

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is effective July 1, 2016 ("Effective Date") and is between the City of Manhattan Beach, a California municipal corporation ("City") and AdminSure, Inc., a California corporation ("Contractor"). City and Contractor are sometimes referred to herein as the "Parties", and individually as a "Party".

RECITALS

A. City is seeking to contract for a professional third party administrator (TPA) in support of the City's self-insured General Liability program.

B. Professional services agreements are exempt from the bid process per the provisions of Section 2.36.130 of the City's Municipal Code.

C. Contractor is the current TPA professional services provider.

D. City desires to utilize the services of Contractor as an independent contractor to provide competent third party administration services in support of the City's self-insured General Liability program.

E. Contractor represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

F. City desires to retain Contractor and Contractor desires to serve City to perform these services in accordance with the terms and conditions of this Agreement.

The Parties therefore agree as follows:

1. Contractor's Services.

A. Scope of Services. Contractor shall perform the services described in the Scope of Services (the "Services"), attached as **Exhibit A**. City may request, in writing, changes in the Scope of Services to be performed. Any changes mutually agreed upon by the Parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

B. Party Representatives. For the purposes of this Agreement, the City Representative shall be the Risk Manager, or such other person designated in writing by the City Manager (the "City Representative"). For the purposes of this Agreement, the Contractor Representative shall be Alithia Vargas-Flores, Vice-President (the "Contractor Representative"). The Contractor Representative shall directly manage Contractor's Services under this Agreement. Contractor shall not change the Contractor Representative without City's prior written consent.

C. Time for Performance. Contractor shall commence the Services on the Effective Date and shall perform all Services by the deadline established by the City Representative or, if no deadline is established, with reasonable diligence.

D. Standard of Performance. Contractor shall perform all Services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

E. Personnel. Contractor has, or will secure at its own expense, all personnel required to perform the Services required under this Agreement. All of the Services required under this Agreement shall be performed by Contractor or under its supervision, and all personnel engaged in the work shall be qualified to perform such Services.

F. Compliance with Laws. Contractor shall comply with all applicable federal, state and local laws, ordinances, codes, regulations and requirements.

G. Permits and Licenses. Contractor shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of Services under this Agreement, including a business license.

H. 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 support the administration of claim files as is customary in the claims administration industry.

2. **Term of Agreement.** The term of this Agreement shall be from July 1, 2016 through June 30, 2019, unless sooner terminated as provided in Section 12 of this Agreement or extended. This Agreement shall automatically renew for up to two (2) additional one (1) year periods except when written notice of non-renewal is delivered by either party to the other. Such notice of non-renewal must be delivered a minimum of one hundred and eighty (180) days prior to the next expiration date of this Agreement. The maximum number of automatic one (1) year renewal periods under this Agreement is two (2); all such renewal periods shall comply with the compensation allocation parameters set forth in Section 3 of this Agreement.

3. **Compensation.**

A. For the first year (July 1, 2016 to June 30, 2017) of the Agreement, the City shall pay Contractor \$2,008.89 per month for TPA services per this Agreement (\$24,106.68 annual cost).

B. For the second year (July 1, 2017 to June 30, 2018) of the Agreement, the City shall pay Contractor \$2,008.89 per month for TPA services per this Agreement (\$24,106.68 annual cost).

C. For the third year, (July 1, 2018 to June 30, 2019), the City shall pay Contractor \$2,069.16 per month for TPA services per this Agreement. (\$24,829.88 annual cost).

D. For each option year that is exercised in years four (July 1, 2019 to June 30, 2020) and five (July 1, 2020 to June 30, 2021), any fee increase for TPA services paid to the Contractor shall be negotiated between the Parties and any increase shall not exceed 2% over the prior year base fee (maximum of \$25,326.48 in Option Year 1 and \$25,833.01 in Option Year 2).

