

PROFESSIONAL SERVICES CONTRACT BETWEEN
THE CITY OF HUNTINGTON BEACH AND
CARL WARREN AND COMPANY
LIABILITY CLAIM INVESTIGATION AND PROCESSING

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Huntington Beach, a municipal corporation of the State of California, hereinafter referred to as "CITY," and Carl Warren, an Arizona Company hereinafter referred to as "CONSULTANT."

WHEREAS, CITY desires to engage the services of a consultant to provide liability claim investigation and processing services; and

Pursuant to documentation on file in the office of the City Clerk, the provisions of the Huntington Beach Municipal Code, Chapter 3.03, relating to procurement of professional service contracts have been complied with; and

CONSULTANT has been selected to perform these services,

NOW, THEREFORE, it is agreed by CITY and CONSULTANT as follows:

1. SCOPE OF SERVICES

CONSULTANT shall provide all services as described in **Exhibit "A,"** which is attached hereto and incorporated into this Agreement by this reference. These services shall sometimes hereinafter be referred to as the "PROJECT."

CONSULTANT hereby designates Richard McAbee who shall represent it and be its sole contact and agent in all consultations with CITY during the performance of this Agreement.

2. CITY STAFF ASSISTANCE

CITY shall assign a staff coordinator to work directly with CONSULTANT in the performance of this Agreement.

3. TERM; TIME OF PERFORMANCE

Time is of the essence of this Agreement. The services of CONSULTANT are to commence on February 18, 2021 (the "Commencement Date"). This Agreement shall automatically terminate three (3) years from the Commencement Date, unless extended or sooner terminated as provided herein. All tasks specified in **Exhibit "A"** shall be completed no later than one (1) year from the Commencement Date. The time for performance of the tasks identified in **Exhibit "A"** are generally to be shown in **Exhibit "A."** This schedule may be amended to benefit the PROJECT if mutually agreed to in writing by CITY and CONSULTANT.

In the event the Commencement Date precedes the Effective Date, CONSULTANT shall be bound by all terms and conditions as provided herein.

4. COMPENSATION

In consideration of the performance of the services described herein, CITY agrees to pay CONSULTANT on a time and materials basis at the rates specified in **Exhibit "B,"** which is attached hereto and incorporated by reference into this Agreement, a fee, including all costs and expenses, not to exceed Three Hundred Nine Thousand Dollars (\$309,000).

5. EXTRA WORK

In the event CITY requires additional services not included in **Exhibit "A"** or changes in the scope of services described in **Exhibit "A,"** CONSULTANT will undertake such work only after receiving written authorization from CITY. Additional compensation for such extra work shall be allowed only if the prior written approval of CITY is obtained.

6. METHOD OF PAYMENT

CONSULTANT shall be paid pursuant to the terms of **Exhibit "B."**

7. DISPOSITION OF PLANS, ESTIMATES AND OTHER DOCUMENTS

CONSULTANT agrees that title to all materials prepared hereunder, including, without limitation, all original drawings, designs, reports, both field and office notices, calculations, computer code, language, data or programs, maps, memoranda, letters and other documents, shall belong to CITY, and CONSULTANT shall turn these materials over to CITY upon expiration or termination of this Agreement or upon PROJECT completion, whichever shall occur first. These materials may be used by CITY as it sees fit.

8. HOLD HARMLESS

A. CONSULTANT hereby agrees to protect, defend, indemnify and hold harmless CITY, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all claims, damages, losses, expenses, judgments, demands and defense costs (including, without limitation, costs and fees of litigation of every nature or liability of any kind or nature) arising out of or in connection with CONSULTANT's (or CONSULTANT's subcontractors, if any) negligent (or alleged negligent) performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement by CONSULTANT, its officers, agents or employees except such loss or damage which was caused by the sole negligence or willful misconduct of CITY. CONSULTANT will conduct all defense at its sole cost and expense and CITY shall approve selection of CONSULTANT's counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as limitation upon the amount of indemnification to be provided by CONSULTANT.

B. To the extent that CONSULTANT performs "Design Professional Services" within the meaning of Civil Code Section 2782.8, then the following Hold Harmless provision applies in place of subsection A above:

“CONSULTANT hereby agrees to protect, defend, indemnify and hold harmless CITY and its officers, elected or appointed officials, employees, agents and volunteers, from and against any and all claims, damages, losses, expenses, demands and defense costs (including, without limitation, costs and fees of litigation of every nature or liability of any kind or nature) to the extent that the claims against CONSULTANT arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT. In no event shall the cost to defend charged to CONSULTANT exceed CONSULTANT’s proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more other defendants to the claims and/or litigation is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, CONSULTANT shall meet and confer with CITY and other defendants regarding unpaid defense costs. The duty to indemnify, including the duty and the cost to defend, is limited as provided in California Civil Code Section 2782.8.

