



City of Sacramento City Council

915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: 9/20/2011

Report Type: Consent

Title: Contract: Liability Claim Adjusting and Subrogation Services

Report ID: 2011-00794

Location: Citywide

Recommendation: Adopt a Resolution authorizing the City Manager or designed to execute an agreement with York Risk Services Group, Inc. for liability claims administration and subrogation services in a total amount not to exceed \$2,450,000.

Contact: Patrick Flaherty, Risk Manager, (916) 808-8587, Human Resources Department

Presenter: None

Department: Human Resources

Division: Risk Mgmt/Insurance Programs

Dept ID: 08001331

Attachments:

- 1- Description/Analysis
- 2- Unexecuted Contract/Agreement Cover Sheet
- 3- York Risk Services Group Agreement
- 4- Resolution

City Attorney Review

Approved as to Form
 Sandra Talbott
 9/14/2011 6:14:25 PM

City Treasurer Review

Reviewed for Impact on Cash and Debt
 Russell Fehr
 9/8/2011 1:58:30 PM

Approvals/Acknowledgements

Department Director or Designee: Geri Hamby - 9/14/2011 9:53:39 AM

Description/Analysis

Issue: The City of Sacramento utilizes a third party claims administrator to adjust the City's general and automobile liability claims. For the past twenty one years, claims administration has been performed by a third party claims administrator with a dedicated claims unit located within the City's Risk Management Division. This is an effective and efficient method of handling the City's liability claims due to the need for frequent interaction between the liability claims administrator and the City Attorney's Office and risk management staff.

The Risk Management Division is responsible for the collection of funds from responsible third parties that damage City assets. An example of a subrogation event is when a vehicle driven by a citizen damages a City vehicle or City owned property, such as a street sign or traffic light. The City has handled subrogation activity with City staff in recent years. However, subrogation is a specialized field requiring detailed knowledge in both claims administration and collections. In an effort to increase the amount of subrogation funds collected each year, a three month trial period with a third party administrator specializing in subrogation activity was recently implemented. The trial period demonstrates that the increased amount collected by a third party administrator will be greater than the cost of services, increasing revenue to the City.

A Request for Proposal (RFP) for Self-Insured General and Automobile Liability Claims Administration and Subrogation Services was issued on July 8, 2011. Through a competitive evaluation process utilizing a panel of internal and external personnel, York Risk Services Group, Inc. (York) was selected as the most qualified vendor and will continue serving as the City's third party claims administrator and will perform subrogation services. York is the City's current third party claims administrator and has continually provided high quality claims administration to the City during the term of their contract. Additionally, York has performed subrogation services for a three month trial period and this has proven to be an effective method to perform subrogation for the CITY. The contract with York is for three (3) years with two (2) optional one year renewal periods.

Policy Considerations: The City is self-insured for the first \$2,000,000 of any liability loss and purchases excess insurance for claims exceeding this amount. The City contracts with a third party liability claims administrator, with adjusters located in the Risk Management Division, to adjust the City's liability claims. This is the most effective and efficient method of handling the City's liability claims. Additionally, having a vendor who specializes in claims administration and subrogation handle the City's subrogation efforts will result in increased revenues to the City.

Environmental Considerations:

California Environmental Quality Act (CEQA): Under the California Environmental Quality Act (CEQA) guidelines, continuing administrative activities do not constitute a project and are therefore exempt from review.

Sustainability Considerations: There are no sustainability considerations applicable to this action.

Other: None

Commission/Committee Action: None

Rationale for Recommendation: On July 8, 2011, a Request for Proposal (RFP) was issued for Self-Insured General and Automobile Liability Claims Administration and Subrogation Services. Six companies submitted formal proposals and three were invited to participate in oral interviews.

A four-member evaluation and interview committee was composed of: Vince Pearson, Risk Manager for Sacramento Regional Housing Authority; Brett Witter, Supervising Deputy City Attorney; Jason T. Hunter, Program Specialist; and Patrick Flaherty, Risk Manager. Selection of the recommended third party claims administrator and subrogation vendor was based on the following criteria; (1) Cost Proposal, (2) Services Proposed, (3) Qualifications of Firm, (4) Experience of Personnel, (5) Oral Interview. Based on the independent scores and the interview process York was the committee's unanimous recommended third party liability claims administrator and subrogation vendor. .

Financial Considerations: The annual cost for liability claims administration services are as follows:

	9/26/11 to 9/26/12	\$406,532
	9/26/12 to 9/26/13	\$406,532
	9/26/13 to 9/26/14	\$406,532
If renewed:	9/26/14 to 9/26/15	\$418,728
	9/26/15 to 9/26/16	\$431,289

The annual cost for subrogation services are as follows:

	9/26/11 to 9/26/12	\$73,000
	9/26/12 to 9/26/13	\$73,000
	9/26/13 to 9/26/14	\$75,000
If renewed:	9/26/14 to 9/26/15	\$79,000
	9/26/15 to 9/26/16	\$80,387

The total annual cost for all services is as follows:

	9/26/11 to 9/26/12	\$479,532
	9/26/12 to 9/26/13	\$479,532
	9/26/13 to 9/26/14	\$481,532
If renewed:	9/26/14 to 9/26/15	\$497,728
	9/26/15 to 9/26/16	\$511,676

The total not to exceed amount for the contract period for liability claims administration and subrogation services is \$2,450,000.

These amounts are included in the risk management budget (fund 6502) and the corresponding expenditure budgets are established for the duration of the contract subject to funding through the annual budget process.

