



**REQUEST FOR PROPOSALS**  
**for**  
**Third Party Workers' Compensation Claims Administration**

**RFP Release Date: June 3, 2022**  
**RFP Submission Deadline: July 6, 2022, 5:00 p.m.**

**RFP #2022-001**

1	General Information .....	2
2	Overview of City of Gardena– City of Opportunity .....	2
3	Workers’ Compensation Excess Program.....	3
4	Terms of Agreement and Insurance requirements .....	3
5	General rules governing RFP.....	6
6	Proposal timetable and submission requirements .....	7
7	TPA company overview and client references.....	8
8	Account Management.....	9
9	Key Claims Administration Requirements (Please refer to Addendum A and B for more details).....	9
10	Claim Staffing expectations and Claim Handling Philosophies.....	10
11	Risk Management Information System (RMIS).....	11
12	Pricing.....	11
13	Ancillary Services.....	12
14	Workers’ Compensation Trust Fund.....	12
15	Bid Protest Procedures .....	13
16	Addendum A- PRISM Claim Standards	
17	Addendum B– Gardena Claim Service Instructions	
18	Addendum C - City of Gardena Professional Services Agreement	



## **1 General Information**

The purpose of this RFP is to provide prospective Third-Party Administrators (TPA) with information that will enable them to prepare and submit a proposal for third party workers' compensation claims administration services for City of Gardena's (the City) self-insured workers' compensation program.

TPAs responding to this proposal must be appropriately licensed and approved to provide workers' compensation claims administration services in the State of California and recognized by OSIP (Office of Self Insurance Plans, California Department of Insurance) as a current valid TPA for self-insured WC programs. Examiners assigned to this account must also possess a valid self-insured administrator certification issued by the California Office of Self-Insurance Plans, Department of Insurance.

The City seeks a TPA partnership that will deliver objective and measurable results that will reduce its total WC program cost. This RFP process will result in an award of a service agreement that will include the takeover of all existing City WC claims (including existing closed claims that reopen) and all new claims beginning Nov 1, 2022. The term of the contract will be for three years with the option of two additional one-year extensions for a total of five years. Quality of claim administration and client service is paramount in this program thus all respondents will be requested to propose fees based on a fixed staffing model. Companies are encouraged to describe why they are uniquely qualified to best assist The City to achieve its goals and cite examples of similar quantifiable successes.

## **2 Overview of City of Gardena– City of Opportunity**

The City of Gardena, California, is a full-service city of 5.9 square miles with an ethnically mixed population of just under 59,000. Located in the South Bay region of Los Angeles County, The City has a population of 58,829 (per the 2010 census). The City has active "Sister City" affiliations with Ichikawa, Japan and Huatabampo, Mexico. Gardena is known for its rich cultural diversity and beautiful landscaping. Gardena is a family-oriented City with many programs to meet the needs of both the family and single population. The city is proud of its high quality of life.

Primary City departments include City Manager, Administrative Services, Community Development, Police, Public Works, Recreation and Human Services, and GTrans (City Bus line). The City reported 521 employees on the 2021 OSIP report with a total payroll of \$34 million.

Gardena workers' compensation claims have been administered by Adminsure for a number of years. Currently, The City has approximately 180 open workers' compensation claims with annual claim frequency of approximately 64 claims per year (three-year average). Total WC liabilities is \$8 million with annual benefit payments totaling \$2.4 million.

### 3 Workers' Compensation Excess Program

As a self-insured employer, The City has secured specific excess insurance through PRISM since 2018 to limit its per claim workers' compensation losses. Prior to PRISM, excess insurance was maintained for most years from a verity of carriers with different retention levels. As such, the selected TPA will be required to appropriately report to the applicable excess carrier any claim which qualifies and when appropriate request reimbursement for amounts in excess of the specific retention. The selected TPA is expected to document excess reports and reimbursement requests in the appropriate claim file. All recovery checks must be documented in the claim file (date, check numbers, amount or a scanned image) before forwarding the checks to The City. Detailed excess policy information will be provided to the selected TPA.

