

**REQUEST FOR
COUNCIL ACTION****CITY COUNCIL MEETING DATE:****SEPTEMBER 4, 2018****TITLE:**

**APPROVE AN AGREEMENT WITH
ADMINSURE, INC., FOR THIRD
PARTY ADMINISTRATOR SERVICES
FOR GENERAL LIABILITY AND
WORKERS' COMPENSATION
CLAIMS {STRATEGIC PLAN NO. 7; 6}**

A handwritten signature in black ink, appearing to read "R. Medina", is written over a horizontal line.

CITY MANAGER**CLERK OF COUNCIL USE ONLY:****APPROVED**

- ☐ As Recommended
☒ As Amended
☐ Ordinance on 1st Reading
☐ Ordinance on 2nd Reading
☐ Implementing Resolution
☐ Set Public Hearing For _____

CONTINUED TO _____**FILE NUMBER** _____**RECOMMENDED ACTION**

Authorize the City Manager and Clerk of the Council to execute the attached agreements with AdminSure, Inc., subject to non-substantive changes approved by the City Manager and City Attorney, to provide the City's self-insured third party claims administration and management for General Liability and Workers' Compensation for the initial three-year term of September 5, 2018 through August 31, 2021 with two, two year options for renewal. Annual total amounts not to exceed:

FEES	WORKERS' COMPENSATION MONTHLY	GENERAL LIABILITY MONTHLY	COMBINED ANNUAL TOTAL
YEAR 1 (10 MONTHS)	\$42,125	\$14,600	\$567,250
YEAR 2	\$43,389	\$15,038	\$701,121
YEAR 3	\$44,690	\$15,489	\$722,155
OPTIONAL YEAR 4	\$46,031	\$15,954	\$743,819
OPTIONAL YEAR 5	\$47,412	\$16,432	\$766,134
OPTIONAL YEAR 6	\$48,834	\$16,925	\$789,108
OPTIONAL YEAR 7	\$50,300	\$17,433	\$812,796

DISCUSSION

The City is self-insured and self-administered for General Liability with excess coverage through participation in a Joint Powers Agreement with the Big Independent Cities Excess Pool (BICEP). For Workers' Compensation, the City is self-insured and self-administered for claims management and processing and has excess coverage through the California State Association of Counties - Excess Insurance Authority (CSAC-EIA).

The Human Resources Department / Risk Management Division regards fiscal responsibility, accountability, and safety as a high priority. Protection of the City's employees, residents, visitors,

and assets is paramount in creating and maintaining a safe place to work, live and visit. In an effort to reduce expenditures, the Department is implementing a forward-thinking and pro-active process toward managing the City's ongoing exposure to risk. To facilitate this, the Department has determined that utilizing a Third Party Administrator (TPA) for General Liability and Workers' Compensation claims management will enable the Risk Management Division to pro-actively focus on Safety and Hazard Mitigation, thus potentially reducing overall City claims and litigation expenses.

Third Party Administrators have personnel with specialized skills and certifications required to effectively and efficiently handle Workers' Compensation and General Liability claims caseloads. Specifically, they work with injured employees, general public/residents, medical providers, contractors/vendors and attorneys to investigate, negotiate and settle claims. Additionally, the selected Third Party Administrators have expertise working specifically in municipalities with police departments.

The City will still be actively involved in any litigation and will have final authority on settlement decisions, though the TPA which will be handling all day-to-day workers' compensation and general liability claims. This service arrangement is not relinquishing City control over these processes but allowing experts to focus solely on the service to our customers, cost effectiveness, timely processing and closure of claims as well as expediency in providing the highest level of care to the City's injured workers. This structure provides a transparent approach and quantifiable results. Additionally, by using a Third Party Administrator to handle General Liability and Workers' Compensation claims administration functions, the City will be able to manage customer expectations and have objective oversight.

In response to the Request for Proposals, six vendors submitted proposals and one vendor declined to bid. Following extensive evaluation of the proposals, the top three were invited to participate in a panel interview process. The panel was comprised of one member highly experienced in General Liability, one member highly experienced in Workers' Compensation, one administrative member of the Santa Ana Police Department, and one municipal Risk Manager. The vote of the panel was unanimous in selecting AdminSure, Inc. as the firm that would provide the best overall service, claims management, and oversight to the City.

AdminSure, Inc. has an outstanding reputation for excellent customer service and fiscally efficient oversight of claims for both Workers' Compensation and General Liability. Out of AdminSure's 76 public sector clients, 66 have Police or Sheriff departments. Servicing these entities requires a high level of expertise in the specific laws and issues surrounding safety employees. AdminSure has brought excellent results to these programs. AdminSure's State of California Audit Scores indicate 100% compliance with best practices/performance standards. AdminSure, Inc. also provides detailed information regarding customer service delivery. AdminSure's services are streamlined but very detail-oriented, thus providing the utmost attention to claimants' needs in a very cost-effective manner.

AdminSure's proposal offered an overall lower annual program cost. It has agreed to reduce their proposed fee by 25.5% if administering both the City's Workers' Compensation and General Liability Programs. This good faith gesture demonstrates AdminSure's ability to provide professional services for a competitive fee as well as its commitment to establishing a strong business relationship with the City of Santa Ana. Inclusive in the cost, and in tandem with Risk Management Division staff, AdminSure, Inc. will provide extensive and ongoing training for City staff as well as development and implementation of processes to mitigate exposure to costly issues that can be foreseen and all mandated reporting.

Utilizing a TPA will require less personnel in the claims adjusting process; however, no current employee will be displaced by this change. This will enable the Human Resources Department to adjust its focus and utilize staff in more effective ways and areas of service. The restructure will redistribute personnel costs as well as eliminate additional direct vendor costs.

The recommended term of this Agreement is for a period of three (3) years, commencing on September 4, 2018 and terminating on August 31, 2021, with an option to extend twice, by mutual agreement of the Parties, for a period up to four (4) additional years, two (2) and two (2). If extension is recommended, it will be brought back to City Council for additional approval at that time. The Agreement shall automatically renew from year to year subject to termination by either party during the life of the Agreement. The City may terminate this agreement at any time, without cause, with ninety (90) days written notice. The City may terminate this agreement with cause with thirty (30) days written notice.

Industry standard/best practices favor longer term agreements, thus the City and its employees would be better served by a longer term agreement, generally three to five years with three-year to five-year optional extensions. However, results and costs will still be reviewed on a constant basis with a full review each year to analyze savings and ensure that the City is still receiving the most competitive terms. Staff will negotiate any changes accordingly.