4. Method of Payment.

A. Invoices. Contractor shall submit to City an invoice, on a monthly basis for each of the specified Services performed pursuant to this Agreement. Invoices shall be clearly labeled to indicate the particular type of service being billed for. Each invoice shall itemize the Services rendered during the billing period, hourly rates charged, if applicable, and the amount due. City shall review each invoice and notify Contractor in writing within ten (10) business days of receipt of any disputed invoice amounts.

B. Payment. City shall pay all undisputed invoice amounts within thirty (30) calendar days after receipt up to the maximum compensation set forth in Section 3 of this Agreement. City does not pay interest on past due amounts. City shall not withhold federal payroll, state payroll or other taxes, or other similar deductions, from payments made to Contractor.

C. Audit of Records. Contractor shall make all records, invoices, time cards, cost control sheets and other records maintained by Contractor in connection with this Agreement available during Contractor's regular working hours to City for review and audit by City.

5. Independent Contractor. Contractor is, and shall at all times remain as to City, a wholly independent contractor. Contractor shall have no power to incur any debt, obligation, or liability on behalf of City. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not, at any time, or in any manner, represent that it or any of its officers, agents or employees are in any manner employees of City.

6. Information and Documents.

A. Contractor covenants that all data, reports, documents, discussion, or other information (collectively "Data") developed or received by Contractor or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Contractor without prior written authorization by City. City shall grant such authorization if applicable law requires disclosure. Contractor, its officers,

employees, agents, or subcontractors shall not without written authorization from the City Manager or unless requested in writing by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary," provided Contractor gives City notice of such court order or subpoena.

B. Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City may, but has no obligation to, represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, City's right to review any such response does not imply or mean the right by City to control, direct or rewrite the response.

C. All Data required to be furnished to City in connection with this Agreement shall become City's property, and City may use all or any portion of the Data submitted by Contractor as City deems appropriate. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the Services, surveys, notes, and other documents prepared in the course of providing the Services shall become City's sole property and may be used, reused or otherwise disposed of by City without Contractor's permission. Contractor may take and retain copies of the written products as desired, but the written products shall not be the subject of a copyright application by Contractor.

D. Contractor's covenants under this Section 6 shall survive the expiration or termination of this Agreement.

7. Conflicts of Interest. Contractor and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Contractor's Services under this Agreement, including the Political Reform Act (Gov. Code § 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Contractor may perform similar Services for other clients, but Contractor and its officers, employees, associates and subcontractors shall not, without the City Representative's prior written approval, perform work for another person or entity for whom Contractor is not currently performing work that would require Contractor or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Contractor shall incorporate a clause substantially similar to this Section 7 into any subcontract that Contractor executes in connection with the performance of this Agreement.

8. Indemnification.

A. Indemnities for Third Party Claims.

1. To the fullest extent permitted by law, Contractor shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Contractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the Parties. Contractor shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Contractor shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

2. Contractor shall pay all required taxes on amounts paid to Contractor under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Contractor shall fully comply with the workers' compensation law regarding Contractor and Contractor's employees. Contractor shall indemnify and hold City harmless from any failure of Contractor to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this subparagraph A. 2).

3. Contractor shall obtain executed indemnity agreements with provisions identical to those in this Section 8 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. If Contractor fails to obtain such indemnity obligations, Contractor shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities at law or in equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants

or employees (or any entity or individual that Contractor's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the Parties.

B. Workers' Compensation Acts not Limiting. Contractor's indemnifications and obligations under this Section 8, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

C. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section 8 shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Contractor's indemnifications and obligations under this Section 8 shall survive the expiration or termination of this Agreement.

9. Insurance.

A. Minimum Scope and Limits of Insurance. Contractor shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

Commercial General Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of Two Million Dollars (\$2,000,000) per project or location. If Contractor is a limited liability company, the commercial general liability coverage shall be amended so that Contractor and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of One Million Dollars (\$1,000,000) per accident for bodily injury and property damage. If Contractor does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Contractor shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph A. 1) of this Section 9.

Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. If Contractor has no employees while performing Services under this Agreement, workers' compensation policy is not required, but Contractor shall execute a declaration that it has no employees.

Professional Liability or Errors and Omissions Insurance with minimum limits of Two Million Dollars (\$2,000,000) per claim and in aggregate.

B. Acceptability of Insurers. The insurance policies required under this Section 9 shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self insurance shall not be considered to comply with the insurance requirements under this Section 9.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming City, its officers, employees, agents and volunteers as additional insureds.

D. Primary and Non-Contributing. The insurance policies required under this Section 9 shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its officers, employees, agents or volunteers, shall be in excess of Contractor's insurance and shall not contribute with it.

E. Contractor's Waiver of Subrogation. The insurance policies required under this Section 9 shall not prohibit Contractor and Contractor's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Contractor hereby waives all rights of subrogation against City.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, Contractor shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Contractor shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Contractor shall not cancel, reduce or otherwise modify the insurance policies required by this Section 9 during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail thirty (30) days' prior written notice to City. If any insurance policy required under this Section 9 is canceled or reduced in coverage or limits, Contractor shall, within two (2) business days of notice from the insurer, phone, fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

H. City Remedy for Noncompliance. If Contractor does not maintain the policies of insurance required under this Section 9 in full force and effect during the term of this Agreement, or in the event any of Contractor's policies do not comply with the requirements under this Section 9, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Contractor's expense, the premium thereon. Contractor shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Contractor.

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Contractor shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section 9. The endorsements are subject to City's approval. Contractor may provide complete, certified copies of all required insurance policies to City. Contractor shall maintain current endorsements on file with City's Risk Manager. Contractor shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Contractor shall furnish such proof at least two (2) weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Contractor shall not be construed as a limitation of Contractor's liability or as full performance of Contractor's duty to indemnify City under Section 8 of this Agreement.

K. Subcontractor Insurance Requirements. Contractor shall require each of its subcontractors that perform Services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section 9.

10. Mutual Cooperation.

A. City's Cooperation. City shall provide Contractor with all pertinent Data, documents and other requested information as is reasonably available for Contractor's proper performance of the Services required under this Agreement.

B. Contractor's Cooperation. In the event any claim or action is brought against City relating to Contractor's performance of Services rendered under this Agreement, Contractor shall render any reasonable assistance that City requires.

11. Records and Inspections. Contractor shall maintain complete and accurate records with respect to costs, expenses, receipts and other such information required by City that relate to the performance of the Services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to City, its designees and representatives at reasonable times, and shall allow City to examine and audit the books and records, to make transcripts therefrom as necessary, and to inspect all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

12. Termination of Agreement.

A. Right to Terminate. Either Party may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to the other Party at least 180 calendar days before the termination is to be effective.

B. Obligations upon Termination. Contractor shall cooperate with any successor contractor in the conversion and transition of all data, transfer of files,

coordination of payment, and any other process associated with the winding down of their provision of services as is customary in the industry. If some of this work occurs post-termination it is considered to have been paid for in the administrative fees through termination. In no event shall Contractor be entitled to receive more than the amount that would be paid to Contractor for the full performance of the Services required by this Agreement. Contractor shall have no other claim against City by reason of such termination, including any claim for compensation.

13. Force Majeure. Contractor shall not be liable for any failure to perform its obligations under this Agreement if Contractor presents acceptable evidence, in City's sole judgment, that such failure was due to strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond Contractor's reasonable control and not due to any act by Contractor.

14. Default.

A. Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default.

