

AGENDA ITEM NO.

COUNCIL MEETING: 2/6/07

APPROVED BY _____

DEPARTMENT DIRECTOR _____

CITY MANAGER _____

DATE: February 6, 2007

FROM: TERRY BOND, Personnel Services Director
Personnel Services Department

BY: DANIEL G. TURNER, Risk/Safety Manager
Risk Management Division

SUBJECT: APPROVE AGREEMENT FOR WORKERS' COMPENSATION SERVICE
PROVIDER CONTRACT BETWEEN THE CITY OF FRESNO AND AMERICAN
ALL RISK LOSS ADMINISTRATORS AND AUTHORIZE PERSONNEL SERVICES
DIRECTOR TO EXECUTE AGREEMENT ON BEHALF OF THE CITY

KEY RESULT AREA

Financial Management & Employee Satisfaction

RECOMMENDATIONS

It is recommended that the City Council approve the Agreement between the City of Fresno and American All Risk Loss Administrators and authorize the Personnel Services Director to prepare and execute the Agreement on behalf of the City.

EXECUTIVE SUMMARY

In the early fall of 2006, staff distributed a Request for Proposal (RFP) to provide Workers' Compensation Third Party Administration services to thirty seven (37) vendors who were known to provide this service. In response to this RFP, the following eleven (11) vendors submitted full service proposals:

- Acclamation Insurance Management Services, Inc. (AIMS)
- American All Risk Loss Administrators (AARLA)
- Broadspire
- Claims Management Inc.
- FARA Insurance Services
- Intercare Insurance Services
- GAB Robbins
- JT 2 Integrated
- Southern California Risk Management Assoc.
- State Compensation Insurance Fund (Claims Management Service)
- Tristar Risk Management

Monitor Integrated Healthcare also submitted a proposal which addressed medical services but did not address claim administration services.

The proposals were reviewed by staff from the Personnel Services and Finance Departments to determine the professional qualifications and competency of staff, level of experience in delivering third party administrative services, costs and fees.

It is staff's opinion that American All Risk Loss Administrators (AARLA) is the most qualified provider and recommends this organization be retained for service an additional three years based upon their previous performance and competitive pricing of services, as well as approval of the Agreement continuing their service.

KEY OBJECTIVE BALANCE

Approval of the recommendation supports the key objectives of Financial Management and Employee Satisfaction by ensuring timely provision of Workers' Compensation benefits and notices in a cost effective manner that duly considers the needs of injured employees.

BACKGROUND

The City of Fresno has been self-insured for its Workers' Compensation liability since August, 1973. In order to administer the program and ensure compliance with State statutes, the City has utilized the services of an outside third party administrator (TPA). The City currently has a contract with American All Risk Loss Administrators which will expire on March 1, 2007.

In the fall of 2006, a Request for Proposal for this service was distributed to thirty-seven vendors who were known to provide this service. Eleven vendors responded within the stated deadline of December 4, 2006, with complete proposals.

The proposals were reviewed by Daniel Turner, Risk/Safety Manager; Clark Connelly, Senior Risk Analyst (Workers' Compensation section); and Kim Jackson, Interim Assistant City Controller, of the Finance Administration section of the Finance Department. Mr. Turner has been associated with the City's program since its inception in 1973. Mr. Connelly has 20 years of direct experience with the program since joining the City in 1987. Ms. Jackson has previous experience in the Workers' Compensation field having been a Claims Manager, Controller, and CFO of a local insurance company. Ms. Jackson has also acted in the capacity of a financial advisor to the State of California Department of Insurance.

The above team concluded that AARLA was the most qualified proposer and recommends an extension of the existing contract with this organization for a period of an additional three years. During the past three years, AARLA has provided exceptional claims service and achieved a number of accomplishments including the establishment of a Medical Provider Network to reduce medical costs, reduced the City's Workers' Compensation litigation rate by almost 50%, and instituted a claim reserving system which has increased the reliability of the City's actuarial reports. Use of the company's medical bill review service has achieved a savings rate of 54% above the previous administrator and resulted in additional savings of approximately \$2.3 million dollars in medical costs since the inception of the contract.

