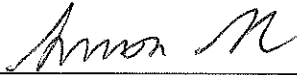


THE ATTACHED AGREEMENT HAS BEEN REVIEWED
AND APPROVED AS TO FORM BY THE CITY
ATTORNEY'S OFFICE AND WILL BE
FORMALLY SIGNED UPON APPROVAL BY
THE CITY COUNCIL



Glen R. Googins
City Attorney

Dated: 7/21/16

AGREEMENT BETWEEN CITY OF CHULA VISTA AND TRISTAR
RISK MANAGEMENT FOR WORKERS COMPENSATION CLAIMS
ADMINISTRATION SERVICES

**AGREEMENT BETWEEN CITY OF CHULA VISTA AND TRISTAR RISK
MANAGEMENT FOR WORKERS COMPENSATION CLAIMS
ADMINISTRATION SERVICES**

THIS AGREEMENT IS MADE AND ENTERED INTO this 1st day of August, 2016, by and between the **CITY OF CHULA VISTA** (hereinafter "City"), a charter city and municipal corporation, and **TRISTAR RISK MANAGEMENT** (hereinafter "Service Company") in view of the following understandings (collectively the "Parties"):

- A. WHEREAS, City is desirous of retaining a qualified workers compensation claims management service company to supervise and administer the workers compensation claims made upon the City's self-insurance program;
- B. WHEREAS, Service Company is a qualified and California-certified self-insurance administrator in the workers compensation field;
- C. WHEREAS, Service Company, via an agreement between Service Company and the San Diego Pooled Insurance Program Authority ("SANDPIPA Agreement"), has provided to City workers compensation claims management services, as the City was a Participant in the aforementioned SANDPIPA Agreement; and
- D. WHEREAS, Service Company is familiar with this Agreement and warrants and represents that it is experienced and staffed in a manner such that it can deliver the services required of Service Company to City in accordance with the time frames and the terms and conditions of this Agreement.

NOW, THEREFORE, FOR VALUABLE AND SUFFICIENT CONSIDERATION, THE CITY AND SERVICE COMPANY HEREBY AGREE AS FOLLOWS:

1. **SCOPE OF WORK**

The Service Company shall provide the following services:

- 1.1 Forms. Consult with City to supply and distribute necessary forms to establish program procedures and practices.
- 1.2 Process Claims. Review and process all reported industrial injury and occupational disease claims in accordance with State requirements.
- 1.3 Compensability Determinations. Determine compensability of injury or illness claims in accordance with all rules and regulations governing the administration of self-insurance pursuant to Section 3700 of the California Labor Code and California administrative regulations. Denial of claims shall be made only after prior discussion and agreement with the City.
- 1.4 Master Panel. Develop, recommend, and update for City a master panel of physicians, dentists, chiropractors, and other practitioners for the treatment of injured employees, and recommend such

specialists as may be required for long term or other disabilities requiring special treatment. Present the initial master panel to the City within 90 days of commencement of services hereunder.

1.5 Medical Treatment. Determine eligibility for and authorize appropriate medical treatment for injured employees, including arranging appointments. Monitor all medical reports and statements of charges to insure that treatment and charges are compatible with injuries reported.

1.6 Education. Conduct or assist in orientation or educational meetings with City personnel who are involved directly or indirectly with the processing of claims.

1.7 Reviews. Periodically review program progress with City personnel, identifying problem areas and recommending a plan of remedial action. This shall include projections of cash flow and actual projections of annual incurred costs, as requested.

1.8 Index Use. Utilize the Index Bureau on cases where such use is merited, provided the City subscribes to such service.

1.9 File Maintenance. Maintain claim files, case logs, check voucher disbursement and all other records, files, and data as may be required by California law, statute and rules and regulations of the City's self-insurance plan, on each reported claim, which shall be available to the City during normal business hours for inspection.

1.10 Approve Payments. Determine extent and degree of all disability and death benefits payable to injured employees in accordance with acceptable and standard practices. Subject to City approval, Authorize payments in accordance with Findings and Awards of the Workers' Compensation Appeals Board (WCAB) or approved Compromise and Release Settlements, acting or recommending action to preclude unnecessary litigation to the extent that acceptable claims practice permits.

1.11 Reserves. Establish, maintain and revise individual claim file reserves as the situation at any given time may warrant, and as payments are made. Reserve levels shall be reviewed at least quarterly on active claims.