B. If the City Manager or his delegate determines that Contractor is in default in the performance of any of the terms or conditions of this Agreement, City shall serve Contractor with written notice of the default. Contractor shall have ten (10) calendar days after service upon it of the notice in which to cure the default by rendering satisfactory performance. In the event that Contractor fails to cure its default within such period of time, City may, notwithstanding any other provision of this Agreement, terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

15. Notices. Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by courier service during Contractor's and City's regular business hours, or (c) three business days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the Party to be notified as set forth below:

If to City:
City of Manhattan Beach
Attn: Gregory S. Borboa
1400 Highland Avenue
Manhattan Beach, California 90266
Telephone: (310) 802-5258
Email: gborboa@citymb.info

If to Contractor:
AdminSure
Attn: Alithia Vargas-Flores
1470 S. Valley Vista Dr., #230
Diamond Bar, California 91765
Telephone: (909) 861-0816
Email: AVargas-Flores@adminsire.com

With a courtesy copy to:

Quinn M. Barrow, City Attorney
1400 Highland Avenue
Manhattan Beach, CA 90266
Telephone: (213) 626-8484
Email: qbarrow@citymb.info

16. Non-Discrimination and Equal Employment Opportunity. In the performance of this Agreement, Contractor shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law. Contractor will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information or sexual orientation.

17. Prohibition of Assignment and Delegation. Contractor shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, without City's prior written consent. City's consent to an assignment of rights under this Agreement shall not release Contractor from any of its obligations or alter any of its primary obligations to be performed under this Agreement. Any attempted assignment or delegation in violation of this Section 17 shall be void and of no effect and shall entitle City to terminate this Agreement. As used in this Section 17, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

18. No Third Party Beneficiaries Intended. This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

19. Waiver. No delay or omission to exercise any right, power or remedy accruing to City under this Agreement shall impair any right, power or remedy of City, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement shall be (1) effective unless it is in writing and signed by the Party making the waiver, (2) deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy, or (3) deemed to constitute a continuing waiver unless the writing expressly so states.

20. Final Payment Acceptance Constitutes Release. The acceptance by Contractor of the final payment made under this Agreement shall operate as and be a

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

21. Non-Appropriation of Funds. Payments to be made to Contractor by City for services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted fund. In the event that City does not appropriate sufficient funds for payment of Contractor's services beyond the current fiscal year, the Agreement shall cover payment for Contractor's services only to the conclusion of the last fiscal year in which City appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year.

22. Exhibits. Exhibit A constitutes a part of this Agreement and is incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Contractor's proposal, the provisions of this Agreement shall control.

23. Entire Agreement and Modification of Agreement. This Agreement and the accompanying exhibit referred to in this Agreement constitute the final, complete and exclusive statement of the terms of the agreement between the Parties pertaining to the subject matter of this Agreement and supersedes all other prior or contemporaneous oral or written understandings and agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by both Parties.

24. Headings. The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the Parties to this Agreement.

25. Word Usage. Unless the context clearly requires otherwise, (a) the words "shall," "will" and "agrees" are mandatory and "may" is permissive; (b) "or" is not exclusive; and (c) "includes" or "including" are not limiting.

26. Time of the Essence. Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a Party of the benefits of any grace or use period allowed in this Agreement.

27. Governing Law and Choice of Forum. This Agreement, and any dispute arising from the relationship between the Parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in a municipal, superior or federal court with geographic jurisdiction over the City of Manhattan Beach.

28. Attorneys' Fees. In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be awarded actual attorneys' fees together with any costs and expenses in addition to all other relief to which that Party may be entitled.

29. Severability. If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable for any reason, the validity of and enforceability of the remaining provisions of this Agreement shall not be affected and continue in full force and effect.

30. Counterparts. This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which will constitute one and the same instrument.

31. Corporate Authority. The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement on behalf of the Parties and that by their execution, the Parties are formally bound to the provision of this Agreement.

[SIGNATURE PAGE FOLLOWS]

The Parties, through their duly authorized representatives are signing this Agreement on the date stated in the introductory clause.

