

**CITY OF CHULA VISTA CONSULTANT SERVICES AGREEMENT WITH INTERCARE HOLDINGS INSURANCE SERVICES, INC., TO PROVIDE THIRD PARTY WORKERS' COMPENSATION ADMINISTRATIVE SERVICE**

This Agreement is entered into effective as of July 1, 2017 ("Effective Date") by and between the City of Chula Vista, a chartered municipal corporation ("City") and Intercare Holdings Insurance Services, Inc., A California Corporation ("Consultant") (collectively, the "Parties" and, individually, a "Party") with reference to the following facts:

**RECITALS**

WHEREAS, City requires third party workers' compensation administration services in order to administer California Labor Code benefits (Workers' Compensation Benefits) for injured/ill employees; and

WHEREAS, in order to procure these services City solicited proposals in accordance with Chula Vista Municipal Code Section 2.56.110 for Professional Services. The City received six proposals and selected Consultant as the most qualified amongst those submitting after conducting oral interviews and checking references; and

WHEREAS, Consultant warrants and represents that it is experienced and staffed in a manner such that it can deliver the services required of Consultant to City in accordance with the time frames and the terms and conditions of this Agreement.

**[End of Recitals. Next Page Starts Obligatory Provisions.]**

## OBLIGATORY PROVISIONS

NOW, THEREFORE, in consideration of the above recitals, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, City and Consultant hereby agree as follows:

### 1. SERVICES

1.1 Required Services. Consultant agrees to perform the services (and deliver to City the “Deliverables” (if any)) described in the attached Exhibit A, incorporated into the Agreement by this reference, within the time frames set forth therein, time being of the essence for this Agreement. The services (and/or Deliverables) described in Exhibit A shall be referred to herein as the “Required Services.”

1.2 Reductions in Scope of Work. City may independently, or upon request from Consultant, from time to time, reduce the Required Services to be performed by the Consultant under this Agreement. Upon doing so, City and Consultant agree to meet and confer in good faith for the purpose of negotiating a corresponding reduction in the compensation associated with the reduction.

1.3 Additional Services. Subject to compliance with the City’s Charter, codes, policies, procedures and ordinances governing procurement and purchasing authority, City may request Consultant provide additional services related to the Required Services (“Additional Services”). If so, City and Consultant agree to meet and confer in good faith for the purpose of negotiating an amendment to Exhibit A, to add the Additional Services. Unless otherwise agreed, compensation for the Additional Services shall be charged and paid consistent with the rates and terms already provided therein. Once added to Exhibit A, “Additional Services” shall also become “Required Services” for purposes of this Agreement.

1.4 Standard of Care. Consultant expressly warrants and agrees that any and all Required Services hereunder shall be performed in accordance with the highest standard of care exercised by members of the profession currently practicing under similar conditions and in similar locations.

1.5 No Waiver of Standard of Care. Where approval by City is required, it is understood to be conceptual approval only and does not relieve the Consultant of responsibility for complying with all laws, codes, industry standards, and liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of the Consultant or its subcontractors.

1.6 Security for Performance. In the event that Exhibit A Section 4 indicates the need for Consultant to provide additional security for performance of its duties under this Agreement, Consultant shall provide such additional security prior to commencement of its Required Services in the form and on the terms prescribed on Exhibit A, or as otherwise prescribed by the City Attorney.

1.7 Compliance with Laws. In its performance of the Required Services, Consultant shall comply with any and all applicable federal, state and local laws, including the Chula Vista Municipal Code.

1.8 Business License. Prior to commencement of work, Consultant shall obtain a business license from City.

1.9 Subcontractors. Prior to commencement of any work, Consultant shall submit for City’s information and approval a list of any and all subcontractors to be used by Consultant in the performance of the Required Services. Consultant agrees to take appropriate measures necessary to ensure that all subcontractors and

personnel utilized by the Consultant to complete its obligations under this Agreement comply with all applicable laws, regulations, ordinances, and policies, whether federal, state, or local. In addition, if any subcontractor is expected to fulfill any responsibilities of the Consultant under this Agreement, Consultant shall ensure that each and every subcontractor carries out the Consultant's responsibilities as set forth in this Agreement.

1.10 Term. This Agreement shall commence on the earlier to occur of the Effective Date or Consultant's commencement of the Required Services hereunder, and shall terminate when the Parties have complied with all their obligations hereunder; provided, however, provisions which expressly survive termination shall remain in effect.