C. Regardless of whether subparagraph A or B applies, CITY shall be reimbursed by CONSULTANT for all costs and attorney’s fees incurred by CITY in enforcing this obligation. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT.

9. PROFESSIONAL LIABILITY INSURANCE

CONSULTANT shall obtain and furnish to CITY a professional liability insurance policy covering the work performed by it hereunder. This policy shall provide coverage for CONSULTANT’s professional liability in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence and in the aggregate. The above-mentioned insurance shall not contain a self-insured retention without the express written consent of CITY; however an insurance

policy "deductible" of Ten Thousand Dollars (\$10,000.00) or less is permitted. A claims-made policy shall be acceptable if the policy further provides that:

- A. The policy retroactive date coincides with or precedes the initiation of the scope of work (including subsequent policies purchased as renewals or replacements).
- B. CONSULTANT shall notify CITY of circumstances or incidents that might give rise to future claims.

CONSULTANT will make every effort to maintain similar insurance during the required extended period of coverage following PROJECT completion. If insurance is terminated for any reason, CONSULTANT agrees to purchase an extended reporting provision of at least two (2) years to report claims arising from work performed in connection with this Agreement.

If CONSULTANT fails or refuses to produce or maintain the insurance required by this section or fails or refuses to furnish the CITY with required proof that insurance has been procured and is in force and paid for, the CITY shall have the right, at the CITY's election, to forthwith terminate this Agreement. Such termination shall not effect Consultant's right to be paid for its time and materials expended prior to notification of termination. CONSULTANT waives the right to receive compensation and agrees to indemnify the CITY for any work performed prior to approval of insurance by the CITY.

10. CERTIFICATE OF INSURANCE

Prior to commencing performance of the work hereunder, CONSULTANT shall furnish to CITY a certificate of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverage as required by this Agreement; the certificate shall:

- A. provide the name and policy number of each carrier and policy;
- B. state that the policy is currently in force; and

- C. shall promise that such policy shall not be suspended, voided or canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice; however, ten (10) days' prior written notice in the event of cancellation for nonpayment of premium.

CONSULTANT shall maintain the foregoing insurance coverage in force until the work under this Agreement is fully completed and accepted by CITY.

The requirement for carrying the foregoing insurance coverage shall not derogate from CONSULTANT's defense, hold harmless and indemnification obligations as set forth in this Agreement. CITY or its representative shall at all times have the right to demand the original or a copy of the policy of insurance. CONSULTANT shall pay, in a prompt and timely manner, the premiums on the insurance hereinabove required.

11. INDEPENDENT CONTRACTOR

CONSULTANT is, and shall be, acting at all times in the performance of this Agreement as an independent contractor herein and not as an employee of CITY. CONSULTANT shall secure at its own cost and expense, and be responsible for any and all payment of all taxes, social security, state disability insurance compensation, unemployment compensation and other payroll deductions for CONSULTANT and its officers, agents and employees and all business licenses, if any, in connection with the PROJECT and/or the services to be performed hereunder.

12. TERMINATION OF AGREEMENT

All work required hereunder shall be performed in a good and workmanlike manner. CITY may terminate CONSULTANT's services hereunder at any time with or without cause, and whether or not the PROJECT is fully complete. Any termination of this Agreement by CITY shall be made in writing, notice of which shall be delivered to CONSULTANT as provided herein. In the

event of termination, all finished and unfinished documents, exhibits, report, and evidence shall, at the option of CITY, become its property and shall be promptly delivered to it by CONSULTANT.

13. ASSIGNMENT AND DELEGATION

This Agreement is a personal service contract and the work hereunder shall not be assigned, delegated or subcontracted by CONSULTANT to any other person or entity without the prior express written consent of CITY. If an assignment, delegation or subcontract is approved, all approved assignees, delegates and subconsultants must satisfy the insurance requirements as set forth in Sections 9 and 10 hereinabove.

14. COPYRIGHTS/PATENTS

CITY shall own all rights to any patent or copyright on any work, item or material produced as a result of this Agreement.

15. CITY EMPLOYEES AND OFFICIALS

CONSULTANT shall employ no CITY official nor any regular CITY employee in the work performed pursuant to this Agreement. No officer or employee of CITY shall have any financial interest in this Agreement in violation of the applicable provisions of the California Government Code.