Emerging Small Business Development (ESBD): The RFP contained a standard 5% small business enterprise and emerging small business enterprise evaluation preference for firms submitting proposals. York is neither a small nor emerging business and no small or emerging businesses responded to the RFP.



Unexecuted Contract/Agreements

- The Unexecuted Contract/Agreement is signed by the other party, is attached as an exhibit to the resolution, and is approved as to form by the City Attorney.

- The Unexecuted Contract/Agreement (Public Project) is NOT signed by the other party, is attached as an exhibit to the resolution, and is approved as to form by the City Attorney.

- The Unexecuted Contract is NOT included as an exhibit to the Resolution because the Agreement(s) is with other another governmental agency and it is not feasible to obtain the other agency's signature prior to Council action (be they denominated Agreements, MOUs, MOAs, etc.); however, the City Attorney approves the forwarding of the report to Council even though the signed agreement is not in hand yet.

- The Unexecuted Contract is NOT included as an exhibit to the resolution because, due to special circumstances, and the City Attorney confirms in writing that it is okay to proceed with Council action even though the signed agreement is not in hand yet.

All unexecuted contracts/agreements which are signed by the other parties are in the Office of the City Clerk before agenda publication.



PROJECT #:
PROJECT NAME: Liability Claims Administration and Subrogation Services
DEPARTMENT: Human Resources
DIVISION: Risk Management

CITY OF SACRAMENTO

PROFESSIONAL SERVICES AGREEMENT *

THIS AGREEMENT is made at Sacramento, California, as of September 26, 2011, by and between the **CITY OF SACRAMENTO**, a municipal corporation ("CITY"), and

York Risk Services Group , Inc. (Contractor)
P.O. Box 619058
Roseville, CA 95661
916-746-8828 (Phone) 916-783-0338 (Fax)

("CONTRACTOR"), who agree as follows:

- Services.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the services described in Exhibit A. CONTRACTOR shall provide said services at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for services outside the scope of Exhibit A unless prior to the commencement of such services: (a) CONTRACTOR notifies CITY and CITY agrees that such services are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional services; and (c) CITY, after notice, approves in writing a Supplemental Agreement specifying the additional services and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement and/or any Supplemental Agreement, unless and until this Agreement or any Supplemental Agreement is approved by the Sacramento City Manager or the City Manager's authorized designee, or by the Sacramento City Council, as required by the Sacramento City Code.
- Payment.** CITY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to CONTRACTOR for the services rendered pursuant to this Agreement unless pursuant to Section 1, above, CITY approves additional compensation for additional services. CONTRACTOR shall submit all billings for said services to CITY in the manner specified in Exhibit B, or, if not specified in Exhibit B, according to the usual and customary procedures and practices that CONTRACTOR uses for billing clients similar to CITY.
- Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Agreement. CITY shall furnish to CONTRACTOR only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.
- General Provisions.** The General Provisions set forth in Exhibit D, that include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by

* This form to be used for all professional services, except professional services related to a construction project and professional services performed by licensed architects, landscape architects or professional land surveyors or registered professional engineers.

CONTRACTOR and made a part of this Agreement, including without limitation any document relating to the scope of services or payment therefor, the General Provisions shall control over said terms or conditions.

5. **Non-Discrimination in Employee Benefits.** This Agreement is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 are summarized in Exhibit E. CONTRACTOR is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.
6. **Authority.** The person signing this Agreement for CONTRACTOR hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.
7. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

CITY OF SACRAMENTO
A Municipal Corporation

By: _____

Print name: _____

Title: _____

For: John Shirey, City Manager

APPROVED TO AS FORM:

City Attorney

ATTEST:

City Clerk

Attachments

- Exhibit A - Scope of Service
- Exhibit B - Fee Schedule/Manner of Payment
- Exhibit C - Facilities/Equipment Provided
- Exhibit D - General Provisions
- Exhibit E - Non-Discrimination in Employee Benefits

CONTRACTOR:

York Risk Services Group, Inc.
NAME OF FIRM

Federal I.D. No.

State I.D. No.

City of Sacramento Business Op. Tax Cert. No.

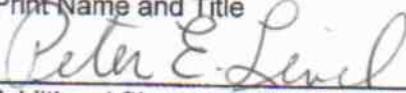
TYPE OF BUSINESS ENTITY (*check one*):

- Individual/Sole Proprietor
- Partnership
- Corporation (*may require 2 signatures*)
- Limited Liability Company
- Other (*please specify:* _____)



Signature of Authorized Person

Jody A Gray, Sr Vice President
Print Name and Title



Additional Signature (*if required*)

Peter F. Lind, Senior Vice President and Secretary
Print Name and Title

**DECLARATION OF COMPLIANCE
Equal Benefits Ordinance**

Name of Contractor: York Risk Services Group, Inc

Address: _____

The above named Contractor ("Contractor") hereby declares and agrees as follows:

1. Contractor has read and understands the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") attached hereto as Exhibit E.
2. As a condition of receiving this Agreement, Contractor agrees to fully comply with the Requirements, as well as any additional requirements that may be specified in the City of Sacramento's Non-Discrimination In Employee Benefits Code codified at Chapter 3.54 of the Sacramento City Code (the AOrdinance@).
3. Contractor understands, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance are any of the following:
 - a. Bereavement Leave
 - b. Disability, life, and other types of insurance
 - c. Family medical leave
 - d. Health benefits
 - e. Membership or membership discounts
 - f. Moving expenses
 - g. Pension and retirement benefits
 - h. Vacation
 - i. Travel benefits
 - j. Any other benefit offered to employees

Contractor agrees that if Contractor offers any of the above-listed employee benefits, Contractor will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

4. Contractor understands that Contractor will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
 - a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, Contractor will not be required to provide the benefit, nor shall it be deemed discriminatory, if Contractor requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.
 - b. If Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, if Contractor provides the employee with a cash equivalent Contractor will not be deemed to be discriminating in the application of that benefit.
 - c. If Contractor provides employee benefits neither to employee's spouses nor to employee's domestic partners.
 - d. If Contractor provides employee benefits to employees on a basis unrelated to marital or domestic partner status.
 - e. If Contractor submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date after the first open enrollment process following the date this Agreement is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such

policies may not exceed one (1) year from the date this Agreement is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.

