



City of San Leandro

Meeting Date: April 17, 2017

Staff Report

File Number: 17-181

Agenda Section: CONSENT CALENDAR

Agenda Number: 8.L.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Jeff Kay
Assistant City Manager

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff Report for a Resolution Approving a Consulting Services Agreement with Intercare Holdings Insurance Services, Inc. ("Intercare") for Workers' Compensation Third Party Claims Administration (TPA) Services for three years in the amount of \$301,054 plus a flat fee structure for bill review charges estimated at \$64,080

SUMMARY AND RECOMMENDATIONS

Staff recommends the approval of a Consulting Services Agreement with Intercare Holdings Insurance Services, Inc. ("Intercare") for Workers' Compensation Third Party Claims Administration (TPA) Services for three years in the amount of \$301,054 plus a flat fee structure for bill review charges estimated at \$64,080.

BACKGROUND

The City of San Leandro is self-insured for its Workers' Compensation program and uses a Third Party Administrator (TPA) for claims administration. The TPA's responsibility is to manage, track, and process payments for all Workers' Compensation claims reported. The City had contracted with JT2 Integrated Resources since June 1, 2014 for these services. The contract with JT2 expires May 30, 2017.

In October 2015, a Request for Proposal (RFP) for Workers' Compensation TPA services was issued in partnership with the Cities of Hayward and Newark. In response to the RFP, eight proposals were received from the following vendors:

Acclamation Insurance Management Services
Athens Administrators
Hazelrigg Claims Management Services
Innovative Claim Solutions, Inc.
Intercare Holdings Insurance Services, Inc.
JT2 Integrated Resources

Tristar Insurance Group
York Risk Services Group, Inc.

A comprehensive review and evaluation process was conducted, including the screening of all proposals by each agency individually, oral presentations, an external interview panel, and an internal interview panel. The top ranking vendors were invited to participate in the internal panel interviews. The City of San Leandro's internal panel, which consisted of representatives from the Police, Public Works and Finance Departments, unanimously selected Intercare as the most qualified TPA to provide claims administration services for the City. Reference checks were completed and all those contacted were highly satisfied with the overall services provided by Intercare.

DISCUSSION

Intercare Holdings Insurance Services, Inc. is a licensed provider of third party claims administration and has been providing Workers' Compensation TPA services for over 20 years. Intercare works with a wide range of public entities across the state of California including City of San Jose, City and County of San Francisco, Berkeley Unified School District, and the City of Napa. Intercare provides effective claims management administration with a focus on delivering a superior level of service with a cost effective service model.

Intercare brings several innovative, value-added services to the City's Workers' Compensation program that will provide enhanced customer service to employees. This includes Intercare's InterConnect program, in which adjusters will visit injured workers at City facilities to discuss benefits, documents, and/or other questions or concerns they may have about their claims. The InterAct Program brings stakeholders together to discuss claims status, medical management, return-to-work possibilities, settlement, disposition strategies and other matters than can move claims to resolution. This high touch service from claims professionals is proven to reduce litigation rates, shorten claim duration rates and lower claims costs.

The proposed agreement will result in a cost reduction in TPA administrative and bill review fees. Currently, the City pays \$117,145 in annual administration fees and \$39 per bill for bill review. The agreement with Intercare will cost \$97,400 in annual administration fees and \$16 per bill for bill review, with an increase of three percent to the administration fee each year. This represents an annual savings of \$19,745 in administrative fees and an approximate \$30,705 savings in bill review costs based on an average of 1,335 bills per year.

Fiscal Year	Annual Fee	Bill Review
2017-18	\$97,400	\$21,360
2018-19	\$100,322	\$21,360
2019-20	\$103,332	\$21,360
TOTAL	\$301,054	\$64,080

If the resolution is approved, Human Resources staff will work closely with Intercare to ensure a smooth transition, and to meet the training and support needs of each department. Upon execution of the agreement, Intercare will work with JT2 to receive data and will take over the account and all associated claims services effective June 1, 2017.

Fiscal Impacts

The agreement proposes a total \$301,054 in administrative fees for the next three years plus a flat fee structure for medical bill review, which is estimated to be \$64,080. As described above, the proposed contract will result in a savings of \$64,628 in administrative fees and an approximate savings in bill review costs of \$92,115 over the three-year contract.