16. NOTICES

Any notices, certificates, or other communications hereunder shall be given either by personal delivery to CONSULTANT's agent (as designated in Section 1 hereinabove) or to CITY as the situation shall warrant, or by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, to the addresses specified below. CITY and CONSULTANT may designate different addresses to which subsequent notices, certificates or other communications will be sent by notifying the other party via personal delivery, a reputable overnight carrier or U. S. certified mail-return receipt requested:

TO CITY:

City of Huntington Beach
ATTN: Deanna Soria
2000 Main Street
Huntington Beach, CA 92648

TO CONSULTANT:

Carl Warren and Company
11209 N. Tatum Blvd., Suite 130
Phoenix, AZ 85028
(602) 485-8228
Attn: Richard McAbee

17. CONSENT

When CITY's consent/approval is required under this Agreement, its consent/approval for one transaction or event shall not be deemed to be a consent/approval to any subsequent occurrence of the same or any other transaction or event.

18. MODIFICATION

No waiver or modification of any language in this Agreement shall be valid unless in writing and duly executed by both parties.

19. SECTION HEADINGS

The titles, captions, section, paragraph and subject headings, and descriptive phrases at the beginning of the various sections in this Agreement are merely descriptive and are included solely for convenience of reference only and are not representative of matters included or excluded from such provisions, and do not interpret, define, limit or describe, or construe the intent of the parties or affect the construction or interpretation of any provision of this Agreement.

20. INTERPRETATION OF THIS AGREEMENT

The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. If any provision of this Agreement is held by an arbitrator or court of competent jurisdiction to be unenforceable, void, illegal or invalid, such holding shall not invalidate or affect the remaining covenants and provisions of this Agreement. No covenant or provision shall be deemed dependent upon any other unless so expressly provided here. As used in this Agreement, the masculine or

neuter gender and singular or plural number shall be deemed to include the other whenever the context so indicates or requires. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no right to contract, then the latter shall prevail, and the provision of this Agreement which is hereby affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

21. DUPLICATE ORIGINAL

The original of this Agreement and one or more copies hereto have been prepared and signed in counterparts as duplicate originals, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original. Each duplicate original shall be deemed an original instrument as against any party who has signed it.

22. IMMIGRATION

CONSULTANT shall be responsible for full compliance with the immigration and naturalization laws of the United States and shall, in particular, comply with the provisions of the United States Code regarding employment verification.

23. LEGAL SERVICES SUBCONTRACTING PROHIBITED

CONSULTANT and CITY agree that CITY is not liable for payment of any subcontractor work involving legal services, and that such legal services are expressly outside the scope of services contemplated hereunder. CONSULTANT understands that pursuant to *Huntington Beach City Charter* Section 309, the City Attorney is the exclusive legal counsel for CITY; and CITY shall not be liable for payment of any legal services expenses incurred by CONSULTANT.

24. ATTORNEY'S FEES

In the event suit is brought by either party to construe, interpret and/or enforce the terms and/or provisions of this Agreement or to secure the performance hereof, each party shall bear its own attorney's fees, such that the prevailing party shall not be entitled to recover its attorney's fees from the nonprevailing party.

25. SURVIVAL

Terms and conditions of this Agreement, which by their sense and context survive the expiration or termination of this Agreement, shall so survive.

26. GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California.

27. SIGNATORIES

Each undersigned represents and warrants that its signature hereinbelow has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify CITY fully for any injuries or damages to CITY in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

28. ENTIRETY

The parties acknowledge and agree that they are entering into this Agreement freely and voluntarily following extensive arm's length negotiation, and that each has had the opportunity to consult with legal counsel prior to executing this Agreement. The parties also acknowledge and agree that no representations, inducements, promises, agreements or warranties, oral or otherwise, have been made by that party or anyone acting on that party's behalf, which are not embodied in this Agreement, and that that party has not executed this Agreement in reliance on any representation, inducement, promise, agreement, warranty, fact or circumstance not expressly set forth in this

Agreement. This Agreement, and the attached exhibits, contain the entire agreement between the parties respecting the subject matter of this Agreement, and supersede all prior understandings and agreements whether oral or in writing between the parties respecting the subject matter hereof.

29. EFFECTIVE DATE

This Agreement shall be effective on the date of its approval by the City Council.

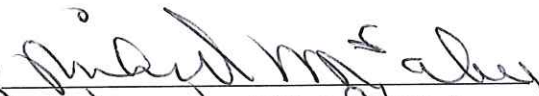
This Agreement shall expire when terminated as provided herein.

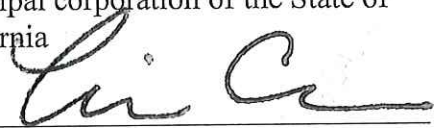
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized officers.