## 2. COMPENSATION

2.1 General. For satisfactory performance of the Required Services, City agrees to compensate Consultant in the amount(s) and on the terms set forth in Exhibit A, Section 4, and Exhibit D. Standard terms for billing and payment are set forth in this Section 2.

2.2 Detailed Invoicing. Consultant agrees to provide City with a detailed invoice for services performed each month, within thirty (30) days of the end of the month in which the services were performed, unless otherwise specified in Exhibit A. Invoicing shall begin on the first of the month following the Effective Date of the Agreement. All charges must be presented in a line item format with each task separately explained in reasonable detail. Each invoice shall include the current monthly amount being billed, the amount invoiced to date, and the remaining amount available under any approved budget. Consultant must obtain prior written authorization from City for any fees or expenses that exceed the estimated budget.

2.3 Payment to Consultant. Upon receipt of a properly prepared invoice and confirmation that the Required Services detailed in the invoice have been satisfactorily performed, City shall pay Consultant for the invoice amount within thirty (30) days. Payment shall be made in accordance with the terms and conditions set forth in Exhibit A..

2.4 Intentionally Omitted.

2.5 Reimbursement of Costs. City may reimburse Consultant's out-of-pocket costs incurred by Consultant in the performance of the Required Services if negotiated in advance and included in Exhibit A. Unless specifically provided in Exhibit A, Consultant shall be responsible for any and all out-of-pocket costs incurred by Consultant in the performance of the Required Services.

2.6 Exclusions. City shall not be responsible for payment to Consultant for any fees or costs in excess of any agreed upon budget, rate or other maximum amount(s) provided for in Exhibit A and Exhibit D. City shall also not be responsible for any cost: (a) incurred prior to the Effective Date (unless otherwise agreed upon); or (b) arising out of or related to the errors, omissions, negligence or acts of willful misconduct of Consultant, its agents, employees, or subcontractors.

2.7 Payment Not Final Approval. Consultant understands and agrees that payment to the Consultant or reimbursement for any Consultant costs related to the performance of Required Services does not constitute a City final decision regarding whether such payment or cost reimbursement is allowable and eligible for payment under this Agreement, nor does it constitute a waiver of any violation by Consultant of the terms of this Agreement. If City determines that Consultant is not entitled to receive any amount of compensation already paid, City will notify Consultant in writing and Consultant shall promptly return such amount.

### 3. INSURANCE

3.1 Required Insurance. Consultant must procure and maintain, during the period of performance of Required Services under this Agreement, and for twelve months after completion of Required Services, the policies of insurance described on the attached Exhibit B, incorporated into the Agreement by this reference (the “Required Insurance”). The Required Insurance shall also comply with all other terms of this Section.

3.2 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.

3.3 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.

3.4 Subcontractors. Consultant 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-consultants must also comply with the terms of this Agreement.

3.5 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 Exhibit B or as may otherwise be specified by the City Attorney or designee. The general liability additional insured coverage must be provided in the form of an endorsement to the Consultant’s insurance using ISO CG 2010 (11/85) or its equivalent; such endorsement must not exclude Products/Completed Operations coverage.

3.6 General Liability Coverage to be “Primary.” Consultant’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 Consultant and in no way relieves Consultant from its responsibility to provide insurance.

3.7 No Cancellation. No Required Insurance policy may be canceled by either Party 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 Consultant must procure and put into effect equivalent coverage(s).

3.8 Waiver of Subrogation. Consultant’s insurer(s) will provide a Waiver of Subrogation in favor of the City for each Required Insurance policy under this Agreement. In addition, Consultant waives any right it may have or may obtain to subrogation for a claim against City.

3.9 Verification of Coverage. Prior to commencement of any work, Consultant shall furnish City with original certificates of insurance and any amendatory endorsements necessary to demonstrate to City that Consultant 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.

3.10 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:

a. 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.

b. 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.

c. 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 Consultant must purchase “extended reporting” coverage for a minimum of five (5) years after completion of the work required by this Agreement.

d. A copy of the claims reporting requirements must be submitted to the City for review.

3.11 Not a Limitation of Other Obligations. Insurance provisions under this section shall not be construed to limit the Consultant’s obligations under this Agreement, including Indemnity.