Budget Authority

Workers' Compensation Third Party Administration fees are funded from the Workers' Compensation operating budget, which is included as part of the Self Insurance fund. In addition to TPA services, medical expenses, legal services, salary continuation, claims expenses, and safety trainings are also part of the Workers' Compensation Fund budget. For 2016-17, the workers' compensation's adopted budget is \$1,536,851. Annual administrative fees are budgeted in 689-19-002-5120 and bill review fees are budgeted in 689-19-002-5730. No additional budget adjustment is necessary.

Attachments:

PREPARED BY: Emily Hung, Human Resources Manager, City Manager's Office

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
INTERCARE HOLDINGS INSURANCE SERVICES, INC.**

THIS AGREEMENT for consulting services is made by and between the City of San Leandro ("City") and Intercare Holdings Insurance Services, Inc. ("Consultant") (together sometimes referred to as the "Parties") as of June 1, 2017 (the "Effective Date").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2020, the date of completion specified in Exhibit A, and Consultant shall provide the services described in Exhibit A during the term of the Agreement, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The term of this Agreement shall not affect the City's right to terminate the Agreement, as referenced in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent provider of claims administration services with respect to a self-insured workers compensation program .
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, promptly upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Subsection 1.2 above and to satisfy Consultant's obligations hereunder.
- 1.5 **City of San Leandro Living Wage Rates.** This contract may be covered by the City of San Leandro Living Wage Ordinance (LWO). Bidder's attention is directed to the San Leandro Municipal Code, Title 1, Chapter 6, Article 6. Successful Bidder must submit completed self-certification form and comply with the LWO if covered.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed \$400,000.00 notwithstanding any contrary indications that may be contained in Consultant's proposal, for claims administration services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit B, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered

pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the Parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1 **Invoices.** Consultant shall submit claims administration fee invoices, not more often than once a month during the term of this Agreement, based on the stated services performed and incurred during the month prior to the month in which the invoice is submitted. The monthly invoice shall be for 1/12th of the annual claims administration fee less any hold back. Invoices shall contain the following information:
- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
 - The beginning and ending dates of the billing period;
 - A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
 - The Consultant's signature;
- 2.2 **Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.
- 2.3 **Final Payment.** On an annual basis, City shall pay the last 10% of the total sum due for the claims administration fee pursuant to this Agreement within 60 days after the annual anniversary date and submittal to City of a final invoice, if all services required have been satisfactorily performed.
- 2.4 **Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement,

unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

- 2.5 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.
- 2.6 **Reimbursable Expenses.** Managed case service charges and reimbursable expenses are specified in Exhibit B. Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded. Such expenses shall be applied against the claim file.
- 2.7 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.9 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before fully executing this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not

allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 Workers' Compensation.

4.1.1 General Requirements. Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of the Contract Administrator.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Consultant, its employees, agendas, and subcontractors.

4.1.2 Submittal Requirements. To comply with Subsection 4.1, Consultant shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section; and
- b. Waiver of Subrogation Endorsement as required by the section.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General Requirements. Consultant, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than \$2,000,000 and automobile liability insurance for the term of this Agreement in an amount not less than \$1,000,000 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 **Minimum Scope of Coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.2.3 **Additional Requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. City, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant.
- c. Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.
- d. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

4.2.4 **Submittal Requirements.** To comply with Subsection 4.2, Consultant shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section;
- b. Additional Insured Endorsement as required by the section;
- c. Waiver of Subrogation Endorsement as required by the section; and
- d. Primary Insurance Endorsement as required by the section.

4.3 **Professional Liability Insurance.**

4.3.1 **General Requirements.** Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement errors & omissions insurance for

licensed professionals performing work pursuant to this Agreement in an amount not less than \$1,000,000 covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 **Claims-Made Limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least 5 years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant shall purchase an extended period coverage for a minimum of 5 years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

4.3.3 **Additional Requirements.** A certified endorsement to include contractual liability shall be included in the policy.

4.3.4 **Submittal Requirements.** To comply with Subsection 4.3, Consultant shall submit the Certificate of Liability Insurance in the amounts specified in the section.