ADMINSURE, INC. – FEE STRUCTURE

	WORKERS' COMPENSATION MONTHLY FEE	WORKERS' COMPENSATION ANNUAL FEE	GENERAL LIABILITY MONTHLY FEE	GENERAL LIABILITY ANNUAL FEE	COMBINED MONTHLY FEES	COMBINED ANNUAL FEES
YEAR 1	\$42,125	\$505,500	\$14,600	\$175,200	\$56,725	\$680,700
YEAR 2	\$43,389	\$520,665	\$15,038	\$180,456	\$58,427	\$701,121
YEAR 3	\$44,690	\$536,285	\$15,489	\$185,870	\$60,180	\$722,155
OPTIONAL YEAR 4	\$46,031	\$552,373	\$15,954	\$191,446	\$61,985	\$743,819
OPTIONAL YEAR 5	\$47,412	\$568,945	\$16,432	\$197,189	\$63,844	\$766,134

- Option of second term of Two additional years if the City so chooses. (A potential total of 7 years)

- The annual fee shall never exceed a three percent (3%) increase per year, including optional additional years. For Workers' Compensation, Optional Year 6 not to exceed \$48,485 per month and Optional Year 7 not to exceed \$50,300 per month. For General Liability, Optional Year 6 not to exceed \$16,925 and Optional Year 7 not to exceed \$17,433.
- Medical Bill Review is a flat fee of \$9 per bill.
- Utilization Review is 7% of billed charges with a cap of \$750.
- One-time flat fee for data conversion will be \$10,000.

In accordance with best practices, the TPA and the City's Finance Department will have a structured financial arrangement through which the vendor will be given access to a bank account and will pay claims, temporary total disability payments, settlements and claims-related expenses as pre-authorized by and on behalf of the City.

Staff recommends that City Council authorize the City Manager to enter into an agreement with AdminSure, Inc. to provide TPA services for General Liability and Workers' Compensation claims processing. Contracts will be reviewed by the City Attorney's Office before execution by the City Manager or his designee.

STRATEGIC PLAN ALIGNMENT

Approval of this item supports the City's effort to meet Goal #7 – Team Santa Ana, Objective #6, Provide a positive workplace environment that supports the health of its employees and celebrates its success.

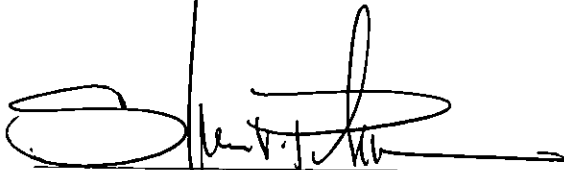
FISCAL IMPACT

Workers' Compensation and General Liability TPA administrative services are not specifically budgeted as a line item in the Fiscal Year 2018/19 Budget. However, Funds are available in the Human Resources Department, Risk Management Division Budget and have been earmarked as follows. The monthly fee for the 10-month pro-rated period, for the first year of the contract, will be:

- \$421,250 from Workers' Compensation, Account(s) Contractual Services-Professional (No. 08209054-62300), Other Personnel Services (No. 08209054-62302); and
- \$146,000 for General Liability from Account(s) Other Contractual Services (No. 08009051-62300), and Other Personnel Services (No. 08009051-60302).

The chart below outlines estimated costs for subsequent contractual years:

FEES	WORKERS' COMPENSATION MONTHLY	GENERAL LIABILITY MONTHLY	COMBINED ANNUAL TOTAL
YEAR 1 (10 MONTHS)	\$42,125	\$14,600	\$567,250
YEAR 2	\$43,389	\$15,038	\$701,121
YEAR 3	\$44,690	\$15,489	\$722,155
OPTIONAL YEAR 4	\$46,031	\$15,954	\$743,819
OPTIONAL YEAR 5	\$47,412	\$16,432	\$766,134



Steven V. Pham
Executive Director
Human Resources Agency

SVP/dsl/dsl

APPROVED AS TO FUNDS AND
ACCOUNTS:



Sergio Vidal *mb1*
Assistant Director
Finance and Management Services Agency

Exhibit: 1. Agreement(s)

**PROFESSIONAL SERVICES AGREEMENT
FOR THIRD PARTY GENERAL LIABILITY CLAIMS ADMINISTRATION BETWEEN
THE CITY OF SANTA ANA AND ADMINSURE, INC.**

This "Professional Services Agreement" between the City of Santa Ana and AdminSure, Inc. ("Agreement") is made and entered into this 4th, day of September, 2018, by and between the City of Santa Ana, California, a California Municipal Corporation (the "City") and Adminsure, a California corporation ("Administrator"). The City and Administrator are sometimes hereinafter referred to individually as a "Party" or collectively as the "Parties". The Parties enter into this Agreement with reference to the following:

Recitals

- A. City is in need of a qualified third party to whom to delegate the responsibilities and duties of administering the City's self insured liability coverage program;
- B. City issued a Request for Proposal ("RFP") for Third Party Administrator services for worker's compensation and claims management. Administrator was one of the companies that submitted a proposal and was ultimately selected as the successful vendor

NOW, THEREFORE, in consideration of the performance by the Parties of the covenants and conditions herein contained, the City and Administrator hereby agree as follows:

Terms and Conditions

1. **Administrator Services.** Administrator agrees to perform any and all work necessary to supervise and administer the liability programs for the City, represent the City in all matters related to the investigation, adjustment, processing, supervision and resolution of liability claims for money damages asserted by third parties against the City, and provide to the City during the term of this Agreement all the services more particularly set forth in Section 2 below and in accordance with Administrator' proposal submitted in response to City's RFP incorporated by reference herein (collectively, the "Services").

2. **Description of Services.** The responsibilities of Administrator are divided into the following categories: claims administration, litigation management, subrogation and reporting of claims activities. Administrator agrees to perform these services in accordance with the Best Practices and Performance Standards for Third Party Administrators.

a. **Claims Administration.**

(i) Administrator shall provide the City with sufficient qualified personnel, including at least one senior claims adjuster, to efficiently and effectively meet the responsibilities as defined below and any other duties incidental, or in addition, to those responsibilities. The senior claims adjuster shall have a minimum of three years' experience in adjusting liability claims for public entities. Administrator shall also provide a supervisor/account manager who shall oversee the servicing of the City's claims. The account manager shall have at least six years' experience in adjusting liability claims,

five of which involved adjusting liability claims for public entities. No adjuster or supervisor/account manager shall service the City's account without prior approval by the City.