3.12 Additional Coverage. To the extent that insurance coverage provided by Consultant maintains higher limits than the minimums appearing in Exhibit B, City requires and shall be entitled to coverage for higher limits maintained.

#### **4. INDEMNIFICATION**

4.1. General. To the maximum extent allowed by law, Consultant 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 arising out of or incident to any alleged acts, omissions, negligence, or willful misconduct of Consultant, its officials, officers, employees, agents, and contractors, arising out of or in connection with the performance of the Required Services, the results of such performance, or this Agreement. This indemnity provision does not include any claims, damages, liability, costs and expenses arising from the sole negligence or willful misconduct of the Indemnified Parties. Also covered is Consultant’s proportionate share of liability (as determined by a Court of competent jurisdiction) arising from, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions of the Indemnified Parties which may be in combination with the active or passive negligent acts or omissions of the Consultant, its employees, agents or officers, or any third party.

4.2 Assistance to Risk Management Consultants. Consultant 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 Audit. Consultant 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 WC Penalties. 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 Consultant to properly perform its duties under this Agreement shall be and remain the responsibility of Consultant. Written notice of such penalty must be provided to participant when identified. However, where City unreasonably delays notification to Consultant, and Consultant 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 Consultant, but shall be the responsibility of the City. Notification by City to the Consultant 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 Costs of Defense and Award. Included in Consultant's obligations under this Section 4 is Consultant's obligation to defend, at Consultant's own cost, expense and risk, any and all suits, actions or other legal proceedings that may be brought or instituted against one or more of the Indemnified Parties. Subject to the limitations in this Section 4, Consultant shall pay and satisfy any judgment, award or decree that may be rendered against one or more of the Indemnified Parties for any and all related legal expenses and costs incurred by any of them.

4.6 Consultant's Obligations Not Limited or Modified. Consultant's obligations under this Section 4 shall not be limited to insurance proceeds, if any, received by the Indemnified Parties, or by any prior or subsequent declaration by the Consultant. Furthermore, Consultant's obligations under this Section 4 shall in no way limit, modify or excuse any of Consultant's other obligations or duties under this Agreement.

4.7 Enforcement Costs. Consultant agrees to pay any and all costs City incurs in enforcing Consultant's obligations under this Section 4.

4.8 Survival. Consultant's obligations under this Section 4 shall survive the termination of this Agreement.

## 5. FINANCIAL INTERESTS OF CONSULTANT.

5.1 Form 700 Filing. The California Political Reform Act and the Chula Vista Conflict of Interest Code require certain government officials and consultants performing work for government agencies to publicly disclose certain of their personal assets and income using a Statement of Economic Interests form (Form 700). In order to assure compliance with these requirements, Consultant shall comply with the disclosure requirements identified in the attached Exhibit C, incorporated into the Agreement by this reference.

5.2 Disclosures; Prohibited Interests. Independent of whether Consultant is required to file a Form 700, Consultant warrants and represents that it has disclosed to City any economic interests held by Consultant, 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. Consultant 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 Consultant, to solicit or secure this Agreement. Further, Consultant 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 Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant 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 Consultant or Consultant's subcontractors. Consultant 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.

## 6. TERMINATION

6.1 Termination for Cause. If for any reason whatsoever Consultant shall fail to perform the Required Services under this Agreement, in a proper or timely manner, or if Consultant shall violate any of the other covenants, agreements or conditions of this Agreement (each a "Default"), in addition to any and all other rights and remedies City may have under this Agreement, at law or in equity, City shall have the right to terminate this Agreement by giving fifteen (15) days written notice to Consultant. Such notice shall identify the Default and the Agreement termination date. If Consultant notifies City of its intent to cure such Default prior to City's specified termination date, and City agrees that the specified Default is capable of being cured, City may grant Consultant up to thirty (30) additional days after the designated termination date to effectuate such cure. In the event of a termination under this Section 6.1, Consultant shall immediately provide City any and all "Work Product" (defined in Section 7 below) prepared by Consultant as part of the Required Services. Such Work Product shall be City's sole and exclusive property as provided in Section 7 hereof. Consultant may be entitled to compensation for work satisfactorily performed prior to Consultant's receipt of the Default notice; provided, however, in no event shall such compensation exceed the amount that would have been payable under this Agreement for such work, and any such compensation shall be reduced by any costs incurred or projected to be incurred by City as a result of the Default.