City:

City of Manhattan Beach,
a California municipal corporation

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: Liza Tamura
Title: City Clerk

APPROVED AS TO FORM:

By: Quinn M. Barrow
Name: Quinn M. Barrow
Title: City Attorney

APPROVED AS TO CONTENT:

By: _____
Name: Bruce Moe
Title: Finance Director

Contractor:

AdminSure
a California corporation

By: Alithia Vargas-Flores
Name: Alithia Vargas-Flores
Title: CFOVP

By: Alycia Anthony
Name: Alycia Anthony
Title: Corporate Secretary

ADMINSURE SCOPE OF SERVICES
City of Manhattan Beach
Effective July 1, 2016

1. **PERIODIC MEETINGS:** The Contractor shall meet with the City and staff periodically 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.
2. **ADVISORY SERVICES:** The Contractor 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.
3. **REQUIRED FORMS:** The Contractor shall provide the City with all forms required by the State in connection with the Program.
4. **COMPLIANCE WITH LAW:** The Contractor shall administer the Program in full compliance with all laws, rules and regulations governing tort claims filed against public entities and self-insured public entities, maximizing the exercise of immunities provided therein.
5. **DESCRIPTION OF SERVICES:** The responsibilities of Contractor are divided into three categories: claims administration, litigation management, and reporting of claims activities as directed by City.
 - A. **Claims Administration.**
 1. Contractor shall provide the City with sufficient qualified personnel, including at least one senior claims adjustor, to efficiently and effectively meet the responsibilities as defined below and any other duties incidental, or in addition, to those responsibilities. The senior claims adjustor shall have a minimum of three years' experience in adjusting liability claims for public entities. Contractor 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 adjustor or

EXHIBIT A

supervisor/account manager shall service the City's account without prior express approval by the City.

2. The responsibilities of Contractor shall include, but not be limited to, the following:
 - (a) 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.
 - (b) Provide comprehensive investigative services;
 - (c) Periodically, determine potential liability and establish, review, and update reserves for each reported accident and advise the City of any changes as they occur;
 - (d) Coordinate with the City and City's excess coverage Litigation Manager (Litigation Manager) in the defense, settlement, and payment of claims. Prepare and submit information to the Litigation Manager, and upon direction, notify excess insurance carrier(s) or pool, on all claims that fall within the reporting requirements set forth by applicable MOC or excess insurance carrier(s);
 - (e) Document sufficiency of reserve minimally at 90-day intervals;
 - (f) Provide the City with a recommendation to accept or deny a claim within the statutory period in the California Government Code;
 - (g) Provide immediate notification to the City offers to settle;
 - (h) Obtain releases and other necessary forms from all appropriate parties upon settlement of a claim prior to issuing a settlement check;
 - (i) Upon the City's request, assist with preparation for appearances in small claims court and appear in small claims court, as needed;
 - (j) Prepare and, where needed, obtain approval for issuance of checks, drafts, or other documents in the payment of claims with copies sent to the City;

EXHIBIT A

- (k) 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;
- (l) Promptly close each claim as soon as possible, but no later than 30 days after final check issuance;
- (m) Make available time, electronic files, and necessary staff for meetings with the City and attendance at applicable meetings (City Council, Excess Carrier Claims Committee meetings) for settlement authority, claim resolution strategy, and periodic claim audits; and
- (n) After collecting data, and information, Contractor shall determine whether claimant(s) are Medicare beneficiaries through SCHIP reporting or otherwise. If claimant(s) are found to be Medicare beneficiaries, Contractor as part of any settlement with the claimant(s) shall on behalf of the City take all steps necessary to protect Medicare's interests, as well as the City. 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
- (o) 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.

The duties of Contractor shall include but not be limited to:

- (1) Monitor defense counsel and assist as needed or directed by City;
- (2) With input from the City, and as directed by the City, assign the defense of litigated cases to the defense firm selected by the City;
- (3) Assist defense counsel, at the direction of the City in obtaining facts or circumstances of a claim, including assistance in answering interrogatories;

EXHIBIT A

- (4) Supplying and collecting the case analysis and performance evaluation forms from the defense firms;
- (5) Review legal bills for accuracy;
- (6) Maintaining, in coordination with the City, an electronic evaluation file on each defense firm with respect to each defense assignment; and
- (7) Provide any and all information, reports, and data to the City as may be requested from time to time.