(ii) The responsibilities of Administrator shall include, but not be limited to, the following:

(1) Establish and maintain an electronic file for each claim reported, to include a diary review system by both the examiner and supervisor; statistical data for each claim should be stored electronically and shall include all data required to comply with federal and state requirements including Medicare secondary payer laws and regulations;

(2) Provide comprehensive claim investigative services;

(3) Periodically, determine potential liability and establish, review, and update reserves for each reported accident and advise the City of any changes as they occur;

(4) Notify Big Independent Cities Excess Pool (BICEP) Litigation Manager of a claim as required by the BICEP Liability Program Memorandum of Coverage (MOC) and coordinate with the City Risk Management Division, City Attorney's Office and BICEP Litigation Manager in the defense, settlement, and payment of claims. Prepare and submit information to the Litigation Manager, and upon request insurance carrier(s), on all claims that fall within the reporting requirements set forth by the MOC or the insurance carrier(s);

(5) Document sufficiency of reserve minimally at 90-day intervals;

(6) Provide the City with a recommendation to accept or deny a claim within the statutory period in the California Government Tort Claims Act;

(7) Provide immediate notification to the City of offers to settle;

(8) Obtain settlement authority from City, BICEP (when required), and the excess carrier where applicable;

(9) Obtain releases and other necessary forms from all appropriate parties upon settlement of a claim prior to issuing a settlement check;

(10) Upon the City's request, assist with preparation for appearances in small claims court, court hearings and City Council meetings at no additional charge to the City;

(11) Prepare and, where needed, obtain approval for issuance of checks, drafts, or other documents in the payment of claims with electronic copies sent to the City;

(12) Promptly determine any potential to tender a claim to third parties and the feasibility of subrogation, and take appropriate steps to subrogate, where such action is appropriate;

(13) Promptly close each claim as soon as possible, but no later than 30 days after final check issuance;

(14) Make available time, electronic files, and necessary staff for meetings with the City and attendance at applicable meetings for settlement authority, claim resolution strategy, and periodic claim audits;

(15) After collecting member data, Administrator shall determine whether claimants are Medicare beneficiaries. If claimants are found to be Medicare beneficiaries, Administrator as part of any settlement with the claimant shall on behalf of the City take all steps necessary to protect Medicare's interests. This shall include, but is not necessarily limited to, confirming that all known liens or claims by Medicare shall be satisfied from the settlement, and making all reasonable efforts to determine whether Medicare will be asserting any future liens or claims against the City, and if so, to satisfy as part of the settlement any such liens or claims to the extent they can be determined, through a Medicare Set Aside or other appropriate procedure or mechanism; and

(16) Maintain complete records of payments from an approved trust account, established by the Administrator on behalf of the City for the purpose of paying all claims related costs.

b. Litigation Management.

(i) Administrator shall assist in the implementation and conform to the procedures of the City Attorney's Office and BICEP's Litigation Management Program.

(ii) The duties of Administrator shall include, but not be limited to:

(1) Monitor defense counsel and assist in the implementation of the BICEP's Litigation Management Guidelines incorporated herein by reference;

(2) With approval of the City Attorney and BICEP (when applicable), assign the defense of litigated cases to the defense firm selected;

(3) Assist defense counsel, at the direction of the City, in obtaining facts or circumstances of a claim, including assistance in answering interrogatories;

(4) Supplying and collecting the case analysis and performance evaluation forms from the defense firms;

(5) Review legal bills for accuracy, for compliance with the Litigation Management Guidelines, and use of cost effective processes;

(6) Maintaining, in coordination with the City and BICEP, an evaluation file on each defense firm with respect to each defense assignment; and

(7) Providing any and all information, reports, and data to the City and BICEP as may be requested from time to time.

(8) Allow access to City files for BICEP annual audit.

c. Reporting of Claims Activity

(i) Provide a monthly statistical report to the City for each line of coverage which shows all claims having activity, including claimant name, nature/type/cause of injury/loss, date of loss, status, loss/expense paid and reserved amounts, with monthly and year-to-date totals. A guide to any and all abbreviations used in any of the reports shall be provided to the City and BICEP. Reports shall include all claims meeting the City's reporting criteria.

(ii) In addition to the monthly statistical report, the Administrator will provide to the City a monthly payment register showing all payments issued, payee, voucher number, voucher date, and claimant name, if applicable.

(iii) Upon the request of the City, the Administrator shall also provide special reports on claims, in detail or summary, sorted or queried by any, or any combination, of the fields at no additional cost. All reports shall be provided in a Microsoft Excel format or any other format as requested by the City.

(iv) The Administrator shall also provide reports to the City, as may be requested from time to time, which accurately identify the types of claims that have been presented so that the City can identify areas where corrective measures may be adopted to prevent future claims of that nature.

3. Administrator's Obligations. The Administrator shall complete the Services as follows:

a. The Administrator represents that it employs, or will employ, at its own expense, all personnel required for the satisfactory performance of the Services.

b. The Administrator represents that the Services will be performed by the Administrator or personnel under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable state and local laws to perform such Services.

c. Administrator shall assign an account manager to ensure the duties under this Agreement are performed in a timely and professional manner. Said representative shall not be replaced by the Administrator without prior written notice to the City, nor without written approval from the City. Any additional personnel used to perform the Services shall be limited to those initially identified by the Administrator, unless approved in writing by the City.

d. Administrator shall ensure that other personnel, such as management, clerical, accounting, and data processing, which may be required to satisfactorily provide the services required by this Agreement, shall be provided by the Administrator within the agreed fee for Services contained in this Agreement. It is understood that the personnel referred to in this entire Section 3 need not be dedicated to the exclusive use of the City.

e. Administrator shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement. Administrator shall not use City premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

f. The Administrator shall provide sufficient office space to ensure that the City's claims can be adjusted in an effective and efficient manner. Such office space shall be equipped with an adequate theft and fire alarm system in an effort to protect the City's records.

g. The Administrator shall work closely with the City and their respective designated representatives by providing any information, reports, and data to the City as may be requested from time to time.

h. The Administrator agrees not to release any report, any portion thereof, or any result of any investigation it may undertake on behalf of the City to any outside person or agency without the express written consent of the City, except as provided by law or in this Agreement. Administrator shall notify City immediately of any subpoena or other request for City records made by a third party.

i. Data Interface. The Administrator shall provide an on-line interface with its database, accessible from the City's computers. This information will be for use by the City. Such data shall be in a format which will permit the City to make print copies of the data on its printers. The data interface will have sufficient firewall and anti-virus software to maintain appropriate security.

j. Data Reporting. Administrator shall provide City monthly loss information with the fields and in the format specified.

k. Administrator shall provide reports outlined in Section 2.c of this Agreement and other reports as requested by the City.

l. Administrator shall develop and implement processes and procedures relating to the protection of electronic data, including a suitable security and off-site back-up system for all stored data and a written policy with respect to disaster recovery, physical and electronic data security, and electronic data retention, as required by the standards for Accreditation with Excellence by the California Association of Joint Powers Authorities. Administrator will notify City immediately in writing of its discovery of any data breach involving City's data.

m. The Administrator shall comply with all applicable federal, state, and local laws, ordinances and regulations including but not limited to the Health Insurance Portability and Accountability Act ("HIPPA."). Administrator shall report immediately to the City, in writing, any discrepancy or inconsistency it discovers in the laws, ordinances, regulations, orders, and/or guidelines in relation to the performance of Services under this Agreement.

n. The Administrator, at its sole expense, shall obtain and maintain during the term of this Agreement, appropriate permits, certificates, and licenses including, but not limited to, any business license that may be required in connection with the performance of services under this Agreement.

o. The Administrator shall not subcontract or assign any portion of the Services without prior written approval of the City.

p. The Administrator shall make no change in the character or extent of the work required by this Agreement, except as may be authorized in writing by the City. Such supplemental authorization shall set forth the specific changes of work to be performed and any related extension of time and/or adjustment of fee to be paid to the City by the Administrator.

q. Administrator shall submit its annual SSAE18 / SAS70 to City within thirty (30) days of receipt along with any action plans to mitigate any deficiencies noted by the auditor.

r. Administrator will cooperate fully with the City, City Attorney's Office, Risk Manager, BICEP and the City's excess carrier.