6.2 Termination or Suspension for Convenience of City. City may suspend or terminate this Agreement, or any portion of the Required Services, at any time and for any reason, with or without cause, by giving specific written notice to Consultant of such termination or suspension at least fifteen (15) days prior to the effective date thereof. Upon receipt of such notice, Consultant shall immediately cease all work under the Agreement and promptly deliver all "Work Product" (defined in Section 7 below) to City. Such Work Product shall be City's sole and exclusive property as provided in Section 7 hereof. Consultant shall be entitled to receive just and equitable compensation for this Work Product in an amount equal to the amount due and payable under this Agreement for work satisfactorily performed as of the date of the termination/suspension notice plus any additional remaining Required Services requested or approved by City in advance that would maximize City's value under the Agreement.

6.3 Waiver of Claims. In the event City terminates the Agreement in accordance with the terms of this Section, Consultant 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.

6.4 Reports. Upon expiration or termination of this Agreement, it is agreed that Consultant 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.

6.5 Transfer of Service Cooperation. Upon expiration of the term of this Agreement or termination as set forth in this Section 6, Consultant shall cooperate with and assist the City in the transition from Consultant to

the City or the City identified successor workers compensation claims management Consultant (“Successor Consultant”), so that any transition from Consultant 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 Consultant. The costs for the transfer of data and documents under this Section 6.5 shall not exceed \$5,000.

6.6 Final Accounting. Upon expiration of the term of this Agreement or termination, a final accounting will be made of the fees payable to the Consultant and of any funds belonging to City in possession of the Consultant, 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 "Consultant" 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."

## 7. OWNERSHIP AND USE OF WORK PRODUCT

All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems and any other materials or properties produced in whole or in part under this Agreement in connection with the performance of the Required Services (collectively “Work Product”) shall be the sole and exclusive property of City. No such Work Product shall be subject to private use, copyrights or patent rights by Consultant in the United States or in any other country without the express, prior written consent of City. City shall have unrestricted authority to publish, disclose, distribute, and otherwise use, copyright or patent, in whole or in part, any such Work Product, without requiring any permission of Consultant, except as may be limited by the provisions of the Public Records Act or expressly prohibited by other applicable laws. With respect to computer files containing data generated as Work Product, Consultant shall make available to City, upon reasonable written request by City, the necessary functional computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

## 8. CONFIDENTIALITY

8.1 Confidentiality. Consultant 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, including attorney-client communications or work product. Consultant 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.

8.2 Information and Data. Consultant and/or City, as indicated, shall comply with the following:

1. Consultant 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. Consultant 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 Consultant by Client or Consultant;
- 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 Consultant's obligations under this section are met.

3. Consultant 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 Consultant.

4. Consultant, including its agents, partners, and subcontractors, shall notify City once it becomes aware of any data security breach to City's information. Consultant shall take immediate action stop and remedy any data security breach. In addition, Consultant shall, at Consultant'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 Consultant, 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 Consultant by or at the direction of City, in the course of Consultant'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 Consultant 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 Consultant 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 Consultant'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. Consultant 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.

## **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 including bill review, utilization review and nurse case management 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 Consultant 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;
- E. Litigated case; or
- F. Issues of compensability.

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 Consultant, as well as previously closed claim upon their re-opening.

## 10. GENERAL PROVISIONS

10.1 Amendment. This Agreement may be amended, but only in writing signed by both Parties.

10.2 Assignment. City would not have entered into this Agreement but for Consultant's unique qualifications and traits. Consultant shall not assign any of its rights or responsibilities under this Agreement, nor any part hereof, without City's prior written consent, which City may grant, condition or deny in its sole discretion.

10.3 Authority. The person(s) executing this Agreement for Consultant warrants and represents that they have the authority to execute same on behalf of Consultant and to bind Consultant to its obligations hereunder without any further action or direction from Consultant or any board, principle or officer thereof.

10.4 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one Agreement after each Party has signed such a counterpart.

10.5 Entire Agreement. This Agreement together with all exhibits attached hereto and other agreements expressly referred to herein, constitutes the entire Agreement between the Parties with respect to the subject matter contained herein. All exhibits referenced herein shall be attached hereto and are incorporated herein by reference. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are superseded.

10.6 Record Retention. During the course of the Agreement and for three (3) years (or as otherwise required by law, whichever is longer) following completion of the Required Services, Consultant agrees to maintain, intact and readily accessible, all data, documents, reports, records, contracts, and supporting materials relating to the performance of the Agreement, including accounting for costs and expenses charged to City, including such records in the possession of sub-contractors/sub-consultants.