In the future, AARLA representatives have outlined a number of enhancements to the program which are contained in the Agreement. These goals include greater emphasis on timely claim closure efforts, obtaining greater recoveries from responsible third parties, and improvements in the Bill Review, Utilization Review, and Nurse Case Management software systems.

From a pure cost standpoint, AARLA was the most competitive of all proposers by submitting the lowest bid for this service compared with the ten other vendors. In terms of administrative costs, AARLA presented two pricing options. Option one is a flat fee of \$700,000 for claims administration services alone. Option two is a flat fee of \$660,000 per year for each of the three years which is contingent upon utilizing Total Managed Care (TMC) for bill review, utilization review, and nurse case management services. TMC is a sister company of AARLA which specializes in these services. TMC was instrumental in creating and obtaining State approval of the City's Medical Provider Network (MPN) and continues to maintain the MPN for the City at no charge.

In addition to the above, AARLA has demonstrated a willingness to resolve disputes and address employee concerns associated with the implementation of the reform legislation which became effective almost three years ago. While this program will remain contentious, AARLA representatives and adjusters have shown a genuine willingness to meet and compromise on a number of issues and have even made staffing adjustments where professional disagreements have arisen.

Staff also believes that there is value in remaining with the existing administrator which is locally owned and is familiar with the City's internal practices and procedures through experience gained by working with City staff and injured employees.

FISCAL IMPACT

AARLA submitted the most financially attractive proposal of all of the vendors. Their set three year fee schedule of \$660,000 annually, combined with their in-house medical bill review program, was the lowest of all of the proposers. Further, AARLA has reduced their fee on bill review procedures to 6% (8% on the existing contract) of savings on bills reduced to the medical fee schedule and 15% of savings on billings reduced within the MPN. As noted earlier, the City's litigation rate has also been reduced from 32% under the previous administrator to 17% during the existing contract period. This reduction has resulted in significant savings associated with legal defense costs. It is the staff's expectation that program costs will continue to be manageable and affordable in partnership with AARLA as the City's Workers' Compensation administrator.

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January 30, 2007

Attachment: Table – Costs and Services by Proposer Resolution



AGREEMENT

FOR

**WORKERS' COMPENSATION
ADMINISTRATIVE SERVICES**

American All Risk Loss Administrators

(AARLA)

MARCH 2007

**March 2007
CITY OF FRESNO
WORKERS' COMPENSATION ADMINISTRATIVE SERVICES
AGREEMENT**

THIS AGREEMENT ("Agreement") is entered into this first day of March, 2007 between American All Risk Loss Administrators ("Administrator"), a California corporation, and the City of Fresno (hereinafter "City"), a municipal corporation.

RECITALS

WHEREAS, City and Administrator entered into an agreement, dated March 1, 2004, for professional services related to the administration of the City's workers' compensation claims for a three-year term which is due to expire February 28, 2007; and

WHEREAS, City issued a Request for Proposal ("RFP") for these services in the Fall of 2006, seeking proposals from responsible vendors to provide this service commencing March 1, 2007; and

WHEREAS, Administrator submitted a proposal, dated December 4, 2006, ("Proposal") in response to the RFP; and

WHEREAS, the parties desire to enter into this Agreement to allow Administrator to manage and administer the City's workers' compensation claims as set forth herein for a new three-year term.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, Administrator and the City agree as follows:

I. DURATION

The term of this Agreement shall be a period of three years beginning March 1, 2007 and ending February 28, 2010.

II. CONTRACT DOCUMENTS

In addition to this Agreement, the contract documents shall consist of the following:

- A. The RFP, attached hereto as **Appendix A** and incorporated herein by reference.
- B. The Proposal, attached hereto as **Appendix B** and incorporated herein by reference.
- C. The order of precedence of documents shall be (1) this Agreement; (2) **Appendix A**; (3) **Appendix B**. Whenever any conflict appears in any portion of the contract documents, it shall be resolved by application of the order of precedence.