4. City Obligations. In furtherance of the Services provided by the Administrator, the City agrees to the following:

a. The City shall provide full information regarding its requirements for the Agreement, and shall furnish without charge to the Administrator, any and all information available within the offices of the City and are necessary for the Administrator to provide and perform the tasks and Services set forth herein.

b. The City shall cooperate with the Administrator in carrying out the work of the Agreement without undue delay. In this regard, the City, including any representative thereof, shall examine documents submitted by the Administrator and shall render any necessary decisions pertaining to such documents or Services as promptly as is practicable.

c. The City will provide to Administrator information regarding its computer system.

5. Administrator Compensation and Schedule of Payment.

a. Payment Schedule. Itemized statements for fees shall be submitted once a month following the month covered by each statement. If the statements are correct, City shall pay Administrator within thirty (30) calendar days after each statement is submitted and received by City.

b. Inspection of Books and Records. Upon request by City, Administrator shall provide time records and back up data and records verifying project costs and expenses, including out-of-pocket third party expenses.

6. Term. The term of this Agreement is for a period of three (3) years, commencing on September 4, 2018 and terminating on August 31, 2021, unless otherwise extended by mutual agreement of the Parties for a period up to two, two year periods.

a. For the first year, September 4, 2018 through August 31, 2019, of this Agreement, the Client shall pay the Administrator \$14,600 per month for Services rendered under this Agreement.

b. For the second year, September 1, 2019 through August 31, 2020, of this Agreement, the Client shall pay the Administrator \$15,038 per month for Services rendered under this Agreement.

c. For the third year, September 1, 2020 through August 31, 2021, of this Agreement, the Client shall pay the Administrator \$15,489 per month for Services rendered under this Agreement.

- d. For the optional fourth year, September 1, 2021 through August 31, 2022, of this Agreement, the Client shall pay the Administrator \$15,954 per month for Services rendered under this Agreement.
- e. For the optional fifth year, September 1, 2022 through August 31, 2023, of this Agreement, the Client shall pay the Administrator \$16,432 per month for Services rendered under this Agreement.
- f. For the optional sixth year, September 1, 2023 through August 31, 2024, of this Agreement, the Client shall pay the Administrator \$16,925 per month for Services rendered under this Agreement.
- g. For the optional seventh year, September 1, 2024 through August 31, 2025, of this Agreement, the Client shall pay the Administrator \$17,433 per month for Services rendered under this Agreement.

7. Termination.

a. The City may terminate this agreement at any time, without cause, with ninety (90) days written notice.

b. The City may terminate this Agreement for cause upon providing the Administrator thirty (30) days written notice if:

(i) If the Administrator breaches any provision of this Agreement and does not cure such breach within ten (10) days after written notice of the breach is given by the City;

(ii) In the event the Administrator's services, in the judgment of City, are unsatisfactory;

(iii) In the event of the Administrator's failure to prosecute the work with diligence or within the time limits specified in the contract documents and Administrator fails to cure this breach within ten (10) days of being advised of the breach;

(iv) Failure to procure or maintain insurance as required by this Agreement; or

(v) In the event of bankruptcy, whether voluntary or involuntary, of Administrator.

c. The Administrator may terminate this Agreement in the event that the City is delinquent in paying any invoices for a period in excess of sixty (60) days. Termination shall be effective thirty (30) days after notice is received by mail at the City's office unless the City has remedied said failure(s) to the satisfaction of the Administrator.

d. This Agreement shall terminate automatically on the occurrence of bankruptcy or insolvency of any Party.

e. If this Agreement is terminated without cause, Administrator shall be paid for the reasonable value of the Services provided up to the time of such termination or suspension. From and after Administrator's receipt of notice of termination, Administrator shall use all reasonable efforts to minimize project costs and expenses, except to the extent the City's notice requested that certain services are continued.

8. Confidentiality. Without the written consent of the City, the Administrator shall not disclose to third parties other than its employees or disclose or use for any purpose other than performance of the Services any information provided to the Administrator by the City in connection with performance of this Agreement, or any information developed or obtained by the Administrator in the performance of this Agreement, unless: 1) the information is known to the Administrator prior to obtaining same from the City or performing Services under this Agreement; 2) the information is at the time of disclosure by the Administrator then in the public domain; or 3) the information is obtained by or from a third party who did not receive it, directly or indirectly, from the City and who has no obligation of confidentiality with respect thereto.

9. Ownership of Records and Work Product.

a. All claim data is owned by the City. All claim electronic files, loss reports, payroll information, and other documents and materials, and all transactional level electronic data in the requested format, shall be delivered to the City upon termination of this Agreement.

b. All products of undertaking and completing the Services and Administrator's duties hereunder including, but not limited to, the study results, reports, drawings, photographs, photo simulations, maps, plans, renderings, specifications, analyses, surveys, data, computer printouts, programs and software, and all supporting documentation of such programs prepared in the performance of the Services shall be the property of City, and shall be delivered to City before final payment and the completion of performance or any earlier termination under this Agreement.

10. Indemnification.

a. The Administrator agrees to indemnify, defend and hold harmless the City, and/or their respective officers, members, agents, and employees from any and all loss, liability, claim, demand, cause of action or suit, of any and every kind and description, arising or resulting from, or in any way connected with, Administrator's performance and/or non-performance of the Services required by this Agreement including, but not limited to, liability for inaccurate data, loss or dissemination of data, whether intentional or inadvertent. The Administrator shall, upon demand by the City, as applicable, and at its sole cost and expense, defend and provide attorneys acceptable to the City, as applicable, to defend the City, and/or their respective officers, officials, employees and agents from and against any and all loss, liability, claim, demand, cause of action or suit, of any and every kind and description, arising or resulting from, or in any way connected with, Administrator's performance and/or non-performance of the Services required by this Agreement. If the City provides its own defense against any such action or suit, the Administrator shall reimburse the City for all reasonable attorney fees and other costs incurred by the City.

b. The Administrator agrees to indemnify, defend and hold harmless the City, and/or their respective officers, members, agents, and employees from any and all loss, liability, claim, demand,

cause of action or suit, of any and every kind and description, arising or resulting from, or in any way connected with, any fines, fees, penalties or Medicare reimbursements required to be paid as a result of the Administrator's failure to timely report any Medicare-eligible judgments, awards, or settlements, or for failure to adequately protect Medicare's conditional or future medical payments.

c. City agrees to defend any demand, claim, or legal action commenced against the Administrator regarding a matter or incident allegedly caused by or resulting from wrongful or negligent acts of their respective officers, employees, agents, or others engaged by the City, and to indemnify the Administrator against any liability, loss, cost, or damage, including attorney's fees, resulting there from.