1.12 Investigations. Subject to prior approval of the City, arrange for field investigation of questionable cases, as well as surveillance on behalf of the City in each individual case. The expense for such investigation or surveillance is understood to be an "Allocated Loss Expense" as otherwise defined in this Agreement.

1.13 EDP Services. Provide at least monthly, computerized loss runs in such formats and at such times as may reasonably be required and mutually agreed upon. Such loss runs to be furnished to the City within fifteen (15) days following the end of the month in which the claim is reported. On line computer access will be available to the City. Upload Loss data to CSAC on City's behalf at CSAC required intervals for periods ending June 30, September 30, December 31 not later than 15th of the following month.

1.14 Filing Reports. Prepare and file on time, all reports as may be required by the Department of Industrial Relations or other Divisions of the State of California regarding the City's workers compensation self-insurance. A copy of the annual report will be prepared and filed with the City's Risk Manager each year not later than 30 days prior to the filing date established by the State.

1.15 Litigation and subrogation. Service Company shall be responsible for the following tasks in connection with disputed claims:

- A. File and serve medical reports to all interested parties on behalf of the City.
- B. Arrange all medical/legal evaluations, with copies of the medical records and a cover letter setting forth the issues of the case. This applies to agreed medical evaluations as well.
- C. Arrange for and control outside photocopy costs by sharing with all interested parties medical or personnel records when feasible.
- D. Make Workers' Compensation Appeal Board appearances on behalf of City on those cases that involve issues of permanent disability or future medical treatment as may be required in Service Company's capacity as claim handler.
- E. Assign complex issues, including but not limited to questions of an apportionment, AOE/COE, 132A, willful conduct, etc., to legal counsel with prior knowledge and consent of the City. However, Service Company will still continue to monitor and assist with the earliest resolution of the case. City retains the right to terminate legal counsel considered unsatisfactory by City
- F. Monitor all cases for potential subrogation, write correspondence to effect recovery, take all necessary action, including timely notification to City, assist in recovering through third party subrogation and recommend retaining legal counsel where litigation is necessary to effect recovery.
- G. Provide a written summary of all pending litigated and subrogated cases on a semi-annual basis, if requested.

1.16 Supplemental Job Displacement Benefits ("SJDB"). Subject to prior review with the City, initiate, coordinate, implement, monitor, and report all SJDB as required by statute for the City, as requested by the City. Prepare all necessary reports and documents for as may be required for SDJB.

1.17 MMSEA. Section 111 of the Medicare, Medicaid, and SCHIP (State Children's Health Insurance Programs) Extension Act of 2007 (all of which together shall be referred to as "MMSEA") (P.L. 110-173), contains mandatory reporting requirements ("MIR") for group health plan arrangements and for liability insurance (including self-insurance), no-fault insurance, and workers' compensation (see 42 U.S.C. 1395y(b)(7) & (8)). As respects compliance with MMSEA under this Agreement:

- A. City has the obligation to perform MIR requirements as respects Claims, register with the Centers for Medicare and Medicaid Services ("CMS") as a Responsible Reporting Entity ("RRE"), and provide to Service Company all relevant information including the RRE Identification Number(s) assigned.
- B. The following are the reporting agent(s) for the purpose of meeting MMSEA obligations including MIR requirements ("Reporting Agent(s)"):
 - i. for MMSEA reporting to CMS: Service Company.
 - ii. for MMSEA compliance and other related services: Service Company's Preferred Provider, unless City directs the use of a different vendor.
- C. Reporting Agent services include determining Medicare eligibility, reporting to CMS eligible Claims using the mandated format for a determination of Medicare eligibility, processing error corrections, and providing quarterly reports. Where applicable, Reporting Agent should also respond to all inquiries and requests for conditional payments, comply with settlement approvals, negotiate and prepare claim set-aside agreements ("CSA's") and Medicare set-aside agreements ("MSA's").
- D. City consents to the disclosure by Service Company of Claims information required by MIR

to Reporting Agent or others for the purpose of providing MIR pursuant to this Agreement. City and Service Company agree that Claim data reported to or by CMS is confidential and each shall take reasonably necessary steps to protect the confidentiality of this data.

E. City agrees that fees and charges by Reporting Agent incurred for compliance with MMSEA and other related services shall be paid by City and charged against the Claim Files as Allocated Loss Expenses. Such fees and charges are listed on Attachment B.