10.7 Further Assurances. The Parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the Parties.

10.8 Independent Contractor. Consultant is and shall at all times remain as to City a wholly independent contractor. Neither City nor any of its officers, employees, agents or volunteers shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents ("Consultant Related Individuals"), except as set forth in this Agreement. No Consultant Related Individuals shall be deemed employees of City, and none of them shall be entitled to any benefits to which City employees are entitled, including but not limited to, overtime, retirement benefits, worker's compensation benefits, injury leave or

other leave benefits. Furthermore, City will not withhold state or federal income tax, social security tax or any other payroll tax with respect to any Consultant Related Individuals; instead, Consultant shall be solely responsible for the payment of same and shall hold the City harmless with respect to same. Consultant shall not at any time or in any manner represent that it or any of its Consultant Related Individuals are employees or agents of City. Consultant shall not incur or have the power to incur any debt, obligation or liability whatsoever against City, or bind City in any manner.

10.9 Notices. All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands and requests to be sent to any Party shall be deemed to have been properly given or served if personally served or deposited in the United States mail, addressed to such Party, postage prepaid, registered or certified, with return receipt requested, at the addresses identified in this Agreement at the places of business for each of the designated Parties as indicated in Exhibit A, or otherwise provided in writing.

10.10 Administrative Claims Requirements and Procedures. 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, Consultant shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.

10.11 Governing Law/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in San Diego County, State of California.

10.12 Service of Process. Consultant agrees that it is subject to personal jurisdiction in California. If Consultant is a foreign corporation, limited liability company, or partnership that is not registered with the California Secretary of State, Consultant irrevocably consents to service of process on Consultant by first class mail directed to the individual and address listed under "For Legal Notice," in section 1.B. of Exhibit A to this Agreement, and that such service shall be effective five days after mailing.

**(End of page. Next page is signature page.)**

**SIGNATURE PAGE  
CONSULTANT SERVICES AGREEMENT**

IN WITNESS WHEREOF, by executing this Agreement where indicated below, City and Consultant agree that they have read and understood all terms and conditions of the 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.

INTERCARE HOLDINGS INSURANCE  
SERVICES, INC.

CITY OF CHULA VISTA

BY: \_\_\_\_\_  
Agnes Hoerberling  
Chief Operating Officer

BY: \_\_\_\_\_  
DAVID BILBY, MSBA, CPFO  
DIRECTOR OF FINANCE/TREASURER

ATTEST<sup>1</sup>

BY: \_\_\_\_\_  
Donna R. Norris, CMC  
City Clerk

APPROVED AS TO FORM

BY: \_\_\_\_\_  
Glen R. Googins  
City Attorney

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<sup>1</sup> Attestation signature only required if the Mayor signs the Agreement. If Mayor is not signing agreement, delete entire attestation signature block.

**EXHIBIT A**  
**SCOPE OF WORK AND PAYMENT TERMS**

**1. Contact People for Contract Administration and Legal Notice**

A. City Contract Administration:

Enter City Staff Person Name

Enter Mailing Address

Enter Phone Number

Enter Email Address

For Legal Notice Copy to:

City of Chula Vista

City Attorney

276 Fourth Avenue, Chula Vista, CA 91910

619-691-5037

CityAttorney@chulavistaca.gov

B. Consultant Contract Administration:

**INTERCARE HOLDINGS INSURANCE SERVICES, INC.**

Maggie Jaltorossian, Vice President

P.O. Box 7111, Pasadena, CA 91109

818-459-8213

mjaltorossian@intercareins.com

For Legal Notice Copy to:

Agnes Hoeberling, Chief Operating Officer

P.O. Box 579 Roseville, CA 95661

916/677-4359

ahoeberling@intercareins.com

**2. Required Services**

A. General Description:

Consultant is to provide Third Party Workers' Compensation Consulting Services as described in the City of Chula Vista Request for Proposal ("RFP") dated March 3, 2017.