11. Insurance.

a. Administrator shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with Administrator's performance. The cost of such insurance shall be borne by Administrator. Failure to procure and/or maintain the proper insurance is grounds for termination of this Agreement.

b. The Administrator shall maintain the following minimum insurance coverage:

(i) Commercial General Liability insurance in an amount no less than \$1,000,000 per occurrence with an aggregate of no less than twice the per occurrence limit. Such insurance shall be endorsed to name the City, and their respective officers, agents and employees as additional insureds.

(ii) Business Automobile Liability insurance in an amount no less than \$1,000,000 per accident. Such insurance shall include coverage for owned, hired and non-owned autos.

(iii) Workers' Compensation insurance meeting all statutory benefit requirements of the Labor Code of the State of California and Employers Liability insurance with a minimum limit of \$1,000,000 each accident for bodily injury or disease. The workers' compensation insurance shall be endorsed to waive any right to subrogation against the City, and their respective officers, agents and employees.

(iv) Professional Errors & Omissions insurance with a minimum limit of \$2,000,000 per occurrence with an aggregate of no less than twice the per occurrence limit.

(v) Crime/Employee Dishonesty: \$1,000,000 to include employee dishonesty, disappearance, theft, and forgery or alteration coverage in a form and issued by an insurance or bonding company or companies acceptable to the City.

(vi) Cyber Liability insurance with a minimum limit of \$1,000,000 per occurrence.

c. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(i) The City, and their respective officers, agents and employees are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Administrator; or automobiles owned, leased, hired or borrowed by the Administrator.

(ii) For any claims related to this project, the Administrator's insurance coverage shall be primary insurance as respects the City, and their respective officers, agents and employees. Any insurance or self insurance maintained by City, and their respective officers, agents and employees, shall be excess of the Administrator's insurance and shall not contribute with it.

(iii) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

d. Prior to commencement of work pursuant to this Agreement, Administrator shall provide the City with a certificate of insurance and required endorsements evidencing that such insurance has been obtained and is in full force and effect. Such coverage shall provide thirty (30) calendar day's notice of intent to cancel or non-renewal to the and City.

e. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VII, unless otherwise acceptable to the City.

12. Non-liability of City Officials. No City representative shall be personally liable to the Administrator, or any successor in interest of Administrator, in the event of any default or breach by the City, or for any amount which may become due to the Administrator or any successor, or on any obligation under the terms of this Agreement.

13. Independent Contractor.

a. The Administrator and its employees are independent contractors of the City and are not employees of City. This Agreement is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture or association, as between the City and Administrator. The employees and agents of one party are not the employees or agents of the other party for any purpose whatsoever.

b. The Administrator shall be solely liable and responsible for providing all compensation and benefits to, or on behalf of, all persons performing work pursuant to this Agreement. The City shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes or other compensation, benefits or taxes for any personnel provided by or on behalf of Administrator.

c. The Administrator understands and agrees that all persons performing work pursuant to this Agreement are, for purposes of workers' compensation liability, solely employees of Administrator and not employees of the City. The Administrator shall be solely liable and responsible for furnishing any and all workers' compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of Administrator hereunder.

d. The Administrator shall agree to indemnify, defend and hold harmless the City for any action or proceeding related to Administrator's employees or agents' independent contractor status.

14. Employment Practices. The Administrator agrees to comply with the following employment practices during the term of this Agreement:

a. In providing for the Services, the Administrator shall not discriminate against any employee or applicant for employment on the basis of race, religion, color, sex, disability national origin, or any other protected category under state or federal law.

b. The Administrator shall take affirmative actions to ensure that applicants are employed and employees are treated during their employment without regard to race, religion, color, sex, disability or national origin.

c. Affirmative actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

15. Conflicts of Interest.

Administrator shall avoid all conflicts of interest or appearance of conflicts of interest in performance of this Agreement.

16. Force Majeure.

a. "Force Majeure" means any cause beyond the reasonable control of a party, including but not limited to act of God, civil or military disruption, fire, strike, flood, riot, war, or inability due to the aforementioned causes to obtain necessary labor, materials, or facilities.

b. If any Party hereto is delayed or prevented from fulfilling its obligations under this Agreement by Force Majeure, said Party will not be liable under this Agreement for such delay or failure, nor for damages or injuries resulting directly from the inability to perform scheduled work due to Force Majeure.

c. Administrator shall be granted an automatic extension of time commensurate with any delay in performing scheduled work arising from Force Majeure. Administrator agrees to resume such work within three (3) days after the Force Majeure has subsided enough to do so.

17. Assignment. Neither Party shall assign or transfer its interest in this Agreement or any part thereof without the written consent of the other Party.

18. Waiver of Breach. The waiver of a breach of this Agreement shall not be construed as a waiver of any subsequent breach.

19. Notice. Whenever it shall be necessary for either Party to serve notice on the other respecting this Agreement, such notice shall be served by personal delivery or by certified mail addressed at the following address, unless and until different addresses may be furnished in writing by either Party to the other and such notice shall be deemed to have been served within seventy-two (72) hours after the same has been deposited in a United States Post Office by certified mail or has been delivered personally, and shall be valid and sufficient service of notice for all purposes:

To City: Clerk of the City Council
City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, CA 92702-1988
Fax 714- 647-6956

With courtesy copies to:

Executive Director – Human Resources Department
City of Santa Ana
20 Civic Center Plaza (M-24)
P.O. Box 1988
Santa Ana, California 92702
Fax 714- 647-6930

and

City Attorney
City of Santa Ana
20 Civic Center Plaza (M-29)
P.O. Box 1988
Santa Ana, California 92702
Fax 714-647-6515

To Administrator: AdminSure
Attention: Alithia Vargas-Flores
3380 Shelby Street
Ontario, CA 91764

20. Governing Law and Venue. This Agreement shall be construed and enforced pursuant to the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

21. Attorneys' Fees. Each Party shall also bear its own attorneys' fees and all costs related to the preparation of this Agreement. In the event any Party to this Agreement brings suit to enforce any provision of this Agreement, or is required to defend an action relating to any provision of this Agreement, the non-prevailing Party agrees to pay the prevailing Party such court costs and attorneys' fees as the court deems just.

22. Advice of Counsel. Each of the Parties acknowledges that it has received or has had the opportunity to receive independent legal advice from an attorney with respect to the advisability of making this Agreement and with respect to the advisability of executing this Agreement.