III. TERMINATION OF AGREEMENT

- A. If for any reason, the City determines there is insufficient funding available for the further performance under this Agreement, then the City may terminate this Agreement without any liability whatsoever of City to Administrator for breach of contract, default, detrimental reliance or any other basis in law or equity, upon 7 calendar days prior written notice of termination to Administrator.
- B. The Agreement may be terminated by either party upon 30 calendar days prior written notice should the other party fail substantially to observe, fulfill or perform any obligation, covenant, term or condition in accordance with the Agreement. A party will have failed substantially to observe, fulfill or perform any obligation, covenant, term or condition of the Agreement, if such failure is not cured within 30 calendar days of prior written notice which shall constitute a material default and breach of the Agreement.
- C. In the event of termination, due to fault not attributable to Administrator, Administrator shall be paid compensation for services satisfactorily performed prior to the effective date of the notice of termination. In the event of termination due to failure of Administrator or any of its employees to substantially perform in accordance with the terms of the Agreement, City may withhold an amount that would otherwise be payable as an offset to, but not in excess of, City's damages caused by such failure.
- D. In the event City terminates the Agreement, City may exercise any right, remedy (in law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law, or proceed by appropriate court action to enforce the terms of the Agreement, or to recover direct, indirect, consequential or incidental damages for the breach of the Agreement. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

IV. INITIAL SERVICES TO BE PROVIDED

A dedicated claims unit shall be provided to the City of Fresno. The unit shall be composed of a minimum of six state-certified claims examiners whose individual caseload shall not exceed 175 open indemnity files. A state-certified claims examiner is one who has successfully completed the certification requirements outlined by the State of California Self-Insurance Plans. A dedicated support staff to service City claims is required. In addition to the six claims examiners, the unit shall have a minimum of one Working Supervisor, one Medical Only Claims Technician, two Claims Assistants and one File Clerk. Administrator shall inform the City of the names of all examiners assigned to this dedicated unit.

V. MINIMUM REQUIRED CLAIM ADMINISTRATION SERVICES

A. PROGRAM ADMINISTRATION

Administrator agrees to:

1. Provide a local service office in the Fresno Metropolitan area. Provide staff as required to

administer the workers' compensation program in full compliance with all the terms and conditions of **Appendix A**, expressed or implied, and meet the goals and objectives on the page in **Appendix B** identified as "Goals & Objectives for the 2007-2010 Contract Term" (hereinafter referred to as "Goals and Objectives"). All staff assigned to provide direct service to the City shall be subject to the approval of City staff.

2. Keep the City informed on changes or proposed changes in statutes, rules and regulations and case law affecting both the City's or the Third Party Administrator's responsibility under the California Workers' Compensation laws.
3. Review program progress with City's representatives including identification of problem areas and recommend solutions thereto and provide consultative services as necessary.
4. Provide the City complete access to its claims data pertaining in any way to the Workers' Compensation Claims Management Program referred to herein. Any system providing such information shall be secure and shall contain the applications necessary to prohibit access by unauthorized individuals.
5. Provide information and guidance to the City regarding workers' compensation claims and inquiries on specific claims.
6. Assist in the development of policies and procedures to ensure that the Workers' Compensation Claims Management Program is operated in a manner that meets the objectives of the City.
7. Design and print Employer's Reports, Doctor's First Reports, treatment and authorization slips, posting notices and warrants, as well as any other forms required by the City or State of California.
8. Establish a banking arrangement and coordinate payment through the City's Personnel Department with proper audit trail.
9. Establish all database coding requirements in conjunction with City staff.
10. Provide staff orientation and training of City personnel as required.
11. Maintain needed records and information and complete the Self-Insurers Annual Report in accordance with all State of California requirements. Provide the completed annual report to the City for approval no less than 30 days before the date on which the annual report is due to the State.
12. Maintain the examiners' caseloads at no more than 175 open indemnity claims.
13. Review each open claim as necessary but at least every 6 months. Medical only claims shall be closed within 3 months unless good cause is evidenced.
14. Seek settlement authority on all claims from City staff.
15. As an agent of the City of Fresno, the Administrator will be held responsible for:
 - a) Complying with the Internal Revenue Code Section for the preparation and issuance of annual 1099 Miscellaneous Reporting; and

b) EDD New Vendor Reporting on a monthly basis.

Administrator shall be responsible for any fines that result from Administrator's failure to comply with these provisions.