### 4 Terms of Agreement and Insurance requirements

The Service agreement shall be effective on Nov 1, 2022 and shall run for three (3) years from Nov 1<sup>st</sup>, 2022 through Oct 31<sup>st</sup>, 2025. The terms may be extended for two additional one-year terms for a total of five years. Please provide separate annual service fee quotes for each additional year (years four and five).

A sample copy of the City's Professional Services Agreement is contained in Addendum C.

#### Insurance requirements

With submittal of bid documents, bidder shall show evidence of levels and type of all insurance required. Prior to execution of a contract, the successful bidder shall furnish an **original** insurance certificate to meet minimum standards as set forth by the City and shall name the City of Gardena as additionally insured.

- A. Commencement of Work. Subcontractor shall not commence work under the Agreement until it has obtained City approved insurance. Before beginning work hereunder, during the entire period of the Agreement, for any extensions hereto, and for periods after the end of the Agreement as may be indicated below, Subcontractor must have and maintain in place all of the insurance coverage required in this Section. Subcontractor's insurance shall comply with all items specified by the Agreement.
- B. Insurance Company Requirements. All insurance policies used to satisfy the requirements imposed hereunder shall be issued by insurers admitted to do business in the State of California. Insurers shall have a current Best's rating of not less than A-:VII, unless otherwise approved by City.

C. Coverage, Limits and Policy Requirements. Contractor shall maintain the types of coverage and limits no less than indicated below:

1. *Commercial General Liability Insurance* - a policy for occurrence coverage for bodily injury, personal injury and property damage, including all coverage provided by and to the extent afforded by Insurance Services Office Form CG 2010 ed. 10/93 or 11/85, with no special limitations affecting City. The limit for all coverages under this policy shall be no less than one million dollars (\$1,000,000) per occurrence.

General Aggregate	\$2 Million
Products/Completed Operations Aggregate:	\$1 Million
Personal and Advertising Injury	\$1 Million
Each Occurrence:	\$1 Million

2. *Commercial Auto Liability Insurance* - a policy including all coverage provided by and to the extent afforded by Insurance Services Office form CA 0001, ed. 12/93, including Symbol 1 (any auto) with no special limitations affecting City. The limit for bodily injury, death and property damage liability shall be no less than One Million (\$1,000,000.00) per occurrence.
3. *Worker's Compensation and Employer's Liability Insurance* – a policy that meets all statutory benefit requirements of the Labor Code, or other applicable law, of the State of California. The minimum coverage limits for said insurance shall be: Worker's Compensation - statutory limits; Employer's Liability - no less than one million dollars (\$1,000,000) per claim. The policy shall be issued by an insurance company which is admitted to do business in the State of California and shall contain a clause that the policy may not be canceled without thirty (30) days prior written notice, return receipt requested, is mailed to City.
4. *Policy Requirements.* The policies set forth above shall comply with the following, as evidenced by the policies or endorsements to the policies:
  - a. ***"The City of Gardena, its appointed and elected officers, employees, agents, and volunteers" shall be named as additional insured.***
  - b. The subcontractor's insurer shall agree to provide CITY with ***"thirty (30) days prior written notice, return receipt requested, of any cancellation, non-renewal or material change in coverage"***.
  - c. For any claims with respect to the Services covered by this Agreement, Subcontractor's insurance coverage shall be primary insurance as respects the City, its elected and appointed officers, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its appointed

and elected officers, employees, agents and volunteers shall be excess of Subcontractor's insurance and shall not contribute with it.