1.18 Additional Services. Service Company to also perform or use its Preferred Provider network, which may include Service Company, its affiliates and subsidiaries (including TRISTAR Managed Care, Inc.), or third parties to perform, the additional duties set forth in Attachment B (referred to as Preferred Provider Specialty Services). Fees for these services will be paid against the specific claim file as Allocated Loss Expenses or, where required by state law, as loss.

2. WARRANTS

2.1 **Dedicated Unit: Certification: Hours of Work.** Service Company warrants that it shall maintain a claim office in San Diego County to handle the City's claims. The claims office must maintain office hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excepting those Service Company holidays (not to exceed 12 days per calendar year) of which City is given not less than 14 days' notice. Service Company will commit: qualified state-certified supervisory staff with at least three years of claims administration experience including Labor Code Section 4850 experience, two state-certified claims examiners with Labor Code Section 4850 experience to the unit, and a designated claims assistant to work on City claims. This dedicated unit of two state-certified claims examiners and one assistant shall normally be available to the City during Service Company working hours; in any event, an examiner or supervisor with knowledge of all City claims shall be available during working hours. Written notice shall be provided to City of any change in the work schedule of the examiners. In the event Service Company replaces either current claims examiner for a period of more than 10 consecutive working days, the replacement shall also be a state-certified examiner.

2.2 Notification of Personnel Changes; Assignment of Claims. Service Company shall notify the City prior to any change in claims examiners, within 3 working days of any change in claims examiners, including temporary changes. Commencing August 1, 2016 and each month thereafter, by the 15th day of the month, Service Company shall deliver to City a written report for each examiner handling any claim under this Agreement, showing the total number of open indemnity claims assigned to the examiner during the prior month, and detailing the number of claims assigned. Service Company expressly warrants that neither examiner shall at any time have a total claim caseload which exceeds 160 open indemnity files.

2.3 Settlement Authority. Service Company also warrants that it will confer with a duly appointed representative of the City in accordance with the written instructions of City; or, in the absence of any written instructions, on all claims which may require any payment or which may result in a denial of benefits. All claims will require pertinent correspondence and reports, as determined by the City, to be provided to the City.

2.4 Payments. Service Company shall prepare and draft all checks necessary for payment of claims and claims expenses by City for execution by the City.

2.5 Audit Service. Company agrees to accept an independent audit of its work performance whenever requested by City. Files on all claims are the property of City and Service Company agrees to

provide access to such files at the request of City and in the event of termination of this Agreement, Service Company agrees to turn over all files on claims hereunder to City within five (5) working days of such request and at no cost to City.

2.6 San Diego Office. Service Company agrees that during the term of this Agreement it will establish and maintain a centrally located office in San Diego County, California, from which the majority of all claims activity will be conducted, including storage of City members' claims files.

2.7 Attendance of Meetings. Upon request of City, Service Company shall attend meetings called by City to discuss issues arising under this Agreement.

2.8 Claims Handling. In the performance of its obligations under this contract, work shall be assigned only to persons who are specially trained, experienced and competent in the administration of municipal workers compensation claims. City shall have the right to direct Service Company to not use a person who, in the opinion of City, is not so specially trained, experienced and competent to render the required services. In addition, City may at its own expense assign claims over six months old to an alternate claims administrator selected by City.

2.9 Service Company shall review all open indemnity claims within 60 days of the commencement of work under this contract to determine their status and necessary actions, as appropriate, and provide a brief written report to the City on the results of that review.

3. **EXCESS POLICIES**

City agrees to provide a complete copy of Excess Workers' Compensation insurance policy to Service Company. Service Company agrees to notify the Excess Workers' Compensation insurer of claims as required under the policy.

4. **INDEMNITY; PENALTIES; INSURANCE**

4.1 Indemnity and Hold Harmless. To the maximum extent allowed by law, Service Company shall protect, defend, indemnify and hold harmless City, its elected and appointed officers, agents, employees and volunteers (collectively, "Indemnified Parties"), from and against any and all claims, demands, causes of action, costs, expenses, (including reasonable attorneys' fees and court costs), liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner to the extent arising out of or incident to any alleged acts, omissions, negligence, or willful misconduct of Service Company, its officials, officers, employees, agents, and contractors, arising out of or in connection with the performance of this Agreement, including the results of such performance, or this Agreement. This indemnity provision does not include any claims, damages, liability, costs and expenses to the extent arising from the negligence or willful misconduct of the Indemnified Parties.