B. Detailed Description:

Tasks to be performed are detailed and described in the Chula Vista Request for Proposal dated March 3, 2017 and Intercare Holdings Insurances Services, Inc., Response to Request for Services dated March 24, 2017 (as accepted by the City), which are hereby fully incorporated into this Agreement. Such tasks, include but are not limited to, and will be performed in a manner consistent with and subject to Attachment A (Workers' Compensation Guidelines Claims Administration Guidelines and Workers' Compensation Claims Audit Philosophy and Expectations) of the March 3, 2017 RFP (which are hereby fully incorporated by reference into this Agreement), the following:



- Forms. Consult with City to supply and distribute necessary forms to establish program procedures and practices.
- Process Claims. Review and process all reported industrial injury and occupational disease claims in accordance with State requirements.
- 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.
- 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.
- 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.
- Education. Conduct or assist in orientation or educational meetings with City personnel who are involved directly or indirectly with the processing of claims.
- 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.
- Index Use. Utilize the Index Bureau on cases where such use is merited, provided the City subscribes to such service.
- 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.
- 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.
- 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.
- 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.
- 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 the California State Association of Counties ("CSAC") on City's behalf at CSAC required intervals for periods ending June 30, September 30, December 31 not later than 15<sup>th</sup> of the following month.
- 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 Director of Human Resources each year not later than 30 days prior to the filing date established by the State.

- Litigation and subrogation. Consultant 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 Consultant'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, Consultant 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.
- 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.
- 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)). With respect to 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 Consultant 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: Consultant.
    - ii. for MMSEA compliance and other related services: Consultant'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 Consultant of Claims information required by MIR to Reporting Agent or others for the purpose of providing MIR pursuant to this Agreement. City and Consultant 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 in this Agreement.

- **Additional Services.** Consultant to also perform or use its Preferred Provider network, which may include Consultant, its affiliates and subsidiaries or third parties to perform, the additional duties set forth in Exhibit D (also 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.
- **Dedicated Unit: Certification: Hours of Work.** The claims office must maintain office hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excepting those Consultant holidays (not to exceed 12 days per calendar year) of which City is given not less than 14 days' notice. Consultant will commit: qualified state-certified supervisory staff with at least three years of claims administration experience including Labor Code Section 4850 experience, state-certified claims examiners with Labor Code Section 4850 experience to the unit, and designated claims assistant to work on City claims. This unit of dedicated state-certified claims examiners and designated assistant shall normally be available to the City during Consultant 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 Consultant replaces either current claims examiner for a period of more than 10 consecutive working days, the replacement shall also be a state-certified examiner. Staffing under this section shall be no less than that specified by Consultant in its March 24, 2017 response to RFP.
- **Notification of Personnel Changes; Assignment of Claims.** Consultant 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 July 1, 2017 and each month thereafter, by the 15th day of the month, Consultant 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. Consultant expressly warrants that neither examiner shall at any time have a total claim caseload which exceeds case load guidelines established by CSAC.
- **Settlement Authority.** Consultant 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.
- **Payments.** Consultant shall prepare and draft all checks necessary for payment of claims and claims expenses by City for execution by the City.
- **Audit Service.** Consultant agrees to accept an independent audit of its work performance whenever requested by City. Files on all claims are the property of City and Consultant agrees to provide access to such files at the request of City and in the event of termination of this Agreement, Consultant 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.
- **Attendance of Meetings.** Upon request of City, Consultant shall attend meetings called by City to discuss issues arising under this Agreement.
- **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 Consultant 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.

- Consultant shall review all open indemnity claims within 90 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. Term:** In accordance with Section 1.10 of this Agreement, the term of this Agreement shall begin July 1, 2017 and end on June 30, 2018 for completion of all Required Services. This Agreement may be extended for up to five (5) additional terms, as set forth in Sections 4 and 5, below.

#### **4. Compensation:**

A. General terms: City agrees to pay Consultant for its services under this Agreement and the Consultant agrees to accept from the City the following in compensation:

1. Flat Fee. A flat annual fee of as set forth in Year 1 of Exhibit D for the period ending June 30, 2018. 1/12 of the annual fee will be paid monthly in arrears, ten (10) days following month end.
2. Allocation Loss Expenses. Allocated Loss Expenses shall also be paid by City. City understands and agrees that Consultant and its affiliates shall receive compensation in connection with the Preferred Provider Specialty Services. The amount of compensation Consultant 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 Consultant's or its affiliate's mark-up of provider fees.
3. Other Payments. 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.