23. No Reliance on Outside Parties. Each of the Parties acknowledges that it has not relied upon any statement or representation by any other Party or any representative of any other Party, in making or executing this Agreement, except as expressly stated herein.

24. Counterparts. Two complete originals of this Agreement will be prepared and executed by the Parties. Either of these originals may be treated as the sole agreement without reference to the other.

25. Amendment. This Agreement cannot be amended or modified except by an instrument in writing signed by both Parties.

26. Interpretation. Should it be necessary for a court to interpret this Agreement, the Parties agree that it has been prepared by a joint effort of all Parties. Accordingly, only the fair meaning of the words shall be used in any interpretation hereof.

27. Severability. The provisions of this Agreement are severable and if one or more provisions or subcomponents should be determined to be unconstitutional, illegal or judicially unenforceable, in whole or in part, then, unless such unenforceability would make it impossible to effectuate the original intent of the Parties, the remaining provisions or subcomponents hereof shall remain binding and enforceable.

28. Expression of Entire Agreement. This Agreement constitutes a single, integrated written contract, and as such, expresses the entire Agreement of the Parties with respect to the matters contained herein and supersedes all prior negotiations, discussions, correspondence and other communications regarding the terms and conditions hereof.

IN WITNESS WHEREOF, the City, and Administrator hereto have executed this Agreement on the date first above written.

ADMINSURE, INC. 3380 Shelby Street Ontario, CA 91764 _____ Alithia Vargas-Flores President	
ATTEST: _____ MARIA D. HUIZAR Clerk of Council	CITY OF SANTA ANA _____ RAUL GODINEZ, II City Manager
APPROVED AS TO FORM: SONIA R. CARVALHO City Attorney By: <u>Laura A. Rossini</u> Laura A. Rossini Senior Assistant City Attorney	RECOMMENDED FOR APPROVAL: _____ STEVEN V. PHAM Executive Director of Human Resources

**PROFESSIONAL SERVICES AGREEMENT
FOR THIRD PARTY WORKERS' COMPENSATION CLAIMS ADMINISTRATION
BETWEEN THE CITY OF SANTA ANA AND ADMINSURE, INC.**

THIS AGREEMENT is entered into this 4th day of September, 2018, between the City of Santa Ana, a California Municipal Corporation hereinafter referred to as the "City," and AdminSure Inc., a California Corporation, hereinafter referred to as the "Administrator."

WHEREAS, the City has undertaken to self-insure their Workers' Compensation obligation; and

WHEREAS, the Administrator is engaged in the business of administering Workers' Compensation Self-Insurance Programs;

WHEREAS, the City issued a Request for Proposal ("RFP") for Third Party Administrator services for worker's compensation and claims management. Administrator was one of the companies that submitted a proposal and was ultimately selected as the successful vendor.

WHEREAS, the City desires to retain the services of the Administrator to administer a Workers' Compensation Self-Insurance Program, hereinafter referred to as the "Program," for the City;

NOW, THEREFORE, the City hereby retains the services of the Administrator and the Administrator agrees to perform the services for the City under the terms and conditions of this Agreement and in accordance with Administrator's proposal submitted in response to City's RFP incorporated by reference herein.

TERMS AND CONDITIONS

1. **TERM:** The term of this Agreement is for a period of three (3) years, commencing on September 4, 2018 and terminating on August 31, 2021, unless otherwise extended by mutual agreement of the Parties for two, two year terms.
2. **PERIODIC MEETINGS:** The Administrator shall meet with the City and staff not less than every 60 days (or at the request of the either party with sufficient notice) to:
 - A. Assist in developing internal procedures.
 - B. Provide orientation and training to personnel involved in the administration of the Program.
 - C. Discuss specific claims and general trends in the Program.
3. **ADVISORY SERVICES:** The Administrator shall provide the City information regarding the adoption, amendment or repeal of all Statutes, Rules and Regulations, et cetera, which may directly affect the Program.
4. **REQUIRED FORMS:** The Administrator shall provide the City with all forms required by the State in connection with the Program.
5. **COMPLIANCE WITH LAW:** The Administrator shall administer the Program in full compliance with all laws, rules and regulations governing Workers' Compensation and Self-Insurance including the Health Insurance Portability Protection Act ("HIPPA.").

6. CLAIMS ADMINISTRATION: The Administrator shall comply with all performance standards of the City's excess insurer. The Administrator shall also comply with the Administrator's Workers' Compensation Claims Administration Standards, but under no circumstances are they to be construed as having precedence over the performance standards of the City's excess insurer. The Administrator shall also have the authority and responsibility to provide claims administration services, which include:

- A. Establishing an electronic claim file and computer database record upon receipt of an injury report.
- B. Setting and updating reserves.
- C. Initiating and maintaining contact with injured workers or their attorneys.
- D. Arranging for investigation.
- E. Determining compensability.
- F. Preparing and issuing benefit notices, if applicable.
- G. Arranging for medical treatment and medical services from clinics, facilities, pharmacies, hospitals, specialists, and other vendors as necessary.
- H. Performing all utilization review services through MedReview, communicating decisions to approve, modify, delay or deny medical treatment in accordance with State law.
- I. Monitoring disability status by reviewing medical reports and contacting doctors for updates.
- J. Auditing and reviewing all medical bills through MedReview and paying all properly adjusted medical bills in a timely and accurate manner.
- K. Paying mileage or medical reimbursements to injured workers.
- L. Paying temporary disability compensation when appropriate to do so or advising the City of the need to adjust payroll records when salary continuation is applicable.
- M. Arranging medical exams in conformance with State law to determine whether an injured worker's medical condition is permanent and stationary (reached Maximum Medical Improvement/MMI) and what, if any, permanent disability exists.
- N. Paying the permanent disability compensation in accordance with the law.
- O. Arranging for attorney representation of the City whenever the need arises subject to final approval of the City.
- P. Monitoring attorneys and assisting them in preparing cases.
- Q. Auditing and paying legal expenses subject to authorization of payment by the City.
- R. Arranging for vocational rehabilitation services when appropriate, monitoring vocational rehabilitation consultants and assisting them as necessary.
- S. Auditing and paying vocational rehabilitation expenses.
- T. Attending all hearings that are required by law or where requested by the City.
- U. Preparing and issuing Vocational Rehabilitation/Supplemental Job Displacement Benefits (SJDB) notices.
- V. Preparing and issuing the permanent disability compensation notices.
- W. Pursuing subrogation when there is a viable third party subject to authorization by the City.
- X. Notifying the City and excess insurers of all claims which exceed or may exceed the self-insurance retention; maintaining a liaison among the City and their excess insurers on matters affecting the handling of such claims and arranging for reimbursement to the City of losses in excess of its self-insurance retention.
- Y. Obtaining settlement authority from the City and negotiating settlement on appropriate claims.
- Z. Closing claim files when appropriate to do so.
- AA. Participating when necessary in the interactive process or other medical legal assessments which may affect open claims.
- BB. Participate fully in any audit performed by the City or by a third party of the City.