4.2 Service Company agrees to assist risk management consultant(s) in securing claims data which may be required for special program analysis. Any costs related thereto shall be paid by City.

4.3 Service Company agrees with City that each individual claim file is subject to audit by qualified representatives of City any time during normal work day hours, subject to prior notice.

4.4 The Parties acknowledge that California Worker's Compensation Benefits may result in the imposition of automatic penalties for late payments of Temporary and Permanent Disability Indemnity later than fourteen (14) days after they are due and payable. Penalties imposed as a result of the failure of

Service Company to properly perform its duties under this Agreement shall be and remain the responsibility of Service Company. Written notice of such penalty must be provided to participant when identified. However, where City unreasonably delays notification to Service Company, and Service Company has no opportunity to make provision for timely payment, and so advises the City upon being notified, any penalty resulting from late payment shall not be the responsibility of Service Company, but shall be the responsibility of the City. Notification by City to the Service Company within seven (7) working days after a City's knowledge of an injury to an employee shall not be considered an unreasonable delay.

4.5 No suit or arbitration shall be brought arising out of this Agreement against City unless a claim has first been presented in writing and filed with City and acted upon by City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may be amended, the provisions of which, including such policies and procedures used by City in the implementation of same, are incorporated herein by this reference. Upon request by City, Service Company shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.

4.6 Required Insurance. Service Company must procure and maintain, during the period of performance under this Agreement, and for twelve months thereafter, the policies of insurance described on the attached Attachment A, incorporated into the Agreement by this reference (the "Required Insurance"). The Required Insurance shall also comply with all other terms of this Section as follows:

- A. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions relating to the Required Insurance must be disclosed to and approved by City in advance of the commencement of work.
- B. Standards for Insurers. Required Insurance must be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of A V or better, or, if insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A X. For Workers' Compensation Insurance, insurance issued by the State Compensation Fund is also acceptable.
- C. Subcontractors. Service Company must include all sub-consultants/sub-contractors as insureds under its policies and/or furnish separate certificates and endorsements demonstrating separate coverage for those not under its policies. Any separate coverage for sub-Service Companies must also comply with the terms of this Agreement.
- D. Additional Insureds. City, its officers, officials, employees, agents, and volunteers must be named as additional insureds with respect to any policy of general liability, automobile, or pollution insurance specified as required in Attachment A or as may otherwise be specified by City's Risk Manager. The general liability additional insured coverage must be provided in the form of an endorsement to the Service Company's insurance using ISO CG 2010 (11/85) or its equivalent; such endorsement must not exclude Products/Completed Operations coverage.
- E. General Liability Coverage to be "Primary." Service Company's general liability coverage must be primary insurance as it pertains to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers is wholly separate from the insurance provided by Service Company and in no way relieves Service Company from its responsibility to provide insurance.
- F. No Cancellation. No Required Insurance policy may be canceled by Service Company during the required insured period under this Agreement, except after thirty days' prior written notice to the City by certified mail, return receipt requested. Prior to the effective date of any such cancellation Service Company must procure and put into effect equivalent coverage(s).

- G. Waiver of Subrogation. Service Company's insurer(s) will provide a Waiver of Subrogation in favor of the City for each Required Insurance policy under this Agreement. In addition, Service Company waives any right it may have or may obtain to subrogation for a claim against City.
- H. Verification of Coverage. Prior to commencement of any work, Service Company shall furnish City with original certificates of insurance and any amendatory endorsements necessary to demonstrate to City that Service Company has obtained the Required Insurance in compliance with the terms of this Agreement. The words "will endeavor" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" or any similar language must be deleted from all certificates. The required certificates and endorsements should otherwise be on industry standard forms. The City reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.
- I. Claims Made Policy Requirements. If General Liability, Pollution and/or Asbestos Pollution Liability and/or Errors & Omissions coverage are required and are provided on a claims-made form, the following requirements also apply:
 - i. The "Retro Date" must be shown, and must be before the date of this Agreement or the beginning of the work required by this Agreement.
 - ii. Insurance must be maintained, and evidence of insurance must be provided, for at least five (5) years after completion of the work required by this Agreement.
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of this Agreement, the Service Company must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the work required by this Agreement.
 - iv. A copy of the claims reporting requirements must be submitted to the City for review.
- J. Not a Limitation of Other Obligations. Insurance provisions under this section shall not be construed to limit the Service Company's obligations under this Agreement, including Indemnity.
- K. Additional Coverage. To the extent that insurance coverage provided by Service Company maintains higher limits than the minimums appearing in Attachment A, City requires and shall be entitled to coverage for higher limits maintained.