4.4 **All Policies Requirements.**

4.4.1 **Acceptability of Insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.2 **Verification of Coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with complete copies of all Certificates of Liability Insurance delivered to Consultant by the insurer, including complete copies of all endorsements attached to the policies. All copies of Certificates of Liability Insurance and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Consultant beginning work, it shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.

4.4.3 **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles

before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4.4.4 **Wasting Policies.** No policy required by this Section 4, except for professional liability coverage, shall include a “wasting” policy limit (i.e. limit that is eroded by the cost of defense).

4.4.5 **Endorsement Requirements.** Each insurance policy required by Section 4 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days’ prior written notice has been provided to the City.

4.4.6 **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.5 **Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant’s breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. **INDEMNIFICATION AND CONSULTANT’S RESPONSIBILITIES.** Refer to the attached Exhibit C, which is incorporated herein and made a part of this Agreement.

Section 6. **STATUS OF CONSULTANT.**

6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant’s services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other

City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

- 6.2 **Consultant Not an Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws and regulations applicable to the performance of the work hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, and any copyright, patent or trademark law. Consultant's failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in

employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

8.1 Termination. City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon 90 days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

8.2 Extension. City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1, but not for a period greater than two years. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

8.3 Amendments. The Parties may amend this Agreement only by a writing signed by all the Parties.

8.4 Assignment and Subcontracting. City and Consultant recognize and agree that this Agreement contemplates performance by Consultant and is based upon a determination of Consultant's unique competence, experience, and specialized knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

8.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but are not limited to, the following:

8.6.1 Immediately terminate the Agreement;

8.6.2 Retain the specifications, reports, documents, and any other work product prepared by Consultant pursuant to this Agreement;

8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both Parties.

9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 **Inspection and Audit of Records.** Any records or documents that Subsection 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

Section 10. MISCELLANEOUS PROVISIONS.

10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which

that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Section 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous 12 months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of California Government Code Section 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of California Government Code Section 1090 *et seq.*, and, if applicable, will be disqualified from holding public office in the State of California.

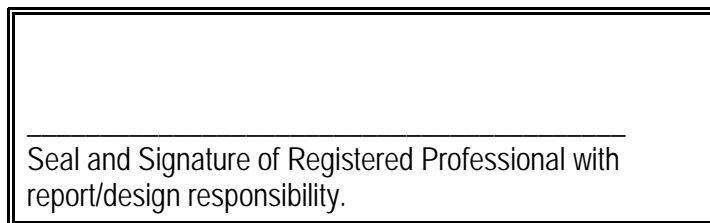
- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by Emily Hung, Human Resources Manager ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 **Notices.** Any written notice to Consultant shall be sent to:

President
Intercare Holdings Insurance Services, Inc.
6020 West Oaks Boulevard, Suite 100
Rocklin, California 95765
Email:

Any written notice to City shall be sent to:
City of San Leandro
Human Resources Manager
Human Resources
835 East 14th Street
San Leandro, CA 94577

With a copy to:
City of San Leandro
Department of Finance
c/o Purchasing Technician
835 East 14th Street
San Leandro, CA 94577

- 10.11 **Professional Seal.** Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.



- 10.12 **Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B, and C represents the entire and integrated

agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

<u>Exhibit A</u>	Scope of Services
<u>Exhibit B</u>	Compensation Schedule & Reimbursable Expenses
<u>Exhibit C</u>	Indemnification

10.13 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

10.14 **Certification per Iran Contracting Act of 2010.** In the event that this contract is for one million dollars (\$1,000,000.00) or more, by Consultant's signature below Consultant certifies that Consultant, and any parent entities, subsidiaries, successors or subunits of Consultant are not identified on a list created pursuant to subdivision (b) of Section 2203 of the California Public Contract Code as a person engaging in investment activities in Iran as described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5 of the California Public Contract Code, as applicable.

SIGNATURES ON FOLLOWING PAGE

The Parties have executed this Agreement as of the Effective Date. The persons whose signatures appear below certify that they are authorized to sign on behalf of the respective Party.

CITY OF SAN LEANDRO

CONSULTANT

Chris Zapata, City Manager

President
Intercare Holdings Insurance Services, Inc.

