation plan administration services ("Agreement") is made and entered into this 3rd day of July, 2012 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City") and AdminSure Inc. ("Consultant"). City and Consultant are sometimes individually referred to herein as a "Party" and, together, as the "Parties." In consideration of the mutual promises contained herein, City and Consultant agree as follows:

ARTICLE 1 – ENGAGEMENT OF CONSULTANT

- 1.1 City hereby engages Consultant to provide workers' compensation plan administration services for City's Human Resources Department (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.

ARTICLE 2 – SERVICES OF CONSULTANT

- 2.1 The Services that Consultant shall perform are more particularly described in Exhibit "A," entitled "Scope of Services," which is attached hereto and incorporated herein by reference.
- 2.2 Consultant shall comply with applicable federal, state and local laws and regulations in the performance of this Agreement including, but not limited to State prevailing wage laws.

ARTICLE 3 – RESPONSIBILITIES OF CITY

- 3.1 City shall make available to Consultant information in its possession that may assist Consultant in performing the Services.
- 3.2 City designates Kimberlee J. Braun, City's Human Resources/Risk Manager, as City's representative with respect to performance of the Services, and such person shall have the authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to performance of the Services.

ARTICLE 4 – DURATION OF AGREEMENT

- 4.1 The term of this Agreement shall be from July 3, 2012 through June 30, 2013.

ARTICLE 5 – PAYMENTS TO CONSULTANT

- 5.1 The total compensation for Consultant's performance of the Services shall be in the amount of Ninety-Seven Thousand Nine Hundred Thirty-Two dollars (\$97,932). City shall pay Consultant in monthly progress payments for the Services performed for each billing period in the amount of Eight Thousand One Hundred Sixty-One dollars (\$8,161).
- 5.2 Consultant shall submit monthly invoices to City describing the Services performed during the preceding month. Consultant's invoices shall include a brief description of the Services performed, the dates the Services were performed, the number of hours spent and by whom, and a description of reimbursable expenses related to the project. City shall pay Consultant no later than thirty (30) days after receipt and approval by City of Consultant's invoice.
- 5.3 All notices shall be given in writing by personal delivery or by mail. Notices sent by mail should be addressed as follows:

City

Kimberlee J. Braun, HR/ Risk Manager
Human Resources Department
City of Redlands
35 Cajon Street, Suite 10
P.O. Box 3005 (mailing)
Redlands, CA 92373

Consultant

Alithia Vargas-Flores, Vice President
AdminSure, Inc.
1470 South Valley Vista Drive
Suite 230
Diamond Bar, CA 91765

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 5.3.

ARTICLE 6 – INSURANCE AND INDEMNIFICATION

- 6.1 Insurance required by this Agreement shall be maintained by Consultant for the duration of its performance of the Services. Consultant shall not perform any Services unless and until the 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. Insurance policies shall include a provision prohibiting cancellation or modification of the policy except upon thirty (30) days prior written notice to City.
- 6.2 Consultant shall secure and maintain Workers' Compensation and Employer's Liability insurance throughout the duration of its performance of the Services in accordance with the laws of the State of California, with an insurance carrier acceptable to City.
- 6.3 Consultant shall secure and maintain 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. City shall be named as an additional insured and such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City.

- 6.4 Consultant shall secure and maintain professional liability insurance throughout the term of this Agreement in the amount of One Million Dollars (\$1,000,000) per claim made.
- 6.5 Consultant shall defend, indemnify and hold harmless City, and its elected officials, employees and agents, from and against any and all claims, losses or liability, including attorneys' fees, arising from injury or death to persons or damage to property occasioned by and negligent act, omission or failure to act by Consultant, its officers, employees and agents in performing the Services.