4.7 Service Company's obligations under this Section 4 shall survive the termination of this Agreement.

5. COMPENSATION

City agrees to pay Service Company for its services under this Agreement and the Service Company agrees to accept from the City the following in compensation:

5.1 A flat annual fee of \$285,266 for the period of August 1, 2016 to June 30, 2017. 1/11 of the annual fee will be paid monthly in arrears, ten (10) days following month end.

5.2 Allocated Loss Expenses, as defined in Section 9.1, shall also be paid by City. City understands and agrees that Service Company and its affiliates shall receive compensation in connection with the Preferred Provider Specialty Services. The amount of compensation Service Company receives will vary depending upon the services, the preferred provider, and may be calculated based on percentage of

savings, percentage of revenue to the provider, or Service Company's or its affiliate's mark-up of provider fees.

5.3 Any other payments that may be due under this Agreement shall be paid monthly in arrears fifteen (15) days following the end of the month and presentation to City of an itemized statement.

5.4 Additional charges to be paid by City include the printing of computer compatible checks or other such printing specifically requested by City.

6. TERM

6.1 The term of this Agreement shall be for the period commencing on August 1, 2016, and continuing until the last day of June 2017.

6.2 City may terminate this Agreement at any time upon the giving of sixty (60) days written notice to Service Company. Upon such termination or modification of Agreement, Service Company shall be entitled to a pro rata fee based upon work actually accomplished as of the effective date of such termination or modification.

6.3 Service Company may terminate this Agreement at any time upon the giving of ninety (90) days written notice to City. Upon such termination or modification of Agreement, Service Company shall be entitled to a pro rata fee based upon work actually accomplished as of the effective date of such termination or modification.

6.4 On termination, a final accounting will be made of the fees payable to the Service Company and of any funds belonging to City in possession of the Service Company, and any balance due either party will be promptly paid by the debtor party. Pending claim files and loss(es) are to revert to the control of and become the responsibility of the newly appointed "Service Company" or to City upon date of Agreement termination. Final accounting shall include any amounts due either party on account of such pending claim(s) and loss(es), including "Allocated Loss Expense."

6.5 In the event City terminates the Agreement in accordance with the terms of this Section, Service Company hereby expressly waives any and all claims for damages or compensation as a result of such termination except as expressly provided in this Section 6.

6.6 Upon termination, it is agreed that Service Company shall file an interim annual report with the City, Self-Insurance Plans, and State Department of Industrial Relations in accordance with applicable rules and regulations governing Workers Compensation Self-Insurance Plans, as well as such other official reports as may be required.

6.7 Upon expiration of the term of this Agreement or termination as set forth in this Section 6, Service Company shall cooperate with and assist the City in the transition from Service Company to the City or the City identified successor workers compensation claims management service company ("Successor Service Company"), so that any transition from Service Company proceeds with no interruptions in the handling or processing of workers compensation claims or related litigation, including the transfer of all data and documents related to pending and closed claims to the City or the Successor Service Company. The costs for the transfer of data and documents under this section 6.7 shall not exceed \$5,000.

7. NOTICES

7.1 Notices required pursuant to the terms of this Agreement shall be given by United States Mail, postage pre-paid, addressed to the parties as follows:

City:
City of Chula Vista
Attn: Courtney Chase, Human Resources Director
276 Fourth Avenue, Bldg. B
Chula Vista, CA 91910

Service Company:
TRISTAR Risk Management
100 Oceangate, Suite 700
Long Beach, CA 90802
Attn.: Thomas J. Veale

With a copy to:
TRISTAR Insurance Group, Inc.
2540 Route 130, Suite 109
Cranbury, NJ 08512
Attn.: General Counsel's Office

7.2 Notices shall be deemed given as of the time the same are placed in the course of transmission of the said Postal Service. Either party may, by written notice, change the address to which notices shall be provided.

8. AMENDMENTS

8.1 No change in or addition to this Agreement or any part hereof shall be valid unless in writing and signed by Service Company and approved and executed by the City.

8.2 Any Party proposing any amendment to this Agreement shall give the other Party prior written notice of intent to amend setting forth the specific language of the proposed amendment.