- f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Agreement is executed by the City.
 - g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).
 - h. Contractor takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Contractor to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).
 - i. In the event Contractor cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Contractor provides a cash equivalent to eligible employees for whom employee benefits are not available. Unless otherwise authorized in writing by the City Manager, Contractor understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Agreement is executed by the City.
- 5. Contractor understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Contractor to possible suspension and/or termination of this Agreement for cause; repayment of any or all of the Agreement amount disbursed by the City; debarment for future agreements until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
 - 6. Contractor understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Contractor further agrees to maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. Contractor also agrees to prominently display a poster informing each employee of these rights.
 - 7. Contractor understands that Contractor has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Agreement award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.
 - 8. Contractor agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by Contractor.

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that he or she is authorized to bind the Contractor to the provisions of this Declaration.



Signature of Authorized Representative

9/14/11

Date

Jody A Gray

Print Name

Sr. Vice President

Title

EXHIBIT A
PROFESSIONAL SERVICES AGREEMENT
SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

Patrick Flaherty, Risk Manager
915 I Street, 4th Floor
Sacramento, CA 95814
916-808-8587 Phone 916-808-5160 Fax pflaherty@cityofsacramento.org E-mail

All CONTRACTOR questions pertaining to this Agreement shall be referred to the CITY Representative or the Representative's designee.

The CONTRACTOR Representative for this Agreement is:

Tom Baber, Vice President, Western Region
P.O. Box 619058
Roseville, CA 95661
916-746-8834 Phone 916-783-0338 Fax Tom.Baber@yorkisg.com E-mail

All CITY questions pertaining to this Agreement shall be referred to the CONTRACTOR Representative. All correspondence to CONTRACTOR shall be addressed to the address set forth on page one of this Agreement. Unless otherwise provided in this Agreement, all correspondence to the CITY shall be addressed to the CITY Representative.

2. Professional Liability Insurance. Professional Liability (Errors and Omissions) insurance is X is not ___ [check one] required for this Agreement. If required, such coverage must be continued for at least 3 year(s) following the completion of all Services and Additional Services under this Agreement. (See Exhibit D, Section 11, for complete insurance requirements.)

3. Conflict of Interest Requirements.

A. **Generally.** Under the California Political Reform Act, Government Code §§ 81000 et seq., designated employees of the CITY are required to comply with the CITY's Conflict of Interest Code. The term "designated employees" is a term of art and includes individuals who are working for contractors who are providing services or performing work for the CITY and who are considered to be "consultants" under the Political Reform Act. The term "consultant" generally includes individuals who make, or participate in making, governmental decisions or who serve in a staff capacity. Individuals who perform work that is solely clerical, ministerial, manual or secretarial are not "consultants."

The CITY's Conflict of Interest Code requires designated employees, including individuals who qualify as "consultants", to file the following statements of economic interests:

- (1) An "assuming office" statement of economic interests to be filed within 30 days after execution of the agreement between the City and the contractor;
- (2) Annual statements of economic interests while the agreement remains in effect, to be filed not later than April 30 of each year; and
- (3) A "leaving office" statement of economic interests to be filed within 30 days of completion of the contract.

The above statements of economic interests are public records subject to public disclosure under the California Public Records Act.

The CITY's Conflict of Interest Code also requires individuals who qualify as "consultants" under the Political Reform Act to comply with the conflict of interest provisions of the Political Reform Act, which generally prohibit individuals from making or participating in the making of decisions that will have a material financial effect on their economic interests.

B. Conflict of Interest Statements. The individual(s) who will provide services or perform work pursuant to this Agreement are "consultants" within the meaning of the Political Reform Act and the CITY's Conflict of Interest Code: ____ yes no *[check one]*

If "yes" is checked above, CONTRACTOR shall cause the following to occur within 30 days after execution of this Agreement:

- (1) Identify the individuals who will provide services or perform work under this Agreement as "consultants";
- (2) Cause these individuals to file with the CITY Representative the assuming office statements of economic interests required by the CITY's Conflict of Interest Code.

Thereafter, throughout the term of the Agreement, CONTRACTOR shall cause these individuals to file with the CITY Representative annual statements of economic interests, and "leaving office" statements of economic interests, as required by the CITY's Conflict of Interest Code. The CITY may withhold all or a portion of any payment due under this Agreement until all required statements are filed.

4. Scope of Services. The services provided shall be as set forth in Attachment 1 to Exhibit A, attached hereto and incorporated herein.

5. Time of Performance. The services described herein shall be provided during the period, or in accordance with the schedule, set forth in the scope of services. Time of performance is a period of three (3) years from September 26, 2011, to September 26, 2014. The CITY reserves

the right to extend the contract up to two (2) additional years at the discretion of the City Manager.