CONSULTANT,

Carl Warren and Company

CITY OF HUNTINGTON BEACH, a
municipal corporation of the State of
California

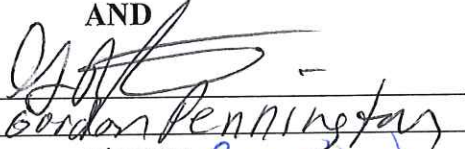
By: 
Richard McAbee
print name


Mayor

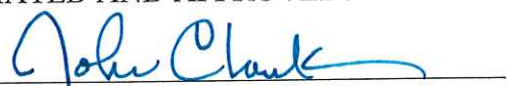
ITS: (circle one) Chairman/President/Vice President *Chief Marketing Officer*


City Clerk

AND

By: 
Gordon Pennington
print name

INITIATED AND APPROVED:

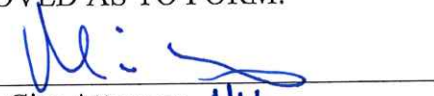

Director of Administrative Services

ITS: (circle one) Secretary/Chief Financial Officer/Asst. Secretary - Treasurer *President*

REVIEWED AND APPROVED:


City Manager

APPROVED AS TO FORM:


City Attorney

BUSINESS LIABILITY COVERAGE FORM**F. OPTIONAL ADDITIONAL INSURED COVERAGES**

If listed or shown as applicable in the Declarations, one or more of the following Optional Additional Insured Coverages also apply. When any of these Optional Additional Insured Coverages apply, Paragraph 6. (Additional Insureds When Required by Written Contract, Written Agreement or Permit) of Section C., Who Is An Insured, does not apply to the person or organization shown in the Declarations. These coverages are subject to the terms and conditions applicable to Business Liability Coverage in this policy, except as provided below:

1. Additional Insured - Designated Person Or Organization

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations; or
- b. In connection with your premises owned by or rented to you.

2. Additional Insured - Managers Or Lessors Of Premises

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Designated Person Or Organization; but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Declarations.

b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

3. Additional Insured - Grantor Of Franchise

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Grantor Of Franchise, but only with respect to their liability as grantor of franchise to you.

4. Additional Insured - Lessor Of Leased Equipment

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

5. Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Declarations.

b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" that takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

6. Additional Insured - State Or Political Subdivision - Permits

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the state or political subdivision shown in the Declarations as an Additional

BUSINESS LIABILITY COVERAGE FORM

Insured – State Or Political Subdivision - Permits, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included in the "product-completed operations" hazard.

7. Additional Insured – Vendors

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured - Vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- b. The insurance afforded to the vendor is subject to the following additional exclusions:

- (1) This insurance does not apply to:
 - (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - (b) Any express warranty unauthorized by you;
 - (c) Any physical or chemical change in the product made intentionally by the vendor;
 - (d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or

- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

8. Additional Insured – Controlling Interest

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Controlling Interest, but only with respect to their liability arising out of:

- a. Their financial control of you; or
- b. Premises they own, maintain or control while you lease or occupy these premises.

BUSINESS LIABILITY COVERAGE FORM

If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice Of Occurrence Or Offense

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insured's Own Cost

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. Additional Insured's Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs a. and b. apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

BUSINESS LIABILITY COVERAGE FORM

This Paragraph f. applies separately to you and any additional insured.

3. Financial Responsibility Laws

- a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

4. Legal Action Against Us

No person or organization has a right under this Coverage Form:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

5. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom a claim is made or "suit" is brought.

6. Representations**a. When You Accept This Policy**

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and

- (3) We have issued this policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

7. Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when b. below applies. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section A. — Coverages.

(5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion k. of Section A. — Coverages.

BUSINESS LIABILITY COVERAGE FORM**(6) When You Are Added As An Additional Insured To Other Insurance**

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (a) and (b) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

8. Transfer Of Rights Of Recovery Against Others To Us**a. Transfer Of Rights Of Recovery**

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLICY CHANGE

This endorsement changes the policy effective on the Inception Date of the policy unless another date is indicated below:

Policy Number: 72 SBA AG9334 SC

Named Insured and Mailing Address; VENBROOK GROUP, LLC
SEE FORM SS1235
6320 CANOGA AVE. FL. 12
WOODLAND HILLS CA 91367

Policy Change Effective Date: 03/04/21 **Effective hour is the same as stated in the
Declarations Page of the Policy.**

Policy Change Number: 009

Agent Name: VENBROOK INSURANCE SERVICES
Code: 250576

POLICY CHANGES:
SENTINEL INSURANCE COMPANY, LIMITED

ANY CHANGES IN YOUR PREMIUM WILL BE REFLECTED IN YOUR NEXT BILLING
STATEMENT. IF YOU ARE ENROLLED IN REPETITIVE EFT DRAWS FROM YOUR BANK
ACCOUNT, CHANGES IN PREMIUM WILL CHANGE FUTURE DRAW AMOUNTS.
THIS IS NOT A BILL.

NO PREMIUM DUE AS OF POLICY CHANGE EFFECTIVE DATE

FORM NUMBERS OF ENDORSEMENTS REVISED AT ENDORSEMENT ISSUE:

IH12001185 ADDITIONAL INSURED - DESIGNATED PERSON OR
ORGANIZATION

PRO RATA FACTOR: 0.469

THIS ENDORSEMENT DOES NOT CHANGE THE POLICY EXCEPT AS SHOWN.