9. DEFINITIONS

9.1 The term "Allocated Loss Expense" shall mean, all WCAB or court costs, fees and expenses; fees for service of process; fees to attorneys; the cost of services of Undercover operatives and detectives; fees of independent adjusters or attorneys for investigation or adjustment of claims; the cost of employing experts for the purpose of preparing maps, photographs, diagrams, chemical or physical analysis, or giving expert advice or opinions involving chemical or physical questions; the cost of copies of transcripts of testimony at coroner's inquests or criminal or civil proceedings; the cost of obtaining copies of any public records, medical records, credit bureau reports, index bureau reports, and other like reports; the cost of depositions and court reporter or recorded statements; any costs involving the trustee account or printing of checks; fees and expenses for experts or consultants, and all other medical cost containment services unless regulatory or reporting requirements define such expenses as loss or indemnity payments; and any similar costs or expenses properly chargeable to the dense of a particular claim or protection of the subrogation rights of City; provided, however, that all of the above services

performed by claims technician employees of Service Company shall not be considered Allocated Loss Expenses.

9.2 The term "Indemnity Claim" means a work injury case which has or may result in any of the following:

- A. Temporary disability or salary in lieu thereof;
- B. Permanent disability;
- C. Life pension;
- D. Death; or
- D. Litigated case.

9.3 The term "Medical Only Claim" means a work injury case in which it appears that no indemnity benefits are due or payable.

9.4 The term "Reportable Loss" means every injury or occupational illness to each employee arising out of or in the course of his employment, unless disability resulting from such injury does not last through the day or does not require medical service, other than ordinary first aid treatment.

9.5 The term "Claim" shall include all new claims reported subsequent to the effective date of this Agreement, plus all previous claims remaining open upon assumption of jurisdiction by Service Company, as well as previously closed claim upon their re-opening.

10. LOSS REPORTING

City agrees to report to Service Company all Reportable Losses, as defined in this Agreement

11. SEVERABILITY

If any portion of this Agreement is held by a court or arbitrator of competent jurisdiction to be invalid, void and unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

12. ASSIGNMENT

City would not have entered into this Agreement but for Service Company's unique qualifications and traits. Service Company shall not assign any of its rights or responsibilities under this Agreement, or any part hereof, without City's prior written consent, which City may grant, condition or deny in its sole discretion.

13. INDEPENDENT CONTRACTOR

Service Company, its officers, employees, and agents, shall be considered and remain in the status of an independent contractor, and not employees of City for the purposes of carrying out any of the terms and conditions set forth in this Agreement.

14. CONFIDENTIALITY

14.1 Service Company agrees that it may acquire and develop knowledge concerning the employees of the City, and related litigation involving the City which is confidential in nature. Service Company

agrees that, to the extent permitted by law, such information shall be considered to be acquired in confidence and shall not be disclosed to others without the consent of the employee or, as to litigation, the City.

14.2 Information and Data. Service Company and/or City, as indicated, shall comply with the following:

1. Service Company and City shall comply with all applicable local, state, and federal laws related to data and information confidentiality, security, loss, and breach, including but not limited to: California Medical Information Act (CMIA); Health Insurance Privacy and Portability Act (HIPPA); Health Information Technology for Economic and Clinical Health Act (HITECH); The Fair Credit Reporting Act (FCRA); and Children's Online Privacy Protection Act (COPPA), to the extent required by the applicable local, state, and federal laws.

2. Service Company will have in place, will maintain, and apply at all times data and information security standards which are consistent with relevant industry standards for the protection of data and information and which deal comprehensively with:

- A. The protection of the confidentiality, integrity and security of all and any data or information (including medical and personal information) supplied to the Service Company by Client or Service Company;
- B. The audit and accounting procedures in place to deal with the requirements of this section;
- C. The reliability and training of staff to ensure awareness of (and compliance with) their obligations under this section; and
- D. Any other measures and procedures to ensure that the Service Company's obligations under this section are met.

3. Service Company and City shall take all reasonable precautions to preserve the integrity and prevent any breach, corruption, loss, damage, or destruction of data and information (including medical or personal information) provided by City or Service Company.

4. Service Company, including its agents, partners, and subcontractors, shall notify City once it becomes aware of any data security breach to City's information. Service Company shall take immediate action to stop and remedy any data security breach. In addition, Service Company shall, at Service Company's expense, also aid in any required notices or remedial measures required by any applicable law as a result of any data breach sustained by Service Company, including their partners, agents, and subcontractors.