**ATTACHMENT 1 TO EXHIBIT A
SCOPE OF SERVICES – LIABILITY CLAIMS ADMINISTRATION**

The City of Sacramento is self-insured for general and auto liability risks and receives approximately 615 claims per year. CONTRACTOR will perform claims adjusting and claim administration services as set forth in this agreement. Services to be provided are as follows:

Retainer. City hereby retains CONTRACTOR, and CONTRACTOR accepts CITY'S retainer, to perform liability claims management services.

Prompt Handling. CONTRACTOR agrees to initiate prompt handling of all claims presented to the CONTRACTOR upon notification in writing, facsimile transmissions, or by telephone from the CITY. CONTRACTOR will not be responsible for late reporting by CITY or claims not reported by CITY.

Claims Subject to Agreement. All third party liability claims that are filed with the CITY or incidents in which a claim is likely, will be forwarded to the CONTRACTOR for review and action. CONTRACTOR is to identify potential claims from any source.

Writings are Property of City. All original reports, documents, and claims data of every kind or description that are prepared in whole or part by or for CONTRACTOR in connection with this Agreement shall be CITY'S property. Additional copies of original reports, documents, and data requested by CITY will be at CITY'S expense in accordance with this Agreement. All such records shall be held in the strictest confidence by CONTRACTOR.

Claims Actions. All claims actions required, such as denial, rejection of claims, etc., will be completed by CONTRACTOR, which is also responsible for the preparation and obtainment of all releases and waivers regarding settlements, and their execution.

Computer System. CONTRACTOR shall convert to the Claims Connect risk management information system no later than January 1, 2012.

Quarterly Reports. CONTRACTOR will provide a quarterly report to the Risk Manager at no additional cost to the CITY, no later than the 25th day of the months of April, July, October, and January. The quarterly report must include the claimant's name, date of loss, a summary of facts and legal issues, action taken and the CONTRACTOR 'S recommendations for further action. The quarterly report must include those claims that meet any of the following criteria:

1. Indemnity Reserves set at \$25,000 or more.
2. A fatality.
3. Amputation of an extremity.
4. Serious head injury or any other injury which involves permanent incapacitation.

Monthly Loss Run Report. CONTRACTOR must provide a monthly loss runs reporting all claims information at no additional cost to the City, no later than (15) days after the end of each month during the term of this contract. These reports must include the status of each open claim, including details of payment and outstanding reserves for the month and year covered by the report. Such report must also include a detailed listing of all claims by department, loss payments, open reserves, summary description by type of losses and a detailed listing of all drafts or checks written. CONTRACTOR shall not be responsible for any late reports due to mechanical failure or any other circumstances beyond the

CONTRACTOR'S control. A list of monthly reports will be agreed upon by CONTRACTOR and CITY. CONTRACTOR must maintain prior year loss history in its Risk Management Information System.

Annual Statistical Loss Run and Disbursement Report. CONTRACTOR must provide a statistical loss run and disbursement report at the end of each Fiscal Year for management reporting, insurance policy renewal, and actuarial purposes.

Annual Report. CONTRACTOR must provide the City with a list annually of all claims received for that period.

Adhoc Reports. CONTRACTOR must provide ad hoc reports at no additional cost on an as needed basis, as well as provide a monthly download of all claims/loss data to the CITY in an electronic format.

Records/Files. All claim files, documents, computation forms and other data are acknowledged to be the property of the CITY. CONTRACTOR at all times must maintain complete and detailed claim files as well as a claims log with regard to work performed under this Agreement. Records will be retained as long as required by statute. City shall have the right to inspect such records at any time during normal business hours.

Claims Exceeding \$25,000. All claims reserved in excess of \$25,000 must be reported in writing within five (5) days of discovery to the Risk Manager, and must include a summary of facts, legal issues, action already taken, and recommendations for further action.

Settlement Authority. CONTRACTOR will present all requests for settlements and payments to vendors, experts, etc. to the Risk Manager for approval. The Risk Manager is authorized to approve on behalf of the City of Sacramento the settlement of tort claims when such settlement is not greater than \$25,000. The Risk Manager, with concurrence from the City Attorney's Office, may authorize settlements to \$50,000. The Tort Claims Committee, comprised of the Risk Manager, a Human Resources representative and City Attorney representative, is authorized to approve on behalf of the City of Sacramento the settlement of tort claims when such settlement is more than \$50,000 but does not exceed \$100,000. The City Council shall approve the settlement of all tort claims when such settlement exceeds \$100,000.

Settlement Reports. For any claim in which settlement in excess of \$15,000 is proposed on behalf of the CITY, CITY may request CONTRACTOR to forward a report detailing terms of proposed settlement; reasons for proposed settlement including liability analysis, damage and discussion of contribution, if appropriate.

Excess Carriers. CONTRACTOR is responsible to the CITY for performance of all duties imposed by the excess carriers on those insurance policies that the CITY is named as insured. This responsibility includes, but is not limited to, giving notice of anticipated pending claims or litigation. CONTRACTOR is responsible for conducting all negotiations and other communication with respect to settlements that reach excess carrier limits. CONTRACTOR is responsible for contractual commitments with carriers to pay amounts covered by their policies and commanded by the settlement in consideration of release by the CITY and those who are required to be indemnified from liability.