ARTICLE 7 – CONFLICTS OF INTEREST

- 7.1 Consultant covenants and represents that it does not have any investment or interest in any real property that may be the subject of this Agreement or any other source of income, interest in real property or investment that would be affected in any manner or degree by the performance of Consultant's Services. Consultant further covenants and represents that in the performance of its duties hereunder, no person having any such interest shall perform any Services under this Agreement.
- 7.2 Consultant agrees it is not a designated employee within the meaning of the Political Reform Act because Consultant:

A. Does not make or participate in:

- (i) the making or any City governmental decisions regarding approval of a rate, rule or regulation, or the adoption or enforcement of laws;
- (ii) the issuance, denial, suspension or revocation of City permits, licenses, applications, certifications, approvals, orders or similar authorization or entitlements;
- (iii) authoring City to enter into, modify or renew a contract;
- (iv) granting City approval to a contract that requires City approval and to which City is a party, or to the specifications for such a contract;
- (v) granting City approval to a plan, design, report, study or similar item;
- (vi) adopting, or granting City approval of policies, standards or guidelines for City or for any subdivision thereof.

B. Does not serve in a staff capacity with City and in that capacity, participate in making a governmental decision or otherwise perform the same or substantially the same duties for City that would otherwise be performed by an individual holding a position specified in City's Conflict of interest Code under Government Code section 87302.

- 7.3 In the event City determines that Consultant must disclose its financial interests, Consultant shall complete and file a Fair Political Practices Commission Form 700, State

of Economic Interests with the City Clerk's office pursuant to the written instructions provided by the City Clerk.

ARTICLE 8 – GENERAL CONSIDERATIONS

- 8.1 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, including fees for the use of in-house counsel by a Party.
- 8.2 Consultant shall not assign any of the Services, except with the prior written approval of City and in strict compliance with the terms and conditions of this Agreement.
- 8.3 Project related documents, records, drawings, designs, cost estimates, electronic data files, databases and any other documents developed by Consultant in connection with its performance of the Services, and any copyright interest in such 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, shall be at City's sole risk.
- 8.4 Consultant is for all purposes under this Agreement an independent contractor and shall perform the Services as an independent contractor. Neither City nor any of its employees or agents shall have control over the conduct of Consultant or Consultant's employees, except as herein set forth. Consultant shall supply necessary tools and instrumentalities required to perform the Services. Assigned personnel employed by Consultant are for its account only, and in no event shall Consultant or 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. Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent for City, nor shall Consultant have any authority, express or implied, to bind City to any obligation.
- 8.5 Unless earlier terminated as provided for below, this Agreement shall terminate on June 30, 2013; provided, however this Agreement may be terminated by City, in its sole discretion, by providing twenty (20) days prior written notice to Consultant (delivered by certified mail, return receipt requested) of City's intent to terminate. 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. Upon receipt of a termination notice, Consultant shall immediately discontinue its provision of the Services and, within five (5) days of the date of the termination notice, deliver or otherwise make available to City, copies (in both hard copy and electronic form, where applicable) of project related data, design calculations, drawings, specifications, reports, estimates, 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 to the date of termination.

- 8.6 Consultant shall maintain books, ledgers, invoices, accounts and other records and documents evidencing costs and expenses related to the Services for a period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant pursuant to this Agreement. Such books shall be available at reasonable times for examination by City at the office of Consultant.
- 8.7 This Agreement, including the Exhibit incorporated herein by reference, represents the entire agreement and understanding between the Parties as to the matters contained herein, and any prior negotiations, written proposals or verbal agreements relating to such matters are superseded by this Agreement. Except as otherwise provided for herein, an amendment to this Agreement shall be in writing, approved by City and signed by City and Consultant.
- 8.8 This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- 8.9 If one or more of the sentences, clauses, paragraphs or sections contained in this Agreement is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair or invalidate the remaining sentences, clauses, paragraphs or sections contained herein, unless to do so would deprive a Party of a material benefit of its bargain under this Agreement.

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

CITY OF REDLANDS

ADMINSURE, INC.

By:



Pete Aguilar, Mayor

By:



Alithia Vargas-Flores, Vice President

Attest:



Sam Irwin, City Clerk

EXHIBIT "A"
SCOPE OF 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 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 15 days of the close of each calendar month.

- I. 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 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 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 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, Consultant shall provide all information and files concerning said attorney.