- d. Coverage shall state that the Subcontractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

D. Additional Requirements.

- a. The procuring of such required policies of insurance shall not be construed to limit Subcontractor's liability hereunder or to fulfill the indemnification provisions and requirements of the Agreement. There shall be no recourse against City for payment of premiums or other amounts with respect thereto. City shall notify Subcontractor in writing of changes in the insurance requirements. If Subcontractor does not deposit copies of acceptable insurance policies or endorsements with City incorporating such changes within sixty (60) days of receipt of such notice, Subcontractor shall be deemed in default hereunder.
- b. *Deductibles.* Any deductible or self-insured retention over \$25,000 per occurrence must be declared to and approved by City. Any deductible exceeding an amount acceptable to City shall be subject to the following changes: either the insurer shall eliminate or reduce such deductibles or self-insured retentions with respect to City, its officers, employees, agents and volunteers (with additional premium, if any, to be paid by Subcontractor); or Subcontractor shall provide satisfactory financial guarantee for payment of losses and related investigations, claim administration and defense expenses.
- c. *Verification of Compliance.* Subcontractor shall furnish original policies or certificates and endorsements effecting coverage required by the Agreement. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by City before work commences. Not less than fifteen (15) days prior to the expiration date of any policy of insurance required by the Agreement, Subcontractor shall deliver to City a binder or certificate of insurance with respect to each renewal policy, bearing a notation evidencing payment of the premium therefore, or accompanied by other proof of payment satisfactory to City. Subcontractor shall provide full copies of any requested policies to CITY within three (3) days of any such request by City.
- d. *Termination for Lack of Coverage.* If Subcontractor, for any reason, fails to have in place, at all times during the term of the Agreement, including any extension hereto, all required insurance and coverage, City may immediately obtain such coverage at Subcontractor's expense and/or terminate the Agreement.

TPA must be in full compliance with all statutory and applicable regulatory agencies at all times.

## **5 General rules governing RFP**

Any questions concerning this RFP must be submitted by email on or before June 17, 2022 to both:

Tony Su, MBA, ARM  
TCS Risk Management  
[tcs.tsu@cityofgardena.org](mailto:tcs.tsu@cityofgardena.org)

Raymond Beeman, CPA  
Director, Administrative Services, City of Gardena  
[RBeeman@cityofgardena.org](mailto:RBeeman@cityofgardena.org)

Responses to written questions shall be provided via email to all RFP recipients as detailed in Section 6 of the RFP. If TPA discovers any significant ambiguity, error, conflict, discrepancy, or omission in this RFP, the TPA should immediately notify TCS Risk Management and the City of any error and request modification or clarification of the RFP document. TPA will not be entitled to additional compensation or time by reason of the error or its later correction.

The City reserves the right to reject any and all proposals, to award the service agreement in whole or part, and to negotiate the terms of the service agreement, including the award amount, with the selected TPA prior to entering into a service agreement.

TPAs with any conflict of interest or potential conflict of interest must be clearly disclose to The City within the proposal and if awarded the service agreement, throughout the life of the service agreement immediately upon development of a potential conflict.

All costs associated with responding to this RFP are the sole responsibility of the TPA. The City may modify this RFP, before the date scheduled for submission of proposals, by issuance of an addendum to all parties who have been furnished the RFP for the purpose of submitting a proposal.

Potential TPAs may request withdrawal of sealed proposal prior to the scheduled proposal opening time provided the request for withdrawal is submitted to the City's RFP Point of Contact in writing. Proposals must be re-submitted and time-stamped in accordance with the RFP document to be accepted.

No proposal may be withdrawn for a period of 120 calendar days after the date of proposal opening. All proposals received are considered firm offers during this period. The Potential TPAs offer will expire after 120 calendar days. If a Potential TPA intended for award withdraws their proposal, that Potential TPA may be deemed non-responsible if responding to future solicitations.

Proposals shall become the property of the City and will not be returned. Any decision of The City with respect to the award of a TPA contract is final.

## 6 Proposal timetable and submission requirements

Listed below are specific dates related to the RFP process. These dates must be observed during the selection process unless otherwise changed by the City.