7. OBLIGATIONS OF THE CITY: The City shall:

- A. Submit all reports of work injury to the Administrator in a timely manner not to exceed two business days of the City's knowledge of the injury.
- B. Respond to the Administrator's requests for information and authority within five days of such requests.
- C. Provide information that is accurate and is in a form specified by the Administrator.
- D. Grant settlement authority, where the City deems it appropriate to do so, to the Administrator in advance of WCAB, Rehabilitation, and legal hearings, or be available by phone or in person during same.

8. CHECKING ACCOUNT: The City and the Administrator agree that:

- A. The City shall establish and maintain a checking account from which all Workers' Compensation benefits and expenses are to be paid.
- B. The Administrator shall prepare checks and issue those checks directly to payees without delay.
- C. The Administrator shall sign checks with a facsimile signature or manually.
- D. The Administrator shall secure checks in a locked area accessible to a limited number of personnel.
- E. The City shall maintain an adequate balance in their checking account to meet all Workers' Compensation obligations without delay.
- F. The checking account may be used to pay penalties in which case the Administrator shall reimburse the City within fifteen (15) working days for any amount of the penalty which the Administrator caused.

9. ELECTRONIC DATA PROCESSING: The Administrator shall provide the City with electronic data processing services that will allow for the production of loss experience and transaction reports within ten (10) days following the close of each calendar month.

10. REGULATORY REPORTING: The Administrator shall prepare all reports required by State and Federal regulatory agencies (if any) in connection with the Program, including the Self-Insurer's Annual Report required by the Department of Self-Insurance Plans.

11. RECORDS: The Administrator shall establish and maintain electronic claim files, claim logs, transaction documents and all other records associated with the Program. These records shall be the property of the City. Unless this Agreement is cancelled, closed hard files, if any, shall be stored by the Administrator for five (5) years and shall thereafter become the responsibility of the City. Upon cancellation of this Agreement, the City shall be responsible for maintaining and storing all data, records, et cetera. The Administrator shall not dispose of or destroy hard files without the prior, written authorization of the City.

12. CONSIDERATION:

- For the first year, September 4, 2018 (or first day following City Council approval) through August 31, 2019, of this Agreement, the City shall pay the Administrator \$42,125 per month for Claims Administration Services rendered under this Agreement.

- For the second year, September 1, 2019 through August 31, 2020, of this Agreement, the City shall pay the Administrator \$43,389 per month for Claims Administration Services rendered under this Agreement.
- For the third year, September 1, 2020 through August 31, 2021, of this Agreement, the City shall pay the Administrator \$44,690 per month for Claims Administration Services rendered under this Agreement.
- For the optional fourth year, September 1, 2021 through August 31, 2022, of this Agreement, the City shall pay the Administrator \$46,031 per month for Claims Administration Services rendered under this Agreement.
- For the optional fifth year, September 1, 2022 through August 31, 2023, of this Agreement, the City shall pay the Administrator \$47,412 per month for Claims Administration Services rendered under this Agreement.
- For the optional sixth year, September 1, 2023 through August 31, 2024, of this Agreement, the City shall pay the Administrator \$48,834 per month for Claims Administration Services rendered under this Agreement.
- For the optional seventh year, September 1, 2024 through August 31, 2025, of this Agreement, the City shall pay the Administrator \$50,300 per month for Claims Administration Services rendered under this Agreement.

The City shall allow the Administrator to perform all Bill Review Services through MedReview. Bill review fees are at \$9.00 per bill. Preferred Provider Organization fees shall not exceed 25% of savings when applicable.

The City shall allow the Administrator to perform all Utilization Review Services through MedReview. Utilization review fees are incorporated into medical bill review invoices at the rate of 7% of billed charges. The maximum utilization review fee charged per medical bill is capped at \$750.00. Utilization review by a physician is billed separately in 10-minute increments, at the rate of \$200.00 per hour.

The City shall allow the Administrator to manage liens and negotiated bills. Liens and/or negotiated bills are 10% of savings with \$5,000 cap.

13. **ALLOCATED EXPENSES:** The City shall pay for field investigation, defense attorneys, legal costs, remote photocopy, engineering experts, accident reconstruction experts, process servers, messenger service, court reporters, vocational rehabilitation consultants, structured settlement consultants, translators, and any other vendor necessary to administer claim files. Payment of expenses in excess of \$150,000 require prior approval of the City before those expenses are paid.

14. **PENALTIES:** The Administrator shall be responsible for paying or appealing penalties that are caused by the Administrator. The Administrator shall not be responsible for penalties that are caused by the City or any third parties. The Administrator will advise City in writing immediately of any penalties that are levied against the City for any reason and prior to paying such penalties.

15. INDEMNIFICATION:

a. The Administrator agrees to indemnify, defend and hold harmless the City, and/or their respective officers, members, agents, and employees from any and all loss, liability, claim, demand, cause of action or suit, of any and every kind and description, arising or resulting from, or in any way connected with, Administrator's performance and/or non-performance of the Services required by this Agreement including, but not limited to, liability for inaccurate data, loss or dissemination of data, whether intentional or inadvertent. The Administrator shall, upon demand by the City, as applicable, and at its sole cost and expense, defend and provide attorneys acceptable to the City, as applicable, to defend the City, and/or their respective officers, officials, employees and agents from and against any and all loss, liability, claim, demand, cause of action or suit, of any and every kind and description, arising or resulting from, or in any way connected with, Administrator's performance and/or non-performance of the Services required by this Agreement. If the City provides its own defense against any such action or suit, the Administrator shall reimburse the City for all reasonable attorney fees and other costs incurred by the City.

b. The Administrator agrees to indemnify, defend and hold harmless the City, and/or their respective officers, members, agents, and employees from any and all loss, liability, claim, demand, cause of action or suit, of any and every kind and description, arising or resulting from, or in any way connected with, any fines, fees, penalties or Medicare reimbursements required to be paid as a result of the Administrator's failure to timely report any Medicare-eligible judgments, awards, or settlements, or for failure to adequately protect Medicare's conditional or future medical payments.

c. City agrees to defend any demand, claim, or legal action commenced against the Administrator regarding a matter or incident allegedly caused by or resulting from wrongful or negligent acts of their respective officers, employees, agents, or others engaged by the City, and to indemnify the Administrator against any liability, loss, cost, or damage, including attorney's fees, resulting there from.

16. INSURANCE: The Administrator shall:

- a. Administrator shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with Administrator's performance. The cost of such insurance shall be borne by Administrator. Failure to procure and/or maintain the proper insurance is grounds for termination of this Agreement.
- b. The Administrator shall maintain the following minimum insurance coverage:
 - i. Commercial General Liability insurance in an amount no less than \$1,000,000 per occurrence with an aggregate of no less than twice the per occurrence limit. Such insurance shall be endorsed to name the City, and its respective officers, agents and employees as additional insureds.
 - ii. Business Automobile Liability insurance in an amount no less than \$1,000,000 per accident. Such insurance shall include coverage for owned, hired and non-owned autos.
 - iii. Workers' Compensation insurance meeting all statutory benefit requirements of the Labor Code of the State of California and Employers Liability insurance with a minimum limit of \$1,000,000 each accident for bodily injury or disease.