Defense Evaluation. CONTRACTOR will request that defense counsel complete a confidential evaluation within thirty (30) days after each tort liability case is opened. This report will be made available to the Risk Manager and contain the following information:

1. The incident causing injury, and degree of personal injury;
2. The identity of all named defendants other than the City of Sacramento, and the policy

limits of applicable insurance coverage for each defendant;

3. The alleged wrongful acts and determined or estimated comparative fault of each individual defendant, including the City in relation to the combined total percentage of all defendants;
4. The alleged negligent acts of the City of Sacramento;
5. And the recommended litigation plan estimated defense budget.

Costs to be paid by City. CITY shall assume and pay all reasonable and necessary defense attorney fees, court costs and all costs for experts required to investigate and adjust claims, such as material damage appraisals, independent medical examinations, and other professional assistance which it is neither possible nor feasible for the CONTRACTOR to provide with its own personnel. All billings for services performed by persons or entities other than the CONTRACTOR will be billed to the City in care of the CONTRACTOR, and will be paid by the CONTRACTOR from the CITY'S trust account. CONTRACTOR shall submit any invoices or requests for payment of fees for attorneys, experts and other professional assistance to City's Risk Manager for approval.

Loss Fund. A loss fund shall be established by CITY with CONTRACTOR given authority to issue drafts and/or checks. All checks or payments must have prior City approval by the Risk Manager or City Attorney's Office before issuance. CONTRACTOR shall monthly supply CITY with copies of such drafts or checks, and CITY agrees to maintain such loss fund at a level to pay said claims. Any costs in connection with setting up and maintaining such fund will be paid by the CITY. The trust fund shall be reimbursed monthly to maintain a balance of \$225,000.

Disbursements. All checks in payment of losses, claims and expenses on behalf of the CITY will be issued by the CONTRACTOR. The CONTRACTOR will forward copies of all checks issued, for accounting purposes, at the end of each month.

Advances. CONTRACTOR shall not be required to advance funds on behalf of the CITY for expenses not covered herein, but may do so, at the CONTRACTOR'S option, for convenience and expediency in processing payments.

Dedicated Unit. CONTRACTOR agrees to assign a Claims Manager and two (2) adjusters under the direction of Regional Manager, to perform this agreement. Use of other personnel shall require the prior consent of the CITY. Adjusters assigned to the CITY'S account shall not have a caseload that exceeds 150 cases. The Claims Manager and adjusters will work exclusively on the CITY'S account and will be physically located at the CITY'S premises.

SCOPE OF SERVICES - SUBROGATION

- A. Provide a well-designed properly staffed subrogation program for the CITY.
- B. Provide an Account Executive to provide management oversight and supervision of the program.
- C. Provide a dedicated subrogation-recovery specialist assigned as the liaison with CITY staff to handle the day-to-day subrogation-recovery claims for the CITY.
- D. Meet with CITY representatives to understand the CITY'S overall goals and expectations and explore the CITY'S current subrogation program.
- E. Identify and review all the CITY'S property policies.
- F. Meet with designated CITY departments to review operations and identify all areas of potential recovery.
- G. Provide training to CITY staff regarding the procedures and their roles and responsibilities under the approved subrogation plan.
- H. Intake and File Set up: Set up all subrogation assignments in the York Claims Management Informational System (CMIS) and determine the facts of the loss, responsible party, insurance policy information and the amount of the loss. Return all losses to CITY with a value of \$500 or under at no charge.
- I. Coverage Review: Provide determination of potential coverage under the CITY'S property insurance policy.
- J. Investigation: Investigate facts of loss and determine cause of loss, evaluate liability, and identify the potentially responsible parties and their insurance companies.
- K. Notification to Responsible Parties: As soon as possible send written notice of the CITY'S intent to seek recovery to all potential parties and their insurance companies.
- L. Communication and Negotiation: Serve as the point of contact with the responsible parties for exchange of all information and documents necessary to achieve the recovery due the CITY. As warranted and pursuant to CITY authority, negotiate all compromise settlements with the responsible party after obtaining authority from the CITY..
- M. Releases: Review all releases presented as part of settlement and process with the responsible party or their insurer. This will include confirmation that all of the CITY'S losses are considered and that it does not waive the right of recovery for any related workers' compensation benefits paid. Send releases to the designated CITY staff for signature with recommendations and comments.
- N. Receipt and Processing of Recoveries: All recovery payments received from responsible party will be sent to the CITY for deposit. Responsible party will be directed to include the CMIS claim number so they may be deposited in the proper account. A copy of all checks will be sent by CITY to CONTRACTOR for recording in the appropriate CMIS claim file.
- O. Promissory Notes: Where a responsible party is uninsured or underinsured, attempt to secure a promissory note.
- P. Small Claims Court: Pursuant to CITY approval, make the necessary filings in Small Claims Court. Prepare for and attend small claims hearings on behalf of the CITY.
- Q. Execution of Judgments: Take the necessary steps to execute on any judgments' on the CITY'S behalf, including the filing of abstracts with the DMV as appropriate.
- R. Restitution: When applicable, monitor the criminal proceedings of responsible parties and seek restitution orders on your behalf.
- S. Collection agencies: Refer losses deemed to be economically unrecoverable to the CITY'S authorized collection agency at no charge. If outside collection agency recovers funds, enter amount in CMIS. Copies of checks in these instances will be provided by CITY with York claim number.

- T. Reporting: Provide timely narrative status reports to the designated CITY staff on the status of open losses. The frequency of the reports will be determined by the severity and level of activity on the loss. A final report outlining the ultimate outcome and recoveries received will be provided on all losses. Provide monthly statistical loss runs generated from the CMIS including the activity for that period on all open losses and those that have closed during that period. Provide summary reports on a quarterly and annual basis showing overall performance of the program.