16. Administrator shall comply with any and all Federal, State, or local laws now in effect or hereafter promulgated, which apply to the services herein specified.
17. Meet or exceed the Goals and Objectives.

B. CLAIMS ADMINISTRATION

Administrator agrees to:

1. Review and process all workers' compensation claims in accordance with all applicable laws as well as the terms of this Agreement.
2. Determine liability for claims brought against the City as a result of the workers' compensation laws of the State of California.
3. Continue to administer and adjust all existing open files.
4. Obtain expert opinion, when necessary and as authorized by the City, to evaluate the nature, extent and duration of injuries.
5. Refer cases requiring legal work only to attorneys previously approved by the City. Assist the attorneys in the preparation of all litigation and negotiations of settlements including, but not limited to, actions against third parties. Cases requiring legal representation must be referred to legal counsel at least two weeks in advance of all discovery cut-off dates.
6. Investigate, or with approval of the City's representative, arrange for investigation of cases where the City's liability is questionable and assist in the settlement or trial of litigated cases.
7. Report all claims that might reach the excess layer of insurance coverage to the appropriate insurance carrier in accordance with their respective requirements. Administrator also agrees to maintain records, and effect collection from the excess insurance carrier on behalf of the City.
8. Attend meetings at the request of the City.
9. Administrator will pay all fines and penalties incurred due to errors or omissions on the part of the Administrator from the Administrator's own funds and will not in any way charge these expenses to the City.
10. Administrator must also maintain the capability to utilize electronic mail (e-mail) between its offices and the City of Fresno.
11. Coordinate return-to-work, medical rehabilitation, and vocational rehabilitation programs with the City's staff.

12. Participate fully in on-site claims reviews and respond promptly to written inquiries.
13. Monitor the condition of injured workers by review of medical reports and special examinations. Provide the City, at no cost, copies of all narrative reports including but not limited to medical, physical therapy, vocational rehabilitation, Appeals Board, any other reports requested by the City as permitted by law.
14. Provide a copy of all checks, vouchers or warrants drawn to pay benefits on behalf of the City.
15. Medical case management shall be provided by each adjuster except in instances where outside case management services are justified and approved by City staff.

C. ADJUSTMENT SERVICES

Administrator agrees to:

1. Maintain a claim file on each potential or actual claim reported to Administrator.
2. Establish and maintain case reserves for workers' compensation claims which accurately reflect the ultimate probable cost of the claim.
3. Act as a liaison between the excess insurance carrier(s) and the City on matters affecting adjustment of claims.
4. Provide a copy of the claims management manual for review by City staff.
5. Maintain records on all claims and notify the City when the City is entitled to reimbursement for loss in excess of their retention.
6. Provide face to face claims review of open claim files at least annually or at the request of the City.
7. Negotiate appropriate agreements on all claims to effect settlements in a timely manner.
8. Provide quarterly review of complex claims or claims with reserves in excess of \$30,000.
9. Provide injured workers with benefits when due and payable, in accordance with all applicable statutory authority.
10. Pay all medical expenses in accordance with the applicable official fee schedule or a negotiated medical provider fee schedule which recognizes a discount for medical services, whichever is lower.
11. Pay all medical legal expenses in accordance with fees established by the California Labor Code.
12. Adjusters will be expected to make court appearances before the Workers' Compensation Appeals Board as may be required to represent the City's interest.
13. Standards of Performance:

