

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is dated July 1, 2021 ("Effective Date") and is between the City of Manhattan Beach, a California municipal corporation ("City") and AdminSure, Inc., a California corporation, ("Consultant"). City and Consultant are sometimes referred to herein as the "Parties", and individually as a "Party".

### RECITALS

A. City desires to utilize the services of Consultant as an independent contractor to provide third party general liability claims administration services.

B. Consultant 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.

C. City desires to retain Consultant and Consultant 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. Consultant's Services.

A. Scope of Services. Consultant shall perform the services described in the Scope of Services (the "Services") for third party general liability claims administration, 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 City Manager, or such other person designated in writing by the City Manager (the "City Representative"). For the purposes of this Agreement, the Consultant Representative shall be Alithia Vargas-Flores, President (the "Consultant Representative"). The Consultant Representative shall directly manage Consultant's Services under this Agreement. Consultant shall not change the Consultant Representative without City's prior written consent.

C. Time for Performance. Consultant 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. Consultant shall perform all Services under this Agreement in accordance with the standard of care generally exercised by like

Approved for Use 3/1/2021

professionals under similar circumstances and in a manner reasonably satisfactory to City.

E. Personnel. Consultant 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 Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such Services.

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

G. Permits and Licenses. Consultant 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.

**2. Term of Agreement.** The term of this Agreement shall be from the Effective Date through June 30, 2026, unless sooner terminated as provided in Section 12 of this Agreement or extended.

### **3. Compensation.**

A. Compensation. As full compensation for Consultant's Services provided under this Agreement, City shall pay Consultant at the monthly rates set forth in the Approved Fee Schedule attached hereto as **Exhibit B**. In no event shall Consultant be paid more than \$180,000 (the "Maximum Compensation") for such Services.

B. Expenses. The amount set forth in paragraph 3.A. above includes reimbursement for all expenditures incurred in the performance of this Agreement.

C. Unauthorized Services and Expenses. City will not pay for any services not specified in the Scope of Services, or reimburse for any expenses not set forth in **Exhibit B**, unless the City Council or the City Representative, if applicable, and the Consultant Representative authorize such services or expenses in writing prior to Consultant's performance of those services or incurrence of additional expenses. Any additional services authorized by the City Council, or (where authorized) the City Manager shall be compensated at the rates set forth in **Exhibit B**, or, if not specified, at a rate mutually agreed to by the Parties. Any additional expense authorized by the City Council or (where authorized) the City Manager shall be reimbursed in the amounts authorized by the City Council or City Manager. City shall make payment for additional services and expenses in accordance with Section 4 of this Agreement.

### **4. Method of Payment.**

A. Invoices. Consultant shall submit to City an invoice, on a monthly basis, for the Services performed pursuant to this Agreement. Invoices must be submitted to Risk Management, 1400 Highland Ave, Manhattan Beach, CA 90266. 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 Consultant in writing within ten Business days of receipt of any disputed invoice amounts.

B. Payment. City shall pay all undisputed invoice amounts within 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 Consultant. Notwithstanding the preceding sentence, if Consultant is a nonresident of California, City will withhold the amount required by the Franchise Tax Board pursuant to Revenue and Taxation Code Section 18662 and applicable regulations.

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

**5. Independent contractor.** Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant 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 Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant 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. Consultant covenants that all data, reports, documents, discussion, or other information (collectively "Data") developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Consultant without prior written authorization by City. City shall grant such authorization if applicable law requires disclosure. Consultant, 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 Consultant gives City notice of such court order or subpoena.

B. Consultant shall promptly notify City should Consultant, 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 Consultant or be present at

any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. 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 Consultant 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 Consultant's permission. Consultant 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 Consultant.

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

**7. Conflicts of Interest.** Consultant and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Consultant'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, Consultant may perform similar Services for other clients, but Consultant 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 Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Consultant shall incorporate a clause substantially similar to this Section into any subcontract that Consultant executes in connection with the performance of this Agreement.

## **8. Indemnification, Hold Harmless, and Duty to Defend.**

### **A. Indemnities.**

1) To the fullest extent permitted by law, Consultant 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 Consultant, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant 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 court decision or by the agreement of the Parties. Consultant 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. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

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

3) Consultant shall obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations, Consultant 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 Consultant's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant'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 court decision or by the agreement of the Parties.

B. Workers' Compensation Acts not Limiting. Consultant's indemnifications and obligations under this Section, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Consultant 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 Consultant 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 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. Consultant's indemnifications and obligations under this Section shall survive the expiration or termination of this Agreement.

## **9. Insurance.**

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

1) Commercial General Liability Insurance with a minimum limit of \$2,000,000.00 per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of \$2,000,000.00 per project or location. If Consultant is a limited liability company, the commercial general liability coverage shall be amended so that Consultant and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) 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 \$2,000,000.00 per accident for bodily injury and property damage. If Consultant does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Consultant shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph A.1) of this Section.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of \$1,000,000.00 per accident for bodily injury or disease. If Consultant has no employees while performing Services under this Agreement, workers' compensation policy is not required, but Consultant shall execute a declaration that it has no employees.