B. Extensions Notwithstanding the foregoing, the maximum amount to be paid to the Consultant for services performed shall not exceed the pricing in Exhibit D for any year service is provided. If the City exercises its option to extend the Agreement, the amount to be paid to the Consultant for services provided during the term of that extension shall not exceed Pricing in Exhibit D. If the City exercises all additional options to extend the Agreement, the total amount to be paid to the Consultant for services provided during the initial and optional extension periods shall not exceed Pricing in Exhibit D.

#### **5. Special Provisions: CHECK ANY THAT APPLY OR SELECT "NONE," AND DELETE ALL INSTRUCTIONS.**

Permitted Sub-Consultants: List Permitted Sub-Consultants or Indicate "None" **NONE**

Security for Performance: See City Attorney or Indicate "None" if Not Applicable **NONE**

Notwithstanding the completion date set forth in Section 3 above, City has option to extend this Agreement for five (5) additional terms, defined as a one-year increment. The City Manager or Director of Finance/Treasurer shall be authorized to exercise the extensions on behalf of the City. If the City exercises an option to extend, each extension shall be on the same terms and conditions contained herein, provided that the amounts specified in Section 4 above may be increased by up to Exhibit D amounts for each extension. The City shall give written notice to Consultant of the City's election to exercise the extension via the Notice of Exercise of Option to Extend document. Such notice shall be provided at least 30 days prior to the expiration of the term.

**EXHIBIT B**

**INSURANCE REQUIREMENTS**

Consultant 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	

Other Negotiated Insurance Terms: A \$1 million/fidelity/crime bond payable to City with an approved corporate surety covering all officers and employees involved. The bond will be a blanket position bond with an approved corporate surety covering all officers and employees involved with the City's claims handling.



**EXHIBIT C**  
**CONSULTANT CONFLICT OF INTEREST DESIGNATION**

The Political Reform Act<sup>2</sup> and the Chula Vista Conflict of Interest Code<sup>3</sup> (“Code”) require designated state and local government officials, including some consultants, to make certain public disclosures using a Statement of Economic Interests form (Form 700). Once filed, a Form 700 is a public document, accessible to any member of the public. In addition, consultants designated to file the Form 700 are also required to comply with certain ethics training requirements.<sup>4</sup>

- A. Consultant IS a corporation or limited liability company and is therefore EXCLUDED<sup>5</sup> from disclosure.
- B. Consultant NOT a corporation or limited liability company and disclosure designation is as follows:

**APPLICABLE DESIGNATIONS FOR INDIVIDUAL(S) ASSIGNED TO PROVIDE SERVICES**

(Category descriptions available at [www.chulavistaca.gov/departments/city-clerk/conflict-of-interest-code](http://www.chulavistaca.gov/departments/city-clerk/conflict-of-interest-code).)

<i>Name</i>	<i>Email Address</i>	<i>Applicable Designation</i>
Enter Name of Each Individual Who Will Be Providing Service Under the Contract – <i>If individuals have different disclosure requirements, duplicate this row and complete separately for each individual</i>	Enter email address(es)	<input type="checkbox"/> <b>A. Full Disclosure</b> <input type="checkbox"/> <b>B. Limited Disclosure</b> ( <i>select one or more of the categories under which the consultant shall file</i> ): <input type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. Justification:  <input type="checkbox"/> <b>C. Excluded from Disclosure</b>

**1. Required Filers**

Each individual who will be performing services for the City pursuant to the Agreement and who meets the definition of “Consultant,” pursuant to FPPC Regulation 18700.3, must file a Form 700.

**2. Required Filing Deadlines**

Each initial Form 700 required under this Agreement shall be filed with the Office of the City Clerk via the City's online filing system, NetFile, within 30 days of the approval of the Agreement. Additional Form 700 filings will be required annually on April 1 during the term of the Agreement, and within 30 days of the termination of the Agreement.

**3. Filing Designation**

The City Department Director will designate each individual who will be providing services to the City pursuant to the Agreement as *full disclosure*, *limited disclosure*, or *excluded from disclosure*, based on an analysis of the services the Consultant will provide. Notwithstanding this designation or anything in the Agreement, the Consultant is ultimately responsible for complying with FPPC regulations and filing requirements. If you have any questions regarding filing requirements, please do not hesitate to contact the City Clerk at (619)691-5041, or the FPPC at 1-866-ASK-FPPC, or (866) 275-3772 \*2.

Pursuant to the duly adopted City of Chula Vista Conflict of Interest Code, this document shall serve as the written determination of the consultant’s requirement to comply with the disclosure requirements set forth in the Code.