- a) Case Load - Administrator shall assign a sufficient number of examiners to ensure that each examiner's caseload shall not exceed 175 open indemnity cases. The Administrator shall report monthly to the City each examiner's assigned caseload.
- b) Case Make-Up - New claim case files will be created within one working day of receipt of the first notice of claim. Each claim file will have the date of creation clearly identifiable in a uniform location. A level of accomplishment of 95% is required within one day, 100% within two working days.
- c) Compensability - The compensability determination (accept, deny, or delay-pending the results of additional investigation) and the reasons for such a determination will be made and documented in the file within 3 working days of the notification of loss, if practical. All benefit notices shall be mailed in compliance with California Labor Code and Division of Industrial Relations regulations. A compensability decision will be made within 90 days from receipt of the Employee Claim Form.
- d) Payment - All benefits that are due and payable shall be made in accordance with all applicable State regulations. A level of accomplishment of 100% shall be considered acceptable.
- e) Three Point Contact - In cases involving anticipated loss of time from work beyond the date of loss, contact will be established with attending physician, the injured worker, and the employer within three (3) days of case make-up as needed to ensure effective medical case management. Such contacts will continue as needed during the course of claim development to assure that treatment is reasonable and necessary.
- f) Litigated Cases - Subject to the concurrence of the City Attorney, the Administrator shall establish written in-house guidelines for referral of (essential) litigated cases to defense counsel. Such guidelines shall require, at a minimum: (1) prompt recognition of issues; (2) timely referral to defense counsel; (3) control of litigation expenses; (4) file documentation of a litigation plan. Medical control of litigated claims will remain with the Administrator. Administrator will make all reasonable efforts to settle litigated claims without assigning to outside counsel. All settlements must be first approved and authorized in writing by City staff. After referral, Administrator will continue to assist in the preparation of litigated cases, negotiations of settlements, and subrogation actions.
- g) Job Displacement Benefits - Administrator shall determine if applicant is eligible for supplemental job displacement benefits and shall administer such benefits in accordance with all applicable statutes and regulations.
- h) Rehabilitation - The adjusting personnel shall advise the injured worker of his/her rehabilitation benefits in accordance with all applicable statutory authority.
- i) Excess Insurance - Potential excess cases shall be reported to the appropriate excess carrier in accordance with the carrier's reporting criteria.
- j) Penalties - The Administrator shall advise the City in writing of the assessment of any penalty for delayed payment and the reason thereof and the Administrator's plan for payment of such penalty within 5 days of assessment. An

accomplishment level of 100% shall be required. The Administrator will be liable for all penalties except those that are the result of the City's sole negligence.

- k) Reserves - All claims shall be reserved to the probable ultimate cost. Reserves are to be reviewed regularly, but no less than every 90 days, with adjustments as necessary, as new or more complete information is known. Stair stepping of reserves is strictly prohibited. Initial reserves and reserve changes are to be clearly documented.
- l) Case Closure - All medical-only cases will be closed or transferred to an indemnity status by the ninetieth day following case make-up. All indemnity cases will be closed within 60 days of the final fiscal transaction with the exception of future medical awards. A level of accomplishment of 95% is acceptable.
- m) Telephone Inquiries - All telephone inquiries requiring return calls will be answered within one working day of the original inquiry. At a minimum, telephonic contact shall be made with each claimant on a monthly basis until claim closure. A level of accomplishment of 95% is acceptable.
- n) Incoming Correspondence - All correspondence received will have the date of receipt clearly stamped on the front side. A level of accomplishment of 95% is required.
- o) Return Correspondence - All correspondence requiring a written answer will have such answer completed and transmitted within 5 days of receipt. A level of accomplishment of 95% is acceptable.
- p) Settlements - Administrator shall obtain the City's authorization on all settlements or stipulations in accordance with Fresno Municipal Code (FMC) Section 2-1203. Administrator shall not enter into any stipulation or settlement involving liability of the City's excess insurer without the advance written consent of the Insurer. Administrator shall not have subrogation settlement authority unless specifically notified by the City. A level of accomplishment of 100% is required.

D. INVESTIGATIVE SERVICES

Administrator agrees to coordinate external investigative services including but not limited to:

1. Receipt and examination of all reports of accidents, incidents, claims or cases which are or may be the subject of claims.
2. The investigation of accidents, incidents, claims or cases where the Administrator's initial examination indicates such action is warranted. Said investigation to include on-site investigation, photographs, interviewing of witnesses, determination of losses, but not to include extraordinary investigative services outside the expertise of Administrator.
3. Undertaking special investigations at the direction of the City.
4. All investigative services, including selection of the firm to be used, require the City's prior authorization.