4) Professional Liability/Errors and Omissions Insurance with minimum limits of \$2,000,000.00 per claim and in aggregate.

B. Acceptability of Insurers. The insurance policies required under this Section 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.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming City and its elected and appointed officials, officers, employees, agents and volunteers as additional insureds. This provision shall also apply to any excess/umbrella liability policies.

D. Primary and Non-Contributing. The insurance policies required under this Section 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 elected and appointed officials, officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.

E. Consultant's Waiver of Subrogation. The insurance policies required under this Section shall not prohibit Consultant and Consultant's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Consultant 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, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Consultant shall not cancel, reduce or otherwise modify the insurance policies required by this Section 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 30 days' prior written notice to City. If any insurance policy required under this Section is canceled or reduced in coverage or limits, Consultant shall, within two 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 Consultant does not maintain the policies of insurance required under this Section in full force and effect during the term of this Agreement, or in the event any of Consultant's policies do not comply with the requirements under this Section, 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 Consultant's expense, the premium thereon. Consultant shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Consultant.

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Consultant 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. The endorsements are subject to City's approval. Consultant may provide complete, certified copies of all required insurance policies to City.

Consultant shall maintain current endorsements on file with City's Risk Manager. Consultant 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. Consultant shall furnish such proof at least two weeks prior to the expiration of the coverages.

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

K. Broader Coverage/Higher Limits. If Consultant maintains broader coverage and/or higher limits than the minimums required above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

L. Subcontractor Insurance Requirements. Consultant 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.

## **10. Mutual Cooperation.**

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

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

**11. Records and Inspections.** Consultant shall maintain complete and accurate records with respect to time, costs, expenses, receipts, correspondence, 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. Consultant 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 years after receipt of final payment.

## **12. Termination of Agreement.**

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

at any time, at will, for any reason or no reason, after giving written notice to City at least 60 calendar days before the termination is to be effective.

B. Obligations upon Termination. Consultant shall cease all work under this Agreement on or before the effective date of termination specified in the notice of termination. In the event of City's termination of this Agreement due to no fault or failure of performance by Consultant, City shall pay Consultant based on the percentage of work satisfactorily performed up to the effective date of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the Services required by this Agreement. Consultant shall have no other claim against City by reason of such termination, including any claim for compensation.

**13. Force Majeure.** Consultant shall not be liable for any failure to perform its obligations under this Agreement if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to acts of God, embargoes, 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 Consultant's reasonable control and not due to any act by Consultant.

**14. Default.**

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

B. In addition to the right to terminate pursuant to Section 12, if the City Manager determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, City shall serve Consultant with written notice of the default. Consultant shall have ten calendar days after service upon it of the notice in which to cure the default by rendering a satisfactory performance. In the event that Consultant 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 Consultant'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:

TO CITY:

City of Manhattan Beach  
Attn: Human Resources  
1400 Highland Avenue  
Manhattan Beach, California 90266

TO CONSULTANT:

AdminSure, Inc.  
Attn: Alithia Vargas-Flores  
3380 Shelby Street  
Ontario, California 91764

COPY TO CITY ATTORNEY:

City of Manhattan Beach  
Attn: City Attorney  
1400 Highland Avenue  
Manhattan Beach, California 90266

**16. Non-Discrimination and Equal Employment Opportunity.** In the performance of this Agreement, Consultant 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. Consultant 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.** Consultant 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 Consultant 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 shall be void and of no effect and shall entitle City to terminate this Agreement. As used in this Section, "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 Consultant of the final payment made under this Agreement shall operate as and be a release of City from all claims and liabilities for compensation to Consultant for anything done, furnished or relating to Consultant's work or services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within ten calendar days of the receipt of that check. However, approval or payment by City shall not constitute, nor be deemed, a release of the responsibility and liability of Consultant, its employees, subcontractors 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 Consultant, its employees, subcontractors and agents.

**21. Corrections.** In addition to the above indemnification obligations, Consultant shall correct, at its expense, all errors in the work which may be disclosed during City's review of Consultant's report or plans. Should Consultant fail to make such correction in a reasonably timely manner, such correction may be made by City, and the cost thereof shall be charged to Consultant. In addition to all other available remedies, City may deduct the cost of such correction from any retention amount held by City or may withhold payment otherwise owed Consultant under this Agreement up to the amount of the cost of correction.

**22. Non-Appropriation of Funds.** Payments to be made to Consultant 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 Consultant's services beyond the current fiscal year, this Agreement shall cover payment for Consultant'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.

**23. Exhibits.** Exhibits A and B constitute a part of this Agreement and are 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 Consultant's proposal, the provisions of this Agreement shall control.

**24. Entire Agreement and Modification of Agreement.** This Agreement and all exhibits 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 supersede 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.

**25. 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.

**26. 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.

**27. 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.

**28. Business Days.** “Business days” means days Manhattan Beach City Hall is open for business.

**29. 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 superior court with geographic jurisdiction over the City of Manhattan Beach.

**30. 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 entitled to recover all attorneys’ fees, experts’ fees, and other costs actually incurred in connection with such litigation or other proceeding, in addition to all other relief to which that Party may be entitled.