**Completed by: Enter City Staff Person’s Name**

2 Cal. Gov. Code §§81000 *et seq.*; FPPC Regs. 18700.3 and 18704.

3 Chula Vista Municipal Code §§2.02.010-2.02.040.

4 Cal. Gov. Code §§53234, *et seq.*

5 CA FPPC Adv. A-15-147 (*Chadwick*) (2015); *Davis v. Fresno Unified School District* (2015) 237 Cal.App.4<sup>th</sup> 261; FPPC Reg. 18700.3 (Consultant defined as an “individual” who participates in making a governmental decision; “individual” does not include corporation or limited liability company).



**EXHIBIT D  
AGREEMENT PRICING  
EXHIBIT D  
AGREEMENT PRICING**

<b>TPA Fees:</b>	<b>Pricing (tail and new claims)</b>
Year 1	\$418,000.00
Year 2	\$430,540.00
Year 3	\$443,456.20
Year 4	\$456,759.89
Year 5	\$470,462.68
Year 6	\$484,576.56
<b>Total</b>	<b>\$2,703,795.33</b>

**Data Conversion Fee** \$3,500.00 one-time fee payable in Year 1

**MMSEA Fee: EDI Set-Up and Testing** No charge for EDI set-up, testing and monthly eligibility query

Quarterly Reporting \$600 a year flat fee regardless of claim volume

**Services Included:**

License fee for VOS Unlimited number of users with “read only” access. 2 users included for real-time, read and write access; additional licenses available for \$1,200 per user per year.

Reports: Monthly standard bordereaux of loss reports; adhoc reports requiring 4 hours or less of programming; SIP Annual report, 1099’s, OSHA reports; safety and loss control reports; trend reports; annual stewardship reports; etc.

DWC postings: Claim forms (DWC1), Form 5020 employer’s report of occupational injury or illness form, posting notices and posters; pamphlets for injured workers

ISO Index Fees Routine claims included in flat fee above; fraud indexes subject to a pass through index fee of \$10-25 depending on database.

Other services: Adjuster hearing attendance; record storage; check printing; reconciliation; banking fees; filing and correspondence fees; UR approval at adjuster level; quarterly claim reviews; InterConnect meetings on-site; InterAct Claim Reviews

**Medical Provider Network**

Annual Maintenance Fee	\$1,500 per year
Creation of Custom MPN	\$5,000 one-time application, filing, website development, geo mapping etc.
MPN Update fees	2 updates to website and network included in the annual maintenance fee. A \$750 fee will be applied to additional changes.
Other – Standard MPN	No charge

**Medical Bill Review (1)**

Per bill	\$15.50 fixed flat fee per bill inclusive of PPO savings year 1 and 2 \$16.00 fixed flat fee per bill inclusive of PPO savings year 3 and beyond
In Patient Medical Fee Schedule (IMFS)	\$15.50 per bill inclusive of PPO fee year 1 and 2 \$16.00 per bill inclusive of PPO fee year 3 and beyond
PPO Network - % of savings fee & Cap Pharmacy	No charge included in Per Bill Fee – see above If using Intercare’s PBM program through Optum, prescription bills are not subject to a bill review fee. Optum’s dispensing fee per prescription is \$3.00 per bill.
U&C Savings	\$15.50 fixed flat fee per bill inclusive of PPO savings year 1 and 2 \$16.00 fixed flat fee per bill inclusive of PPO savings year 3 and beyond
Outpatient	\$15.50 fixed flat fee per bill inclusive of PPO savings year 1 and 2 \$16.00 fixed flat fee per bill inclusive of PPO savings year 3 and beyond
Negotiated	Unscheduled, out of network bills – 10% of savings capped at a fee of \$2,500 per bill
Medical EDI/WCIS reporting Duplicates	No charge No charge for full duplicates

**Case Management**

Nurse Case Management	\$90.00 per hour billed in 15-min increments
Early Intervention/Triage	\$90 per call

**Utilization Review**

	Non-Clinical (Adjuster) – no charge
	Clinical (Nurse Level) - \$90.00 per hour
	Medical Advisor - \$175.00 per hour
1st Level Peer Review	\$200.00 per hour
Other – Specialty Peer Review	\$275.00 per hour

(1) Intercare and InterMed fees or charges to increase by 3% annually effective each annual renewal