5. Personal information means information provided to, by, or at the direction of City, or to which access was provided to Service Company by or at the direction of City, in the course of Service Company's performance under this Agreement that, but is not limited to: (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, e-mail addresses and other unique identifiers) or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, financial account numbers, credit report information, biometric or health data, answers to security questions and other personal identifiers).

6. Data Breach means (i) any act or omission that compromises either the security, confidentiality or integrity of Personal Information or the physical, technical, administrative or organizational safeguards put in place by Service Company that relate to the protection of the security,

confidentiality or integrity of Personal Information, or (ii) receipt of a complaint in relation to the privacy practices of Service Company or a breach or alleged breach of this Agreement relating to such privacy practices.

7. The parties acknowledge that in the course of dealings between each other:

- A. Each party will acquire from the other information about business activities and operations, technical information and trade secrets, all of which are highly confidential and proprietary (“Confidential Business Information”). Confidential Business Information shall not include (i) information already known to a party; (ii) information which now is or hereafter becomes publicly known through no wrongful act of a party, (iii) information received by a party from a third party without similar restriction and without breach of this Agreement; (iv) information independently developed by a party; (v) information approved for release by written authorization of the other party; and (vi) information which, after notice to a party providing a reasonable opportunity to contest disclosure, must be disclosed pursuant to the requirements of a governmental agency or a final binding order of a court of competent jurisdiction;
- B. Each party may gain access to and/or generate information of Service Company’s consumers, customers, insureds or claimants which may include personally identifiable, financial and/or health information which may be protected by federal, state and local laws (“Protected Information”).

8. In the event a party provides its Confidential Business Information and/or Protected Information (collectively “Confidential Information”) to the other party (“Receiving Party”), such Confidential Information shall be provided subject to the following confidentiality terms:

- A. A party’s Confidential Information shall be safeguarded by the Receiving Party with at least as great a degree of care as the Receiving Party uses to safeguard its own most confidential materials or information relating to its own business. Service Company shall conspicuously mark information that it deems Confidential Business Information.
- B. The Confidential Information must be circulated, quoted, disclosed, or distributed solely on a “need to know basis” and only to employees, attorneys, or consultants of the Receiving Party (“Representatives”) after such Representatives have been informed of and agreed to be bound by this duty of confidentiality. Further, a Receiving Party agrees to obligate each of its Representatives to a level of care sufficient to protect the Confidential Information from unauthorized use or disclosure.
- C. A Receiving Party and its Representatives shall not further circulate, quote, disclose or distribute any of the Confidential Information except as permitted under this Section 8.

14.3 The provisions of this Section 14 shall survive the termination of this Agreement.

15. LAW GOVERNING AGREEMENT AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the State of California. To the extent permitted by law, any action arising under or relating to this Agreement shall be brought only in San Diego County, State of California.

16. HOLIDAYS

Service Company must provide a list of days its office will be closed because of a holiday within 30 days of the execution of this Agreement. The number of holidays on which the office is closed may not exceed 12 days per year.

17. INTENTIONALLY OMITTED

18. CONFLICTS

Service Company warrants and represents that it has disclosed to City any economic interests held by Service Company, or its employees or subcontractors who will be performing the required services, in any real property or project which is the subject of this Agreement. Service Company warrants and represents that it has not employed or retained any company or person, other than a bona fide employee or approved subcontractor working solely for Service Company, to solicit or secure this Agreement. Further, Service Company warrants and represents that it has not paid or agreed to pay any company or person, other than a bona fide employee or approved subcontractor working solely for Service Company, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Service Company further warrants and represents that no officer or employee of City has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, the proceeds hereof, or in the business of Service Company or Service Company's subcontractors. Service Company further agrees to notify City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement. For breach or violation of any of these warranties, City shall have the right to rescind this Agreement without liability.

19. COUNTERSIGNATURE; ELECTRONIC SIGNATURES

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by e-mail transmission shall constitute effective execution and delivery of this Agreement and may be used in lieu of the original for all purposes. Signatures of the parties transmitted by e-mail shall be deemed to be their original signatures for all purposes.

(Signature Page to follow.)