**31. 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.

**32. 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.

**33. Corporate Authority.** Each person executing this Agreement on behalf of his or her Party warrants that he or she is duly authorized to execute this Agreement on behalf

of that Party and that by such execution, that Party is formally bound to the provisions 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

Consultant:

AdminSure, Inc.,  
a California corporation

By: \_\_\_\_\_  
Name: Bruce Moe  
Title: City Manager

By: \_\_\_\_\_  
Name: Alithia Vargas-Flores  
Title: President

ATTEST:

By: \_\_\_\_\_  
Name: Liza Tamura  
Title: City Clerk

APPROVED AS TO FORM:

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

APPROVED AS TO FISCAL IMPACT:

By: \_\_\_\_\_  
Name: Steve S. Charelian  
Title: Finance Director

APPROVED AS TO CONTENT:

By: \_\_\_\_\_  
Name: Lisa Jenkins  
Title: Human Resources Director

## **EXHIBIT A SCOPE OF SERVICES**

1. **DESCRIPTION OF SERVICES:** The responsibilities of Consultant are divided into three categories: claims administration, litigation management, and reporting of claims activities as directed by City.

A. Claims Administration.

1. Consultant 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. Consultant 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 supervisor/account manager shall service the City's account without prior express approval by the City.
2. The responsibilities of Consultant 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;
- 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, Consultant shall determine whether claimant(s) are Medicare beneficiaries through SCHIP reporting or otherwise. If claimant(s) are found to be Medicare beneficiaries, Consultant 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's. 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 Consultant 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;
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 Consultant 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 Consultant 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 Consultant 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.

2. **PERIODIC MEETINGS:** The Consultant 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.

3. **ADVISORY SERVICES:** The Consultant shall provide the City information regarding the adoption, amendment or repeal of all Statutes, Rules and Regulations, et cetera, which may directly affect the Program.
4. **REQUIRED FORMS:** The Consultant shall provide the City with all forms required by the State in connection with the Program.
5. **COMPLIANCE WITH LAW:** The Consultant 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.
6. **CHECKING ACCOUNT:** The City and the Consultant 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 Consultant shall prepare checks and issue those checks directly to payees without delay.
  - C. The Consultant shall sign checks with a facsimile signature or manually.
  - D. The Consultant shall secure checks in a locked area accessible to a limited number of personnel.
  - E. The City shall maintain an adequate balance in their checking account to meet all General Liability program obligations without delay.
  - F. The checking account may be used to pay penalties in which case the Consultant shall reimburse the City within fifteen (15) working days for any amount of the penalty which the Consultant caused.
7. **ELECTRONIC DATA PROCESSING:** The Consultant 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 Consultant will also work with the City to develop ad hoc and other specialized reports as requested.
8. **REGULATORY REPORTING:** The Consultant 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 Consultant 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 Consultant 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 Consultant shall not dispose of or destroy hard files without the prior, written authorization of the City.

**10. OBLIGATIONS OF THE CONSULTANT.** The Consultant shall complete the Services as follows:

- A. The Consultant represents that it employs, or will employ, at its own expense, all personnel required for the satisfactory performance of the Services.
- B. The Consultant represents that the Services will be performed by the Consultant 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. Consultant shall assign an account manager to ensure the duties under this Agreement are performed in a timely and professional manner. Said representative shall not be replaced by the Consultant without prior written notice to the City, nor without written approval from the City.
- D. Consultant 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 Consultant 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. Consultant shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement. Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant 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. Consultant shall provide City loss information with the fields and format specified by the City.
- K. Consultant shall provide reports outlined in this Agreement and other reports as requested by the City.

- L. Consultant shall develop and implement processes and procedures relating to the protection of electronic data, including a suitable security and off-site back-up system for all stored data and a written policy with respect to disaster recovery, physical and electronic data security, and electronic data retention, as required by the standards for Accreditation with Excellence by the California Association of Joint Powers Authorities.
- M. The Consultant shall comply with all applicable federal, state, and local laws, ordinances and regulations. Consultant 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 Consultant, 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 Consultant shall not subcontract or assign any portion of the Services without prior written approval of City.
- P. The Consultant 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 Consultant.
- Q. Consultant 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 Consultant in a timely manner.
- B. Respond to the Consultant's requests for information and authority within a reasonable time.
- C. Provide information that is accurate and is in a form specified by the Consultant in furtherance of effective claims handling processes.
- D. Grant settlement authority to the Consultant in a timely manner.

## **END OF SCOPE OF SERVICES**

**EXHIBIT B  
APPROVED FEE SCHEDULE**

<b>Third Party General Liability Claims Administration Services – Flat Rate Fee</b>		
	<b>Monthly Fee</b>	<b>Total Annually</b>
Year 1:	\$2,500	\$30,000
Year 2:	\$2,750	\$33,000
Year 3:	\$3,000	\$36,000
Year 4:	\$3,250	\$39,000
Year 5:	\$3,500	\$42,000
<b>Total Contract Term:</b>		<b>\$180,000</b>