Form SS 12 11 04 05 T
Process Date: 03/09/21

Page 001

Policy Effective Date: 08/22/20
Policy Expiration Date: 08/22/21

POLICY NUMBER: 72 SBA AG9334



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - DESIGNATED PERSON OR
ORGANIZATION

CITY OF LAS VEGAS
ATTN: PURCHASING & CONTRACTS
495 S. MAIN ST., 3RD FLOOR
LAS VEGAS NV 89101

THE CITY OF COSTA MESA AND ITS ELECTED AND APPOINTED BOARDS,
OFFICERS, AGENTS, AND EMPLOYEES
P O BOX 1200
COSTA MESA CA 92728-8030

CITY OF HUNTINGTON BEACH, ITS OFFICERS, ELECTED OR APPOINTED
OFFICIALS, EMPLOYEES, AGENTS AND VOLUNTEERS ARE INCLUDED AS
ADDITIONAL INSURED.
2000 MAIN STREET
HUNTINGTON BEACH CA 92648



INSURANCE AND INDEMNIFICATION WAIVER MODIFICATION REQUEST

1. Requested by: Risk Management
2. Date: 3/9/2021
3. Name of contractor/permittee: Carl Warren & Company
4. Description of work to be performed: Third Party Administrator for Liability Claims
5. Value and length of contract: \$309,000.00; 3 years
6. Waiver/modification request: \$75,000 Retention on Professional Liability
7. Reason for request and why it should be granted: unable to comply with requirements
8. Identify the risks to the City in approving this waiver/modification: NA

John Clark

Department Head Signature

3-9-21

Date:

APPROVALS

Approvals must be obtained in the order listed on this form. Two approvals are required for a request to be granted. Approval from the City Administrator's Office is only required if Risk Management and the City Attorney's Office disagree.

1. Risk Management

Approved Denied

[Signature]
Signature

3-9-21
Date

2. City Attorney's Office

Approved Denied

[Signature]
Signature

3-11-21
Date

3. City Manager's Office

Approved Denied

Signature

Date

If approved, the completed waiver/modification request is to be submitted to the City Attorney's Office along with the contract for approval. Once the contract has been approved, this form is to be filed with the Risk Management Division of Human Resources

EXHIBIT "A"

A. STATEMENT OF WORK: (Narrative of work to be performed)

See attached Exhibit A.

B. CONSULTANT'S DUTIES AND RESPONSIBILITIES:

See attached Exhibit A.

C. CITY'S DUTIES AND RESPONSIBILITIES:

See attached Exhibit A.

D. WORK PROGRAM/PROJECT SCHEDULE:

See attached Exhibit A.

SCOPE OF WORK

The Consultant is to provide the City with the following services:

A. Program Administration

Consultant shall:

1. Provide professional and technical staff to perform General Liability Claims Administration services with the assignment of qualified personnel, including at least one principal claims examiner, to efficiently and effectively meet the scope of work listed in this section. Such assignment shall be subject to approval by the City.
2. Represent the City in all matters related to the set-up, investigation, adjustment, processing, negotiation, and resolution of liability claims against the City.
3. Inform the City of changes or proposed changes in statutes, rules and regulations and any other case law affecting its General Liability Program.
4. Provide information and guidance regarding the general liability claims program and specified claims.
5. Provide copies of file correspondence and documentation as requested by City.
6. Inform City of problem areas and/or trends, both potential and perceived, and provide recommendations and/or solutions to address problem areas and/or trends.
7. Attend appointments, including but not limited to: meetings, conferences, Court appearances and scene investigations at the request of the City.
8. Provide 24-hour on-call service by providing the City with contact information for key personnel. This may include, but is not limited to, responding to an incident scene and/or conducting investigations.
9. Conduct risk management related seminars for department heads and/or City staff at the request of the City.
10. Attempt to settle and/or recommend denial of claims.
11. Prepare necessary reports of claims filed for the City's primary and excess carriers.
12. Establish and maintain a file for each potential claim.
13. Prepare a Monthly Status Report on all claims including litigated claims. Copies of the report shall be furnished to both the City Attorney and Risk Manager within twenty (20) days of the close of each calendar month. The Monthly Status Report shall include, but is not limited to, the following:

EXHIBIT A

- i. The details of each claim. This includes a list of all claims segregated by policy year showing the following: policy year, case number, claimant's name, cause of loss description, date of loss, type of loss, status, losses paid to date, reserves, and total incurred; the outstanding reserves of each claim and detail of all claim payments during the month; investigative costs; claims opened and closed during the month; and any active litigation.