SIGNATURE PAGE FOR AGREEMENT BETWEEN CITY OF CHULA VISTA AND TRISTAR RISK MANAGEMENT FOR WORKERS COMPENSATION CLAIMS ADMINISTRATION SERVICES

IN WITNESS WHEREOF, by executing this Agreement where indicated below, City and Service Company agree that they have read and understood all terms and conditions of this Agreement, that they fully agree and consent to bound by same, and that they are freely entering into this Agreement as of the Effective Date.

CITY OF CHULA VISTA

TRISTAR RISK MANAGEMENT

BY: _____
GARY HALBERT
CITY MANAGER

BY: _____
NAME:
TITLE:

APPROVED AS TO FORM

BY _____
GLEN R. GOOGINS
CITY ATTORNEY

**ATTACHMENT A
INSURANCE REQUIREMENTS**

Service Company shall adhere to all terms and conditions of Section 3 of the Agreement and agrees to provide the following types and minimum amounts of insurance, as indicated by checking the applicable boxes (x).

	Type of Insurance	Minimum Amount	Form
<input checked="" type="checkbox"/>	General Liability: Including products and completed operations, personal and advertising injury	\$2,000,000 per occurrence for bodily injury, personal injury (including death), and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this Agreement or the general aggregate limit must be twice the required occurrence limit Additional Insured Endorsement or Blanket AI Endorsement for City* Waiver of Recovery Endorsement	Insurance Services Office Form CG 00 01 <i>*Must be primary and must not exclude Products/Completed Operations</i>
<input checked="" type="checkbox"/>	Automobile Liability	\$1,000,000 per accident for bodily injury, including death, and property damage	Insurance Services Office Form CA 00 01 Code 1-Any Auto Code 8-Hired Code 9-Non Owned
<input checked="" type="checkbox"/>	Workers' Compensation Employer's Liability	\$1,000,000 each accident \$1,000,000 disease policy limit \$1,000,000 disease each employee Waiver of Recovery Endorsement	
<input checked="" type="checkbox"/>	Professional Liability (Errors & Omissions)	\$1,000,000 each occurrence \$2,000,000 aggregate	

If Service Company maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by Service Company.

**ATTACHMENT B
PREFERRED PROVIDER SPECIALTY SERVICES**

Schedule C is effective as of August 1, 2016 and is subject to change from time to time thereafter upon notice to City. These Preferred Provider Specialty Services fees are paid as Allocated Loss Expenses or, where required by state law, as loss. These fees shall be paid against the specific claim file.

SERVICES	FEES
MANAGED CARE	
BILL REVIEW: MEDICAL AND PHARMACY	
Bill Review	\$7.50 per bill, <i>plus</i>
PPO Network Access:	
PPO Network Discount	25% of the difference between the state fee schedule and the PPO rate
Hospital Inpatient & Outpatient Fee	12% of the difference between the state fee schedule and the PPO rate
Specialty Bill Review	30% of the difference between the state fee schedule and the PPO rate
Duplicate Bills, Duplicate Line items, Courier Service, Attendance at WCAB Hearings	No Charge
UTILIZATION REVIEW	
Flat Fee (In-Patient & Out-Patient)	\$95 flat rate (includes review to treatment protocols, negotiating treatment, directing into PPO, preparing file for Peer Review, sending all parties documentation and noting the file)
Hourly	\$95 - \$105 per hour
PEER REVIEW (PHYSICIAN ADVISOR)	
Level 1 (Physician Advisor Determination)	\$200 flat rate (includes review of medical records and communication of decision in writing to all parties)
Level 2 (Physician Appeal/Same Specialty)	\$250 flat rate (includes review of medical records and communication of decision in writing to all parties)
MEDICAL CASE MANAGEMENT	
Early Intervention	\$95 per hour
Telephonic	\$95 per hour
Field	\$95 per hour, plus Mileage at IRS mileage rate
Wellness Program (hourly)	\$95 per hour
Wellness Program (with HCA screening, follow-up & quarterly maintenance, as appropriate)	\$10 per month, per employee
Medical Provider Networks (MPN) (California)	Standard: No charge Customized: \$500 per month (includes filing State reports, web access)
OTHER	
Special Investigations	Based on assignment, typically \$65 per hour
Legal Bill Review	5% of total originally billed by attorney
Central Index Bureau	Actual cost (as of 1/1/15, it is \$8.75 per report)
Claim Reporting: Telephonic	\$18 per report
Claim Reporting: Fax or Internet	\$9 per report
MMSEA Reporting	\$8.20 (additional fees apply for MMSEA Compliance & Other Related Services)
Mileage	IRS allowance rate