EXHIBIT B

PROFESSIONAL SERVICES AGREEMENT

FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the performance of all services set forth in Exhibit A and Attachment 1 to Exhibit A, including normal revisions (hereafter the "Services"), and for all authorized Reimbursable Expenses, shall not exceed the total sum of \$2,450,000.
2. **Billable Rates.** CONTRACTOR shall be paid for the performance of Services on an hourly rate, daily rate, flat fee, lump sum or other basis, as set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein.
3. **CONTRACTOR's Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONTRACTOR for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by CITY.
4. **Payments to CONTRACTOR.**
 - A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR's invoice, said payments to be made in proportion to services performed or as otherwise specified in Attachment 1 to Exhibit B. CONTRACTOR may request payment on a monthly basis. CONTRACTOR shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.
 - B. All invoices submitted by CONTRACTOR shall contain the following information:
 - (1) Job Name
 - (2) Description of services billed under this invoice, and overall status of project
 - (3) Date of Invoice Issuance
 - (4) Sequential Invoice Number
 - (5) CITY's Purchase Order Number
 - (6) Total Contract Amount
 - (7) Amount of this Invoice (Itemize all Reimbursable Expenses)
 - (8) Total Billed to Date
 - (9) Total Remaining on Contract
 - (10) Updated project schedule. This shall identify those steps that shall be taken to bring the project back on schedule if it is behind schedule.
 - C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to CONTRACTOR for correction. CITY shall not be responsible for delays in payment to CONTRACTOR resulting from CONTRACTOR's failure to comply with the invoice format described below.

D. Requests for payment shall be sent to:

*Patrick Flaherty, Risk Manager
915 I Street, 4th Floor
Sacramento, CA 95814
916-808-8587 Phone 916-808-5160 Fax pflaherty@cityofsacramento.org E-mail*

5. **Additional Services.** Additional Services are those services related to the scope of services of CONTRACTOR set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Services shall be provided only when a Supplemental Agreement authorizing such Additional Services is approved by CITY in accordance with CITY's Supplemental Agreement procedures. CITY reserves the right to perform any Additional Services with its own staff or to retain other contractors to perform said Additional Services.
6. **Accounting Records of CONTRACTOR.** During performance of this Agreement and for a period of three (3) years after completing all Services and Additional Services hereunder, CONTRACTOR shall maintain all accounting and financial records related to this Agreement, including, but not limited to, records of CONTRACTOR's costs for all Services and Additional Services performed under this Agreement and records of CONTRACTOR's Reimbursable Expenses, in accordance with generally accepted accounting practices, and shall keep and make such records available for inspection and audit by representatives of the CITY upon reasonable written notice.
7. **Taxes.** CONTRACTOR shall pay, when and as due, any and all taxes incurred as a result of CONTRACTOR's compensation hereunder, including estimated taxes, and shall provide CITY with proof of such payment upon request. CONTRACTOR hereby agrees to indemnify CITY for any claims, losses, costs, fees, liabilities, damages or injuries suffered by CITY arising out of CONTRACTOR's breach of this Section 7.

ATTACHMENT 1 TO EXHIBIT B

FEE SCHEDULE/MANNER OF PAYMENT FOR LIABILITY CLAIMS ADMINISTRATION

1. **Billable Rates.** CONTRACTOR shall be paid for the performance of Liability Claims Administration Services on a flat fee paid monthly as set forth in Exhibit B, attached hereto and incorporated herein. Payment shall be made to CONSULTANT based upon the following annual amounts:

	9/26/11 to 9/26/12	\$406,532
	9/26/12 to 9/26/13	\$406,532
	9/26/13 to 9/26/14	\$406,532
If renewed:	9/26/14 to 9/26/15	\$418,728
	9/26/15 to 9/26/16	\$431,289

2. **Allocated Loss Adjustment Services:** The CITY shall be responsible for all allocated loss adjustment expenses such as fees to court reporters, outside defense counsel, court costs, service of process, experts, independent medical exams, transcripts, copies of medical records, copies of depositions, witness fees, photographs, appraisals, Medicare set asides, and fraud investigations. These bills will be presented by the CONTRACTOR to CITY for authority for payment.

FEE SCHEDULE/MANNER OF PAYMENT FOR SUBROGATION SERVICES

1. CITY shall pay to CONTRACTOR a flat fee, as set forth below, for all new assigned losses:

	9/26/11 to 9/26/12	\$335.00
	9/26/12 to 9/26/13	\$335.00
	9/26/13 to 9/26/14	\$345.00
If renewed:	9/26/14 to 9/26/15	\$355.00
	9/26/15 to 9/26/16	\$365.00

2. CITY shall pay to CONTRACTOR a flat fee of \$250.00 for all losses already set up by CITY.

3. Losses with damages under \$500 will be billed at 20% of the recovery by CONTRACTOR, instead of the flat fee.

4. In addition to the flat fee of \$335.00, losses deemed to be complex or requiring unusual collection efforts will be billed at a time and expense basis after consultation and agreement by the CITY. Cases subject to a time and expense fee will be discussed with and approved by CITY and may include the following: small claims actions, criminal restitutions, promissory notes, retained legal counsel or litigation, contract disputes, and retained experts.