C. Reporting of Claims Activity

- (1) 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. Reports shall include all claims meeting the City's reporting criteria.
- (2) In addition to the monthly statistical report, the Contractor will provide to the City a monthly payment register showing all payments issued, payee, voucher number, voucher date, and claimant name, if applicable.
- (3) Upon the request of the City, the Contractor 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 to the City. All reports shall be provided in a Microsoft Excel format or any other format as requested by the City.
- (4) The Contractor 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 City can identify areas where corrective measures may be adopted to prevent future claims of that nature.

6. **CHECKING ACCOUNT:** The City and the Contractor agree that:

- A. The City shall establish and maintain a checking account from which all General Liability claims expenses are to be paid.
- B. The Contractor shall prepare checks and issue those checks directly to payees without delay.
- C. The Contractor shall sign checks with a facsimile signature or manually.
- D. The Contractor shall secure checks in a locked area accessible to a limited number of personnel.

EXHIBIT A

- E. The City shall maintain an adequate balance in their checking account to meet all General Liability program obligations without delay.
- F. The checking account may be used to pay penalties in which case the Contractor shall reimburse the City within fifteen (15) working days for any amount of the penalty which the Contractor caused.

7. **ELECTRONIC DATA PROCESSING:** The Contractor 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. The Contractor will also work with the City to develop ad hoc and other specialized reports as requested.

8. **REGULATORY REPORTING:** The Contractor 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.

9. **RECORDS:** The Contractor 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 Contractor 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 Contractor shall not dispose of or destroy hard files without the prior, written authorization of the City.

10. **OBLIGATIONS OF THE CONTRACTOR.** The Contractor shall complete the Services as follows:

- A. The Contractor represents that it employs, or will employ, at its own expense, all personnel required for the satisfactory performance of the Services.
- B. The Contractor represents that the Services will be performed by the Contractor 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. Contractor shall assign an account manager to ensure the duties under this Agreement are performed in a timely and professional manner. Said representative

EXHIBIT A

shall not be replaced by the Contractor without prior written notice to the City, nor without written approval from the City.

- D. Contractor 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 Contractor within the agreed fee for Services contained in this Agreement. It is understood that the personnel referred to need not be dedicated to the exclusive use of the City.
- E. Contractor shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement. Contractor 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 Contractor 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 Contractor 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 Contractor agrees not to release any report, information, data or any portion thereof, or any result of any investigation undertaken 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.
- I. *Data Interface.* The Contractor shall provide an on-line interface with its database, accessible from the City's computers or computers authorized by the City to have access to the database. This information will be for use by the City and its authorized agent. Such data shall be in a format which will permit the City to make print copies of the data on its printers.
- J. *Data Reporting.* Contractor shall provide City loss information with the fields and format specified by the City.
- K. Contractor shall provide reports outlined in this Agreement and other reports as requested by the City.
- L. Contractor shall develop and implement processes and procedures relating to the protection of electronic data, including a suitable security and off-site back-up

EXHIBIT A

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.

- M. The Contractor shall comply with all applicable federal, state, and local laws, ordinances and regulations. Contractor 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 Contractor, 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 Contractor shall not subcontract or assign any portion of the Services without prior written approval of City.
- P. The Contractor 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 Contractor.
- Q. Contractor shall submit its annual SSAE16/SAS 70 to City within thirty (30) days of receipt along with any action plans to mitigate any deficiencies noted by the auditor.

11. OBLIGATIONS OF THE CITY

The City shall perform the following:

- A. Submit all reports of general liability claims to the Contractor in a timely manner.
- B. Respond to the Contractor's requests for information and authority within a reasonable time.
- C. Provide information that is accurate and is in a form specified by the Contractor in furtherance of effective claims handling processes.
- D. Grant settlement authority to the Contractor in a timely manner.

END OF SCOPE OF SERVICES