Attest:

Tamika Greenwood, City Clerk

Approved as to Fiscal Authority:

David Baum, Finance Director

689-19-002-5120, 689-19-002-5730
Account Number

Approved as to Form:

Richard D. Pio Roda, City Attorney

Per Section 10.7:

- Form 700 Not Required
- Form 700 Required

1969630.2 (2015)

EXHIBIT A
SCOPE OF SERVICES
AND
SCHEDULE OF PERFORMANCE

Consultant shall provide claims administration services for City's self-insured workers' compensation program as required by the regulatory bodies of the State of California and at a level acceptable to City and City's Excess Workers' Compensation Insurer.

- I. PROGRAM COMMUNICATION. Consultant shall:
 - A. Conduct or assist in informational meetings for City personnel involved in the processing of workers' compensation claims.
 - B. Provide information to City about changes or proposed changes in statutes, rules and regulations affecting City's responsibilities for its self-insured workers' compensation program.
 - C. Review the progress of the program with City representatives, including the identification of problem areas and corresponding recommendations for solutions.
 - D. Be available to meet with the City Council and other City Managers as requested to discuss the status and/or resolution of specific claims.

- II. STANDARDS OF PERFORMANCE. Consultant shall:
 - A. Comply with the most current Excess Carrier's Claims Administration Guidelines.
 - B. Participate in any and all audits requested by City or its Excess Carrier.
 - C. Facilitate the timely filing of workers' compensation claims based upon City forms and procedures for the reporting of industrial injuries, illnesses, or exposures.
 - D. Support the recording of "information only" claims of industrial injuries, illnesses, or exposures.
 - E. Be responsible for payment of penalties for late payments of benefits, bills and awards, if Consultant caused the late payment. Penalties for delay in payment caused by City's failure to report claims or lost time from work within eight (8) days of knowledge shall be the City's responsibility.
 - F. Obtain City's written authorization on all Settlements and Stipulations.
 - G. Provide confidentiality as to its work under this Agreement.
 - H. Comply with all applicable federal and state laws and regulations pertaining to medical confidentiality and require all subcontractors to do the same.

- I. Advise City immediately if it appears a City employee is unable to or should not perform his/her customary job duties.
 - J. Consult frequently with City in cases with the potential for light duty assignment, claim denial, litigation, or disability retirement.
 - K. Obtain City's approval of use of legal counsel and manage legal counsel on an ongoing basis, and not allow legal counsel to perform tasks that can be done as effectively and economically by Consultant.
 - L. Obtain City's approval of use of investigative services and manage investigators on an ongoing basis to assure tasks are done as effectively and economically as possible.
 - M. At City's discretion, provide all services referenced in, and at a level not less than proposed in, Consultant's response to City Request for Proposal for Workers' Compensation Claims Management.
- III. REPORTS. Consultant shall provide:
- A. Quarterly detailed listing of open claims by location stating claims number, claimant's name, cause of injury, body part, medical paid in the past quarter, total medical paid to date, indemnity paid last quarter, indemnity paid to date, allocated costs paid last quarter, allocated costs paid to date, remaining reserves and incurred loss.
 - B. Summaries of all open and closed claims by location and a summary total, listing number of open and closed claims, medical paid to date, indemnity paid to date, allocated costs paid to date, remaining reserves and total incurred loss.
 - C. Reports as requested by the City's excess workers' compensation carrier and City Risk Management personnel.
 - D. Assistance in the preparation of all reports required by State or Federal agencies.
 - E. Monthly and annual record Log and Summary of Occupational Injuries and Illnesses as required by Cal/OSHA, and any other record keeping required by Cal/OSHA as it pertains to workers' compensation claims.
 - F. Upon request of City, remote access to Consultants claims information system for City claims for two (2) City Risk Management Department employees.
- IV. TRUST ACCOUNT. Consultant shall:
- A. Establish a City trust account, in a financial institution approved by the City, for City's benefit and for the receipt of deposited funds and disbursements by Consultant, as Trustee, in payment for obligations incurred in the administration of the City's workers' compensation claims in accordance with the terms of this Agreement.