14. The qualified TPA will follow special reporting requirements to the appropriate carriers for the time the City of Huntington Beach was a member of the BIG Independent Cities Excess Pool (BICEP), which dissolved effective July 1, 2019.

15. Provide Quarterly Claim reviews to the City.

16. Provide the City with an annual Stewardship report.

17. Submit and assist with file audits by Carriers or Pools.

B. Claims Administration

Consultant shall provide administrative services that include, but are not limited to:

1. At the direction of the City, claimants or their attorneys will be contacted promptly and appropriate contact will be maintained until the claim is closed. Claimants or their attorneys will receive a telephone call from Consultant or have a contact letter mailed to them from Consultant within 48 hours of receipt of claim by Consultant.
2. Obtain estimates of automobile damage when appropriate.
3. Review the status of claims and adequacy of reserves on all active cases at least every 90 days.
4. Provide first investigative report to Risk Management within thirty (30) days of receipt of claim.
5. Provide narrative reports when recommending rejection or settlement of a claim, when a claim is going to trial, or when any other significant events have occurred or will occur. Reports must be clear and concise.
6. Negotiate and approve claim settlements up to \$5,000 and submit notice to the Risk Manager.
7. All files will be diaried at appropriate intervals to allow for timely completion of required activity.
8. Content of all files will be in chronological order with correspondence in the designated section.

EXHIBIT A

9. Files will clearly and concisely document action taken on the claim.
10. Telephone calls will be returned within 24 hours. If the staff member called is not available within this timeframe, another designated staff member will return to call.
11. Review all new claims for liability and provide an assessment of liability to the City no later than thirty (30) days from receipt of loss notice to City.
12. Identify and notify possible co-defendants.
13. Tender claims to other potential responsible parties.
14. Complete and send Insufficiency letters, rejection notices, delay letters, mitigation of damages letters and other correspondence and communication as is needed.
15. Process all claims in accordance with City's instructions and policies.
16. Have translators available to assist with non-English speaking claimants and/or witnesses.
17. Maintain a procedure to alert necessary persons of important dates with respect to the claims.
19. If the possibility of subrogation exists, pursue subrogation recovery on behalf of the City for 18% of the net recovery.
20. Report to BICEP (Excess Liability Pool) or PRISM in accordance with policy provisions.
21. Comply and meet with any excess pool/carrier claims administration requirements.

C. Investigations

1. Within ten (10) days of receipt of claim, unless otherwise requested by the Risk Manager, take statements of facts from claimants when not represented by an attorney. Statements will be preserved by recording or taking handwritten signed statements.
2. Further investigate claims where the initial review indicates that it is warranted. Further investigation may include but is not limited to: on-sight investigation, photographs, interviewing witnesses and taking signed or recorded statements, verification of damage or loss, taking measurements, obtaining maps/diagrams from the City or other sources, obtaining medical releases, police reports, internal operations investigations, paramedic reports, marine safety department reports, building permits, or other records as required.
3. If an attorney is involved, direct all communication to the claimant's attorney regarding the investigation, negotiation, and evaluation of any claims leading to a settlement.

EXHIBIT A

4. Report all bodily injury claims to Index Bureau. Conduct Index bureau searches for repeat claimants. Conduct additional Index Bureau searches at request of the City.
5. Obtain approval from City before engaging the services of an outside vendor for an investigative assignment.

D. Litigation Management

Consultant shall provide Litigation Management services that include, but are not limited to:

1. Provide City Attorney's Office with transmittal letter outlining the status of the case, results of investigations, primary issues, requested action, a complete copy of the file and any documentation within fourteen (14) days of receipt of lawsuit with a copy to the Risk Manager.
2. Maintain liaison with the City Attorney's Office and defense counsel and provide such investigation as required during the entire litigation process, including but not limited to: additional investigations for pretrial and trial that may be requested by either the City Attorney's Office or defense counsel.
3. Obtain approval from City prior to agreement or settlement.
4. Obtain a fully executed release on all settlements and dismissals.
5. Attend Settlement Conferences, mediation or arbitrations as requested.
6. Assist the City Attorney and defense counsel in preparing and/or answering discovery as requested.
7. Assist City personnel in Small Claims Court actions filed by and against City, including but not limited to: obtaining witness information, evidence, assistance in preparing the case for trial, and appearance at the trial if deemed necessary by the City.