E. LEGAL SERVICES ADMINISTRATION

Administrator agrees to:

1. Consult with the City and all legal counsel involved as necessary to ensure that all facts and investigation results are available for use by the defense legal counsel.
2. Ensure that any attorneys working on claims are informed of all relevant facts so that the necessary subpoenas for records and/or witnesses are issued and depositions taken.
3. Review and consult with the City on proposed settlements and secure approval of the City before agreement of any settlement in accordance with FMC Section 2-1203.
4. Assist attorneys in protecting the interests of the City, including but not limited to, the City's interests in third-party cases.
5. With prior approval from the City, refer cases to defense attorneys (designated by the City Attorney) only when the expertise of an attorney is required to resolve issues.
6. Review and document subrogation potential on all files. Administrator will accurately document and report loss history, costs, and expenses to support subrogation claims. Subrogation efforts on injuries wherein there is also property loss to the City shall be coordinated with the City and/or their liability program coordinator.

F. REPORTING TO THE CITY

Administrator agrees to provide the City with monthly reports utilizing a format submitted to the City by the Administrator and approved by the City.

1. Provide loss runs outlining all claims activity including medical and indemnity expenditure on not less than a monthly basis, with flexibility of cut-off-dates to meet the City's needs. Reports should, at a minimum, include the following data:
 - a) Claimant's name, Department/Division of assignment, and occupation code (to be provided by the City).
 - b) Incurred medical and indemnity loss estimates.
 - c) Monthly medical, indemnity, and ALAE.
 - d) Cumulative medical and indemnity payments made to date.
 - e) Estimated remaining reserves on each claim.
 - f) Final cost on all closed files.
 - g) Designation of type of injury, part of body injured, and cause of injury of all reported illnesses and injuries.
 - h) Designation or identification of all litigated, rehabilitation, new and closed cases. Cases involving any financial activity during the reporting period will also be identified.

- i) Summary of claims by Department, Division and City-wide.
 - j) Frequency and severity analysis by type, part of body and cause of injury, organized by Department, Division and bargaining unit.
 - k) Multiple Claims Report.
2. Prepare a separate monthly report organized by Division/Department which will outline the status of each new claim as being accepted, denied, or delayed for review by the City's health and welfare carrier. The report shall be updated with a change in claim status as appropriate.

VI. OWNERSHIP OF DATA

It is agreed that all data is proprietary by nature and is the sole property of the City. It is further agreed that such data will be presented to the City on demand in a format acceptable to the City.

VII. INSURANCE AND INDEMNIFICATION REQUIREMENTS

A. INSURANCE

Administrator shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (1) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in Best's Insurance Rating Guide; or (2) authorized by the City's Risk/Safety Manager. The following policies of insurance are required:

- (i) COMMERCIAL GENERAL LIABILITY insurance which shall include contractual, products and completed operations coverage, bodily injury and property damage liability insurance with combined single limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
- (ii) COMMERCIAL AUTOMOBILE LIABILITY insurance endorsed for "any auto" with combined single limits of liability of not less than \$1,000,000 per occurrence.
- (iii) PROFESSIONAL LIABILITY insurance (Errors and Omissions) with a limit of liability of not less than \$1,000,000 per occurrence.
- (iv) WORKERS' COMPENSATION insurance required under the California Labor Code.
- (v) BLANKET FIDELITY BOND in the amount of not less than \$1,000,000.

The above described policies of insurance shall be endorsed to provide an unrestricted 30 day written notice in favor of the City, of policy cancellation, change or reduction of coverage, except for the worker's compensation policy which shall provide a 10 day written notice of cancellation, change or reduction of coverage. =Such notice shall be directed to the City's Risk/Safety Manager. In

the event any policies are due to expire during the period the work is to be performed, the Administrator shall provide a new certificate evidencing renewal of such a policy not less than 15 days prior to the expiration date of the expiring policy(ies). Upon issuance by the insurer, broker, or agent of a notice of cancellation, change or reduction in coverage, the Administrator shall file with the City a certified copy of the new or renewal policy and certificates for such policy.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name the City of Fresno, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so the Administrator's insurance shall be primary and no contribution shall be required of the City. In the event claims made forms are used for any Professional Liability coverage, either (i) the policy(ies) shall be endorsed to provide not less than a 5 year discovery period, or (ii) the coverage shall be maintained for a minimum of 5 years following the termination of any agreement and the requirements of this section relating to such coverage shall survive termination or expiration of the Agreement.

Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to the City, its officers, officials, agents, employees and volunteers. The Administrator shall furnish the City with the certificate(s) and applicable endorsements for ALL required insurance prior to the City's execution of an Agreement. The Administrator shall furnish the City with copies of the actual policies upon the request of the City's Risk/Safety Manager at any time during the life of the Agreement or any extension and this obligation shall survive termination of the Agreement.

If at any time during the life of the work to be performed or any extension, the Administrator fails to maintain the required insurance in full force and effect, all work shall be discontinued immediately, and all payments due or that become due to the Administrator shall be withheld until notice is received by City that the required insurance has been restored to full force and effects and that the premiums, therefore, have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause of City to terminate any agreement with the Administrator.

If the Administrator should subcontract all or any portion of the work to be performed, the Administrator shall require each subcontractor to provide insurance protection in favor of the City of Fresno, its officers, officials, employees, agents, and volunteers in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with the Administrator and City prior to the commencement of any work by the subcontractor.

B. INDEMNIFICATION

To the furthest extent allowed by law, the Administrator shall indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeiture, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of Administrator or any of

its officers, principals, employees, agents or volunteers in the performance of the Agreement.

If the Administrator should subcontract all or any portion of the work to be performed, the Administrator shall require each subcontractor to indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

The indemnification provisions shall survive termination or expiration of the Agreement.

VIII. CITY'S OBLIGATION

The City shall be obligated under this Agreement as follows:

- A. To promptly report to Administrator, as they shall occur and become known, the incidents of occupational injury, disease or death of the City's workers or employees on forms provided by Administrator and to provide full and accurate information relative to such reports of injury, disease or death as available upon occurrence.
- B. To cooperate with Administrator, its agents, servants and employees, including independent contractors, in the investigation of any claims for workers' compensation benefits against the City.
- C. To promptly forward to Administrator all applications, notice of claims, notices of hearing or other legal notices pertaining to claims against the City of occupational injury, disease or death occurring during any period covered by the terms of this Agreement.

IX. SERVICE FEES AND CHARGES

- A. In consideration of Administrator providing the above-described services to the City, the City accepts Administrator's Secondary Bid of their Cost Proposal in **Appendix B** and agrees to pay Administrator a flat fee rate of \$660,000 for each year of this Agreement. In this regard, Administrator will issue detailed monthly billing statements of \$55,000 for services rendered in the preceding month, and such statements shall be payable in the normal course of City business. Such fee includes any and all expenses of Administrator.
- B. Bill Review charges will be 6% of savings for Fee Schedule and 15% of savings if the City MPN is used to reduce the bill. If a non-MPN Bill is reduced, the cost will be 18% of savings. Utilization Review charges will be \$85 per Utilization Review and \$150 for Peer Review. Nurse Case Management charges will be \$85 per hour/telephonic Nurse Case Management.
- C. The preceding service fees shall not include the payment of Allocated Loss Expenses which consist of, but are not limited to Workers' Compensation Appeals Board or court costs, fees, and expenses; fees for service of process; fees to attorneys; fees of independent adjusters or attorneys for investigation or adjustment of claims not performed by AARLA workers' compensation administrative staff, the cost of employing experts for the purpose of preparing maps, photographs, diagrams, chemical or physical questions; the cost of depositions and court reporter or recorded statements, and any similar costs or

expenses properly chargeable to the defense of a particular claim or to the protection of the subrogation rights of the City of Fresno are the responsibility of the City.

- D. Detailed statements shall be rendered monthly for services rendered in the preceding month and shall be payable in the normal course of City business.

X. GENERAL PROVISIONS

- A. Maintenance of Records. Records of Administrator pertaining to the Agreement shall be kept on a generally recognized accounting basis and shall be available to City or its authorized representatives upon request during regular business hours throughout the life of the Agreement and for a period of 3 years after final payment, or if longer, for any period required by law. In addition, all books, documents, papers, and records of Administrator pertaining to the Agreement shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. This section shall survive expiration or termination of the Agreement.
- B. Nondiscrimination. Administrator shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. During the performance of the Agreement, Administrator agrees as follows:
 - 1. Administrator will comply with all laws and regulations, as applicable, providing that no person in the United States shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era or Middle East conflicts be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from the Agreement.
 - 2. Administrator will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era or Middle East conflicts. Administrator shall take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era or Middle East conflicts. Such action 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. Administrator agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