- B. Always maintain City's deposited funds in a trust account with a federally or state chartered banking or savings institution. Said account shall be federally insured for an amount not less than \$100,000.00. Said account may, but need not be, interest bearing. If interest bearing, interest earnings shall belong to City. Costs for said account, if any, shall be borne by City.
- C. Maintain complete and accurate books and records of all deposits and disbursements from the City trust account City, or its authorized representatives, shall always have access and the right to review and copy said books and records at reasonable times during Consultants regular business hours.

V. MEDICAL COST CONTAINMENT PROGRAMS. Consultant shall:

- A. Work and cooperate with the City's designated initial medical providers regarding the treatment of injured City employees.
- B. Contract with InterMed Cost Containment Services, Inc., an experienced and qualified company to provide, administer and maintain the following on behalf of the city of San Leandro and Consultant:
 - 1. Medical Bill Review Services;
 - 2. A generic Preferred Provider Organization (PPO) authorized to do business in the State of California; and
 - 3. Utilization Review (UR) as mandated by the State of California workers' compensation laws and regulations.

EXHIBIT B

COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES

Annual Claims Administration Fee

	Annual Fee ⁽¹⁾
Year 1	\$97,400
Year 2	\$100,322
Year 3	\$103,332
Total	\$301,054

(1) Fees shall increase annually by the greater of 3% as stated above or the percentage increase in the CPI for the twelve month period immediately preceding the contract anniversary date. The "Not To Exceed Fee " shall be adjusted accordingly for the year.

If agreement is renewed, the annual fee for Years 4 & 5 will increase by the greater of 3% annually or the percentage increase in the CPI for the twelve month period immediately preceding the contract anniversary date. .

Bill Review Services¹:

Per Bill Fee Inclusive of PPO Access	\$16.00	Flat Fee per Bill
PPO Network	\$0.00	Included in Flat Fee

Utilization Review Services¹

Level 1 – Adjuster Level	No charge	
Level 2 – Nurse	\$90.00	Per hour
Peer Review – Medical Director	\$200.00	Per hour
Specialty Peer Review ⁶	\$300.00	Per Hour

Case Management Services¹

Telephonic Case Management	\$90.00	Per Hour
Field Case Management - Pass through cost. Billed to claim file as incurred	\$105.00	Per Hour plus mileage

Transition Fee¹

Data Conversion	\$5,000.00	One-Time Fee
Implementation/Transition Cost	No charge	

SIU Services¹

- FD1–Fraud submission – Filing Fee for a complete package of SIU claim. Includes research, packaging and discussing with Department of Insurance. \$100.00 Per Case

- Upon DOI or District Attorney acceptance for prosecution. Cost of travel incurred by the SIU Manager to testify on behalf of client and prosecution shall be billed separately and with prior client approval. \$250.00 Per Case

EXHIBIT C

INDEMNIFICATION

Consultant shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, elected officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the services called for or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the active negligence or willful misconduct of City.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of Consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

The Consultant's obligation to defend and indemnify shall not be excused because of the Consultant's inability to evaluate Liability or because the Consultant evaluates Liability and determines that the Consultant is not liable to the claimant. The Consultant must respond within 30 days to the tender of any claim for defense and indemnity by the City. If the Consultant fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Consultant under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first.

2800305.1



City of San Leandro

Meeting Date: April 17, 2017

Resolution - Council

File Number: 17-182 **Agenda Section:** CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: Jeff Kay
Assistant City Manager

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION Approving a Consulting Services Agreement with Intercare Holdings Insurance Services, Inc. for Workers' Compensation Third Party Claims Administration Services for three years in the amount of \$301,054 plus flat fee structure for bill review charges estimated at \$64,080.

WHEREAS, an agreement between the City of San Leandro and Intercare Holdings Insurance Services, Inc. a copy of which is attached, has been presented to this City Council; and

WHEREAS, the City Council is familiar with the contents thereof; and

WHEREAS, the City Manager recommends approval of said agreement.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

1. That said agreement substantially in the form presented is hereby approved and execution by the City Manager is hereby authorized; and
2. That the City Manager is authorized to make non-substantial revisions to said agreement, subject to the approval of the City Attorney; and
3. That an original executed agreement shall be attached to and made a part of this resolution.