The workers' compensation insurance shall be endorsed to waive any right to subrogation against the City, and its respective officers, agents and employees.

- iv. Professional Errors & Omissions insurance with a minimum limit of \$2,000,000 per occurrence with an aggregate of no less than twice the per occurrence limit.
 - v. Crime/Employee Dishonesty: \$1,000,000 to include employee dishonesty, disappearance, theft, and forgery or alteration coverage in a form and issued by an insurance or bonding company or companies acceptable to the City.
 - vi. Cyber Liability insurance with a minimum of \$1,000,000 per occurrence.
 - vii. Maintain at all time during the pendency of this Agreement, a fidelity bond of one million (\$1,000,000) dollars.
- c. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
- i. The City, and its respective officers, agents and employees are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Administrator; or automobiles owned, leased, hired or borrowed by the Administrator.
 - ii. For any claims related to this project, the Administrator's insurance coverage shall be primary insurance as respects the City, and its respective officers, agents and employees. Any insurance or self-insurance maintained by City, and their respective officers, agents and employees, shall be excess of the Administrator's insurance and shall not contribute with it.
 - iii. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
- d. Prior to commencement of work pursuant to this Agreement, Administrator shall provide the City with a certificate of insurance and required endorsements evidencing that such insurance has been obtained and is in full force and effect. Such coverage shall provide thirty (30) calendar days' notice of intent to cancel or non-renewal to the and City.
- e. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-: VII, unless otherwise acceptable to the City.

17. NOTICES: All notices, demands, requests, or approvals which are required under this Agreement, or which either the City or the Administrator may desire to serve upon the other, shall be in writing and shall be conclusively deemed served when delivered personally, or forty-eight (48) hours after the deposit thereof in the United States Mail with postage pre-paid. Notices shall be mailed to each party at the addresses below:

To City:

Clerk of the City Council
City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, CA 92702-1988
Fax: 714- 647-6956

With courtesy copies to:

Executive Director, Human Resources
Attention: Risk Manager
City of Santa Ana
20 Civic Center Plaza (M-24)
P.O. Box 1988
Santa Ana, California 92702
Fax: 714-647-6930

Sonia R. Carvalho
City Attorney
City of Santa Ana
20 Civic Center Plaza (M-29)
P.O. Box 1988
Santa Ana, California 92702
Fax: 714- 647-6515

To Administrator:

AdminSure, Inc.
Attention: Alithia Vargas-Flores
3380 Shelby Street
Ontario, CA 91764

18. CONFIDENTIALITY: Employees of Administrator in the course of their duties may have access to financial, accounting, statistical, medical information, and personnel data of private individuals and employees of City. Administrator covenants that all data, documents, discussion, or other information developed or received by Administrator or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Administrator unless allowed pursuant to the Business Associate Agreement between the parties or by written authorization from the 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. Administrator's covenant under this Section shall survive the termination of this Agreement.

19. CANCELLATION: The City may terminate this agreement at any time, without cause, with ninety (90) days written notice.

- a. The City may terminate this Agreement for cause upon providing the Administrator thirty (30) days written notice if:
 - i. If the Administrator breaches any provision of this Agreement and does not cure such breach within ten (10) days after written notice of the breach is given by the City;
 - ii. In the event the Administrator's services, in the judgment of City, are unsatisfactory;

- iii. In the event of the Administrator's failure to prosecute the work with diligence or within the time limits specified in the contract documents and Administrator fails to cure this breach within ten (10) days of being advised of the breach;
- iv. Failure to procure or maintain insurance as required by this Agreement; or
- v. In the event of bankruptcy, whether voluntary or involuntary, of Administrator.

- b. The Administrator may terminate this Agreement in the event that the City is delinquent in paying any invoices for a period in excess of sixty (60) days. Termination shall be effective thirty (30) days after notice is received by mail at the City's office unless the City has remedied said failure(s) to the satisfaction of the Administrator.
- c. This Agreement shall terminate automatically on the occurrence of bankruptcy or insolvency of any Party.
- d. If this Agreement is terminated without cause, Administrator shall be paid for the reasonable value of the Services provided up to the time of such termination or suspension. From and after Administrator's receipt of notice of termination, Administrator shall use all reasonable efforts to minimize project costs and expenses, except to the extent the City's notice requested that certain services are continued.
- e. Upon the date of termination of this Agreement, or the date on which records are transferred to another custodian, whichever occurs first, the Administrator shall no longer have the authority or responsibility to administer claims or perform any service on behalf of the City.

20. 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.

21. DATA INTERFACE. The Administrator shall provide an on-line interface with its database, accessible from the City's computers. This information will be for use by the City. Such data shall be in a format which will permit the City to make print copies of the data on its printers. The data interface will have sufficient firewall and anti-virus software to maintain appropriate security.

22. NON-DISCRIMINATION. Administrator shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. Administrator affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

23. PARTIAL INVALIDITY: If any provision of this Agreement is held by a competent court to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

24. GOVERNING LAW AND VENUE: The validity of this Agreement and of any of its terms and provisions shall be interpreted pursuant to the Laws of the State of California. Both parties further agree

that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

25. INTERPRETATION: The terms and conditions of this Agreement shall be construed pursuant to their plain, ordinary meaning and shall not be interpreted against the maker.

26. ASSIGNMENT: The Administrator shall not assign, sublet, transfer by operation of law, or otherwise any or all of its rights, burdens, duties, or obligations of this Agreement without the prior, written consent of the City.

27. CONFLICT OF INTEREST: The Administrator shall avoid all conflicts of interest or appearance of conflicts of interest in performance of this Agreement.

28. ENTIRE CONTRACT: This instrument contains the entire Agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force or effect. Subsequent modifications shall be made in writing with the agreement of the parties.

25. COUNTER-PARTS: Two complete originals of this Agreement will be prepared and executed by the Parties. Either of these originals may be treated as the sole agreement without reference to the other.

ADMSURE, INC. 3380 Shelby Street Ontario, CA 91764	
_____ ALITHIA VARGAS-FLORES President	
ATTEST:	CITY OF SANTA ANA
_____ MARIA D. HUIZAR Clerk of Council	_____ RAUL GODINEZ, II City Manager
APPROVED AS TO FORM: SONIA R. CARVALHO City Attorney By: <u>Laura A. Rossini</u> Laura A. Rossini Senior Assistant City Attorney	RECOMMENDED FOR APPROVAL: _____ STEVEN V. PHAM Executive Director of Human Resources