EXHIBIT "B"

Payment Schedule (Hourly Payment)

A. Hourly Rate

CONSULTANT'S fees for such services shall be based upon the following hourly rate and cost schedule:

See attached Exhibit B

B. Travel Charges for time during travel are not reimbursable.

C. Billing

1. All billing shall be done monthly in fifteen (15) minute increments and matched to an appropriate breakdown of the time that was taken to perform that work and who performed it.
2. Each month's bill should include a total to date. That total should provide, at a glance, the total fees and costs incurred to date for the project.
3. A copy of memoranda, letters, reports, calculations and other documentation prepared by CONSULTANT may be required to be submitted to CITY to demonstrate progress toward completion of tasks. In the event CITY rejects or has comments on any such product, CITY shall identify specific requirements for satisfactory completion.
4. CONSULTANT shall submit to CITY an invoice for each monthly payment due. Such invoice shall:
 - A) Reference this Agreement;
 - B) Describe the services performed;
 - C) Show the total amount of the payment due;
 - D) Include a certification by a principal member of CONSULTANT's firm that the work has been performed in accordance with the provisions of this Agreement; and
 - E) For all payments include an estimate of the percentage of work completed.

Upon submission of any such invoice, if CITY is satisfied that CONSULTANT is making satisfactory progress toward completion of tasks in accordance with this Agreement, CITY shall approve the invoice, in which event payment shall be made within thirty (30) days of receipt of the invoice by CITY. Such approval shall not be unreasonably withheld. If CITY does not approve an invoice, CITY shall notify CONSULTANT in writing of the reasons for non-approval and the schedule of performance set forth in **Exhibit "A"** may at the option of CITY be suspended until the parties agree that past performance by CONSULTANT is in, or has been brought into compliance, or until this Agreement has expired or is terminated as provided herein.

5. Any billings for extra work or additional services authorized in advance and in writing by CITY shall be invoiced separately to CITY. Such invoice shall contain all of the information required above, and in addition shall list the hours expended and hourly rate charged for such time. Such invoices shall be approved by CITY if the work performed is in accordance with the extra work or additional services requested, and if CITY is satisfied that the statement of hours worked and costs incurred is accurate. Such approval shall not be unreasonably withheld. Any dispute between the parties concerning payment of such an invoice shall be treated as separate and apart from the ongoing performance of the remainder of this Agreement.



CARL WARREN & COMPANY
Claims Management and Solutions

Third Party Administrative
Services Price Proposal

for

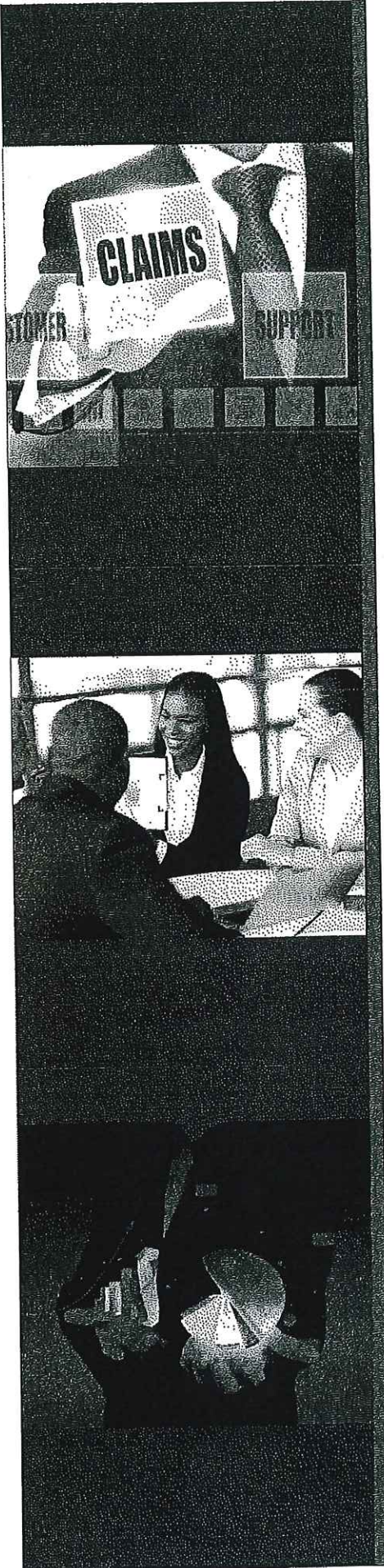
City of Huntington Beach

January 27, 2021

Contact:

Richard McAbee
Chief Marketing Officer
11209 N. Tatum Blvd., Suite 130
Phoenix, AZ 85028
C: 602-723-5610 | T: 602-485-8228
rmcabee@carlwarren.com

Confidential & Proprietary





Carl Warren & Company, LLC
Third Party Administrative Services Price Proposal for
City of Huntington Beach