3. Administrator will, in all solicitations or advertisements for employees placed by or on behalf of Administrator, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era or Middle East conflicts.
4. Administrator will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of Administrator's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

C. Independent Contractor and Not a Partnership/Joint Venture.

1. In the furnishing of the services provided for herein, Administrator is acting solely as an independent contractor. Neither Administrator, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of City for any purpose. City shall have no right to control or supervise or direct the manner or method by which Administrator shall perform its work and functions. However, City shall retain the right to administer this Agreement so as to verify that Administrator is performing its obligations in accordance with the terms and conditions thereof.
2. The Agreement does not evidence a partnership or joint venture between Administrator and City. Administrator shall not have no authority to bind the City absent City's express written consent. Except to the extent otherwise provided in the Agreement, Administrator shall bear its own costs/expenses in pursuit hereof.
3. Because of its status as an independent contractor, Administrator and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to City employees. Administrator shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, Administrator shall be solely responsible, indemnify, defend and save City harmless from all matters relating to employment and tax withholding for and payment of Administrator's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in City employment benefits, entitlements, programs and/or funds offered employees of City whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, Administrator may be providing services to others unrelated to City or to this Agreement.

- D. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.
- E. Binding. Once the Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.
- F. Assignment.
1. The Agreement is personal to Administrator and there shall be no assignment by Administrator of its rights or obligations under the Agreement without the prior written approval of the City. Any attempted assignment by Administrator, its successors or assigns, shall be null and void unless approved in writing by the City.
 2. Administrator hereby agrees not to assign the payment of any monies due Administrator from the City under the terms of the Agreement to any other individual(s), corporation(s) or entity(ies). The City retains the right to pay any and all monies due the Administrator directly to the Administrator.
- G. Compliance With Law. In providing the services required under the Agreement, the Administrator shall at all times comply with all applicable laws of the United States, the State of California and the City of Fresno, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of the Agreement.
- H. Waiver. The waiver by either party of a breach by the other of any provision of the Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of the Agreement. No provisions of the Agreement may be waived unless in writing and signed by all parties to the Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
- I. Governing Law and Venue. The Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of the Agreement and any rights and duties hereunder shall be Fresno County, California.
- J. Headings. The section headings in the Agreement are for convenience and reference only and shall not construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of the Agreement.

- K. Severability. The provisions of the Agreement are severable. The invalidity, or unenforceability of any one provision in the Agreement shall not affect the other provisions.
- L. Interpretation. The parties acknowledge that the Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of the Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing the Agreement in favor or against any party, but rather by construing the terms in accordance with the generally accepted meaning.
- M. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of the Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.
- N. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of the Agreement. The Agreement represents the entire and integrated agreements between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. The Agreement may be modified only by written instrument duly authorized and executed by both the City and the Administrator.
- O. Recycling Program. In the event Administrator maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, Administrator at its sole cost and expense shall:
 - 1. Immediately establish and maintain a viable and ongoing recycling program, approved by City's Solid Waste Management Division, for each office and facility. Literature describing City recycling programs is available from City's Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.
 - 2. Immediately contact City's Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.
 - 3. Cooperate with and demonstrate to the satisfaction of City's Solid Waste Management Division the establishment of the recycling program in paragraph (1) above and the ongoing maintenance thereof.

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IN WITNESS WHEREOF, the parties authorized agents have executed this Amendment to Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a municipal corporation

AMERICAN ALL RISK LOSS
ADMINISTRATORS,
a California corporation

By: _____
Terry Bond, Director
Personnel Services Department

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

ATTEST:
REBECCA E. KLISH
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By: _____
Senior Deputy Date

Addresses:

City:
City of Fresno- Personnel Dept.
Attn: Terry Bond
2600 Fresno Street
Fresno, CA 93721
Phone 559-621-6964
FAX 559-498-4775

Administrator:
American All Risk Loss Administrators
P.O. Box 9783
Fresno, California 93794-9783
Phone: 559-277-4960
FAX: 559-277-4961