EXHIBIT C

PROFESSIONAL SERVICES AGREEMENT

FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

CITY shall [*check one*]

Not furnish any facilities or equipment for this Agreement; or

furnish the following facilities or equipment for the Agreement; The City shall furnish office space for the CONTRACTOR'S staff for the "dedicated unit" as defined in Exhibit A, Attachment 1. The CITY will also provide for the CONTRACTOR'S use of: office furniture, file cabinets, computers, printers, copy machine, telephones, and general office supplies. The CITY will retain ownership of the aforementioned equipment and supplies upon termination of this Agreement

**EXHIBIT D
PROFESSIONAL SERVICES AGREEMENT**

GENERAL PROVISIONS

1. Independent Contractor.

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term "Services" shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)
- B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.
- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.

D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between CITY and CONTRACTOR. CONTRACTOR may represent, perform services for, or be employed by such additional persons or companies as CONTRACTOR sees fit provided that CONTRACTOR does not violate the provisions of Section 5, below.

2. **Licenses; Permits, Etc.** CONTRACTOR represents and warrants that CONTRACTOR has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for CONTRACTOR to practice its profession or provide any services under the Agreement. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for CONTRACTOR to practice its profession or provide such Services. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.
3. **Time.** CONTRACTOR shall devote such time and effort to the performance of Services pursuant to this Agreement as is necessary for the satisfactory and timely performance of CONTRACTOR's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.
4. **CONTRACTOR Not Agent.** Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.
5. **Conflicts of Interest.** CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder CONTRACTOR's performance of Services under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement. If CONTRACTOR is or employs a former officer or employee of the CITY, CONTRACTOR and any such employee(s) shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.
6. **Confidentiality of CITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are

valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

7. CONTRACTOR Information.

- A. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostating, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONTRACTOR shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by CITY.
- B. CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY's failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.
- C. All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR's proposal to CITY or in connection with any Services performed by CONTRACTOR, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to CITY, CITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual "trade secret" designation of such information.
- D. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with

the provisions of subsection C, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated "trade secret" by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

8. Standard of Performance. CONTRACTOR shall perform all Services required pursuant to this Agreement in the manner and according to the standards currently observed by a competent practitioner of CONTRACTOR's profession in California. All products of whatsoever nature that CONTRACTOR delivers to CITY pursuant to this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in CONTRACTOR's profession, and shall be provided in accordance with any schedule of performance specified in Exhibit A. CONTRACTOR shall assign only competent personnel to perform Services pursuant to this Agreement. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR's staff assigned to perform the Services required under this Agreement, prior to any such performance. In the event that CITY, at any time during the term of this Agreement, desires the removal of any person assigned by CONTRACTOR to perform Services pursuant to this Agreement, because CITY, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, CONTRACTOR shall remove such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person.

9. Term; Suspension; Termination.

- A. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.
- B. CITY shall have the right at any time to temporarily suspend CONTRACTOR's performance hereunder, in whole or in part, by giving a written notice of suspension to CONTRACTOR. If CITY gives such notice of suspension, CONTRACTOR shall immediately suspend its activities under this Agreement, as specified in such notice.
- C. CITY shall have the right to terminate this Agreement at any time by giving a written notice of termination to CONTRACTOR. If CITY gives such notice of termination, CONTRACTOR shall immediately cease rendering Services pursuant to this Agreement. If CITY terminates this Agreement:
 - (1) CONTRACTOR shall, not later than five days after such notice of termination, deliver to CITY copies of all information prepared pursuant to this Agreement.
 - (2) CITY shall pay CONTRACTOR the reasonable value of Services rendered by CONTRACTOR prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed the Services required by this Agreement. In this regard, CONTRACTOR shall furnish to CITY such financial information as in the judgment of the CITY is necessary for CITY to determine the reasonable value of the Services rendered by CONTRACTOR. The foregoing is cumulative and does not affect any right or

remedy that CITY may have in law or equity.

10. Indemnity.

- A. Indemnity: CONTRACTOR shall defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement by CONTRACTOR, any sub-consultant, subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of CITY, its agents, servants, or independent contractors who are directly responsible to CITY, except when such agents, servants, or independent contractors are under the direct supervision and control of CONTRACTOR.
- B. Insurance Policies: Intellectual Property Claims: The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY's rights under this Section 10, nor shall the limits of such insurance limit the liability of CONTRACTOR hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

11. Insurance Requirements. During the entire term of this Agreement, CONTRACTOR shall maintain the insurance coverage described in this Section 11.

Full compensation for all premiums that CONTRACTOR is required to pay for the insurance coverage described herein shall be included in the compensation specified for the Services provided by CONTRACTOR under this Agreement. No additional compensation will be provided for CONTRACTOR's insurance premiums.

It is understood and agreed by the CONTRACTOR that its liability to the CITY shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the CONTRACTOR in connection with this Agreement.

A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less

than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the CONTRACTOR.

No automobile liability insurance shall be required if CONTRACTOR completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement." _____ (CONTRACTOR initials)

- (3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

X Workers' Compensation waiver of subrogation in favor of the City is required for all work performed by the CONTRACTOR.

No Workers' Compensation insurance shall be required if CONTRACTOR completes the following certification:

"I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers' Compensation insurance." _____ (CONTRACTOR initials)

- (4) Professional Liability Insurance providing coverage on a claim made basis for errors, omissions or malpractice with limits of not less than one million (\$1,000,000) dollars if required by the CITY under Exhibit A, Section 2.

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of CONTRACTOR, products and completed operations of CONTRACTOR, and premises owned, leased or used by CONTRACTOR. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

X Additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

- (2) Automobile Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) Except for professional liability, CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officials, employees and volunteers. Any insurance or self-insurance maintained by CITY, its officials, employees or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees or volunteers.
- (3) Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 11 must be declared to and approved by the CITY Risk Management Division in writing prior to execution of this Agreement.