Fixed Annual Pricing – 2 Year

CLAIMS ADMINISTRATION SERVICES	FIXED ANNUAL PRICING	
	2021 - 2022	2022 - 2023
Fixed Annual Rate - NTE (*Not-to-exceed 165 new claims & record only per year)	\$103,000*	\$105,060*
Excess of CAP of 165 Claims Per Year: • Litigated	\$900 per suffix	\$927 per suffix
Excess of CAP of 165 Claims Per Year: • Non-Litigated	\$600 per suffix	\$618 per suffix
Incident Report/Record Only	Included	Included
Telephone	Included	Included
Copy Work	Included	Included
Stenographs	Included	Included
Postage	Included	Included
Office Expense	Included	Included
Claims Set-Up Fee	Included	Included
Data Processing	Included	Included
Index Bureau (ISO Claims Search & OFAC)	Included	Included
MMSEA Filing Fee (liability claims)	Included	Included
Miscellaneous/ Allocated Loss Adjustment Expenses (i.e. police reports, medical records, etc.)	At Cost	At Cost
Field Work Services		
General Liability Adjuster Services	\$88 per hour	\$88 per hour
Mileage	Included	Included
Photographs/Duplicate Photographs	Included	Included
Auxiliary Services		
Subrogation	18% of net recovery	18% of net recovery
Outside Investigations	At Cost	At Cost
Auto/Property Damage Appraisals	At Cost	At Cost
Surveillance/Fraud Unit	At Cost	At Cost
Annual Administration Services		
• Data Management • Account Management • Annual Stewardship • Quarterly Claims Review	Included	Included
• RMIS Training/ Technical Support • Set-Up (one-time charge) • Data Conversion(s) • 3 Users RMIS Access • Standard Monthly Loss Runs • Report Programming • Carrier TPA Oversight (Data Extract, Feeds, Audits, Compliance & Reporting)	Included	Included
Additional Users	\$250/user per year	\$250/user per year
Custom Report Development	\$250 per hour	\$250 per hour
Exit IT Services (Final Termination Report)	\$250 per hour	\$250 per hour
Banking/Trust Account Services		
Trust Account Maintenance	Included	Included
Check Issuance and Reconciliations	Included	Included
1099 Reporting, including IRS File	Included	Included



Carl Warren & Company, LLC
Third Party Administrative Services Price Proposal for
City of Huntington Beach

Fixed Annual Pricing – 3 Year

CLAIMS ADMINISTRATION SERVICES	FIXED ANNUAL PRICING		
	2021 - 2022	2022 - 2023	2023 - 2024
Fixed Annual Rate – NTE (*Not-to-exceed 165 new claims & record only per year)	\$103,000*	\$103,000*	\$103,000*
Excess of CAP of 165 Claims Per Year:	\$900 per suffix	\$900 per suffix	\$900 per suffix
• Litigated			
Excess of CAP of 165 Claims Per Year:	\$600 per suffix	\$600 per suffix	\$600 per suffix
• Non-Litigated			
Incident Report/Record Only	Included	Included	Included
Telephone	Included	Included	Included
Copy Work	Included	Included	Included
Stenographs	Included	Included	Included
Postage	Included	Included	Included
Office Expense	Included	Included	Included
Claims Set-Up Fee	Included	Included	Included
Data Processing	Included	Included	Included
Index Bureau (ISO Claims Search & OFAC)	Included	Included	Included
MMSEA Filing Fee (liability claims)	Included	Included	Included
Miscellaneous/Allocated Loss Adjustment Expenses (i.e. police reports, medical records, etc.)	At Cost	At Cost	At Cost
Field Work Services			
General Liability Adjuster Services	\$88 per hour	\$88 per hour	\$88 per hour
Mileage	Included	Included	Included
Photographs/Duplicate Photographs	Included	Included	Included
Ancillary Services			
Subrogation	18% of net recovery	18% of net recovery	18% of net recovery
Outside Investigations	At Cost	At Cost	At Cost
Auto/Property Damage Appraisals	At Cost	At Cost	At Cost
Surveillance/Fraud Unit	At Cost	At Cost	At Cost
Annual Administration Services			
• Data Management • Account Management • Annual Stewardship • Quarterly Claims Review	Included	Included	Included
• RMIS Training/ Technical Support • Set-Up (one-time charge) • Data Conversion(s) • 3 Users RMIS Access • Standard Monthly Loss Runs • Report Programming • Carrier TPA Oversight (Data Extract, Feeds, Audits, Compliance & Reporting)	Included	Included	Included
Additional Users	\$250/user per year	\$250/user per year	\$250/user per year
Custom Report Development	\$250 per hour	\$250 per hour	\$250 per hour
Exit IT Services (Final Termination Report)	\$250 per hour	\$250 per hour	\$250 per hour
Banking/Trust Account Services			
Trust Account Maintenance	Included	Included	Included
Check Issuance and Reconciliations	Included	Included	Included
1099 Reporting, including IRS File	Included	Included	Included

PROFESSIONAL SERVICES CONTRACT BETWEEN
THE CITY OF HUNTINGTON BEACH AND
CARL WARREN AND COMPANY
LIABILITY CLAIM INVESTIGATION AND PROCESSING

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