E. Verification of Coverage

- (1) CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the CITY representative named in Exhibit A. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.
- (2) The CITY may withdraw its offer of contract or cancel this Agreement if the certificates of insurance and endorsements required have not been provided

prior to execution of this Agreement. The CITY may withhold payments to CONTRACTOR and/or cancel the Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

CONTRACTOR shall require and verify that all sub-consultants and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

12. Equal Employment Opportunity. During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

- A. Compliance With Regulations: CONTRACTOR shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".
- B. Nondiscrimination: CONTRACTOR, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in discrimination prohibited by the Regulations.
- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
- D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of noncompliance by CONTRACTOR with the nondiscrimination provisions of this Agreement, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:
 - (1) Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies;

(2) Cancellation, termination, or suspension of the Agreement, in whole or in part.

F. Incorporation of Provisions: CONTRACTOR shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request CITY to enter such litigation to protect the interests of CITY.

13. **Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by CONTRACTOR, and by CITY, in accordance with applicable provisions of the Sacramento City Code.

14. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

17. **Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities who will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.

18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.

19. **Use Tax Requirements.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

A. Use Tax Direct Payment Permit: For all leases and purchases of materials, equipment, supplies, or other tangible personal property used to perform the Agreement and

shipped from outside California, the Contractor and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization ("SBE") in accordance with the applicable SBE criteria and requirements.

- B. Sellers Permit: For any construction contract and any construction subcontract in the amount of \$5,000,000 or more, Contractor and the subcontractor(s) shall obtain sellers permits from the SBE and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the City. Contractor and its subcontractors shall remit the self-accrued use tax to the SBE, and shall provide a copy of each remittance to the City.
- C. The above provisions shall apply in all instances unless prohibited by the funding source for the Agreement.

EXHIBIT E

REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

INTRODUCTION

The Sacramento Non-Discrimination In Employee Benefits Code (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

APPLICATION

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding \$25,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

The Ordinance does not apply: to subcontractors or subcontracts of any Contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement; to permits for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

DEFINITIONS

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements.

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas

and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

“Contractor” means any person or persons, firm partnership or corporation, company, or combination thereof, that enters into a Contract with the City. “Contractor” does not include a public entity.

“Domestic Partner” means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

“Employee Benefits” means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees. “Employee benefits” shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

CONTRACTOR’S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee’s name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS

(a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form, signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.

(b) The Contractor shall give each existing employee working directing on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as Attachment “A.”

(c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as Attachment “B.”

Attachment A



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

On (date), your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for (contract details), and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits Code (Sacramento City Code Section 3.54).

The Ordinance does not require the Employer to provide employee benefits. The Ordinance does require that if certain employee benefits are provided by the Employer, that those benefits be provided without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouse or domestic partner of employees.

The Ordinance covers any employee working on the specific contract referenced above, but only for the period of time while those employees are actually working on this specific contract.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

(Employee Benefits does not include benefits that may be preempted by federal or state law.)

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, or in the application of these employee benefits, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of the Ordinance, and after having exhausted all remedies with your employer,

You May . . .

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
5730 24th Street, Bldg. 1
Sacramento, CA 95822

- Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:
 - Reinstatement, injunctive relief, compensatory damages and punitive damages
 - Reasonable attorney's fees and costs

Attachment B



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

If your employer provides employee benefits, they must be provided to those employees working on a City of Sacramento contract without discriminating between employees with spouses and employees with domestic partners.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

If you feel you have been discriminated against by your employer . . .

You May . . .

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
5730 24th Street, Bldg. 1
Sacramento, CA 95822

- Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

Discrimination and Retaliation Prohibited.

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of this Ordinance . . .

You May Also . . .

Submit a written complaint to the City of Sacramento, Contract Services Unit, at the same address, containing the details of the alleged violation.

RESOLUTION NO.

Adopted by the Sacramento City Council

AGREEMENT FOR LIABILITY CLAIMS ADMINISTRATION AND SUBROGATION SERVICES

BACKGROUND

- A. The City utilizes a third party claims administrator to adjust the City's general and automobile liability claims. The claims administrator's personnel servicing the City are located within the City's Risk Management Division due to the frequent interactions between the claims administrator's staff and the City Attorney's Office and Risk Management staff. This is an efficient and effective method of handling the City's liability claims.
- B. The Risk Management Division is responsible for the collection of funds from responsible third parties that damage City assets. Subrogation is a specialized field that requires knowledge of claims administration and collections. Utilizing a third party vendor that specializes in claims administration and subrogation will increase the funds collected from responsible third parties and increase revenues to the City.
- C. A Request for Proposal for Self-Insured General and Automobile Liability Claims Administration and Subrogation Services was issued on July 8, 2011. A four member committee of external and internal individuals selected York Risk Services Group, Inc., as the City's third party liability claims administrator and subrogation vendor.
- D. There is sufficient funding in the risk management budget (Fund 6502) and the corresponding expenditure budgets are established for the duration of the contract subject to funding through the annual budget process.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Manager or designee is authorized to execute an agreement with York Risk Services Group, Inc. for liability claims administration and subrogation services for a term of thirty-six (36) months at an annual cost not to exceed \$479,532 for year one, \$479,532 for year two, and \$481,532 for year three. The not to exceed amount for the optional fourth year is \$497,728 and the not to exceed amount for the optional fifth year is \$511,676. The total not to exceed amount for the contract period for liability claims administration and subrogation services is \$2,450,000.