### RFP/Timeline

June 3, 2022 - RFP issue date

June 17, 2022 - Last day to submit to TCS Risk or the City any questions related to the RFP

June 24, 2022 – Responses to written questions to be provided via email to all RFP recipients

July 6, 2022 – Proposals due by 5pm

Week of July 29, 2022 - Selection of TPA finalists

Week of Aug 22, 2022 - Oral presentations by finalists and may include visits to finalists claim offices

Sept 9, 2022 - Notification of intent to award sent to selected TPA

Sept 12 - 30, 2022 – Contract negotiations, Submittal of final transition plan by the TPA awarded the service agreement

Oct 2022 - City Council Approval of TPA Contract. Begin data conversion/migration

Nov 1, 2022 - existing claims takeover

Proposals must be submitted no later than **July 6, 2022 by 5pm**. TPA must mail four (4) hard copies of their proposal responses, and clearly mark the box or package with “City of Gardena Proposal for Workers’ Compensation TPA Services” and one electronic version (via email). Each recipient named below should receive the number of copies indicted next to their name, and one electronic version (PDF format) emailed to:

Raymond Beeman, CPA (3 copies)  
Director, Administrative Services  
City of Gardena  
[RBeeman@cityofgardena.org](mailto:RBeeman@cityofgardena.org)

Tony Su (1 copy)  
TCS Risk Management Services  
[tcs.tsu@cityofgardena.org](mailto:tcs.tsu@cityofgardena.org)

Late proposals will be rejected and returned to the TPA. TPA must select a method of delivery that ensures proposals will be delivered to the correct location by the due date and time.

Proposals should be typed, organized and presented in the order and by the number assigned in the RFP, along with copies of requested documents, policies and samples of TPA reports and forms.

Failure to meet mandatory requirements will result in the proposal being rejected.

The evaluation and selection of a TPA will be based on the information submitted in the TPA’s proposal, pricing, services, compatibility with the City’s needs, oral presentations, references and any on- site visits.

The City and TCS Risk are not obligated to disclose its specific findings ratings; evaluation or comparison to any of the TPA’s who submit a proposal.



## 7 TPA company overview and client references

Please include in your proposal the following information.

- Company Profile - -Years in business
- Revenue or other financial data if able to disclose or other metrics of size and stability
- Company Officers/Management staff that will be directly involved with the City program
- Total number of employees and number of employees in handling claim office
- Recommended Claims Handling Office
- Merger and Acquisition activity in past 3 years or planned in the next year
- Clients
  - # of public transit clients
  - # of public agency clients
  - percent self-insured clients
- Confirm your company is a currently licensed claims administrator of self- insured WC programs licensed to do such business in California and approved by OSIP
- Provide a copy of your company's internal claims management standards and outline your company initial investigation guidelines and requirements
- Describe any financial and/or ownership relationship with any other company that may pose a conflict of interest and provide a conflict of interest statement and/or confidential agreement.
- Describe your company's claims quality control program and the frequency of internal operational audits.
- Provide a list of workers' compensation insurance carriers for which you are approved as a Workers' Compensation TPA.
- Provide information on the circumstances and status of any disciplinary action taken or pending against your company during the last 3 years by any state regulatory bodies or professional organizations.
- Describe your policy regarding penalties resulting from your company's failure to perform according to the California Labor Code.
- Provide three (3) client references with similar operations with dates of service, client's name and contact person with telephone numbers and email addresses for which you currently provide workers' compensation TPA services. In addition, provide (2) references and contact information of past clients. (By providing these references, you agree that neither the City, TCS Risk, nor the clients referenced shall have any liability regarding the provision of such references or the City use of such references in making the selection under the RFP)
- Identify any service(s) you intend to sub-contract to others and identify the proposed sub-contractors including names, phone numbers and the qualifications of the sub-contractors company.
- Provide a proposed transition plan and implementation timetable.

## **8 Account Management**

The City will require an account manager for this program. This individual will play an essential role in the successful administration of this program and should have authority and overall responsibility for the following key components of the program:

- Service agreement administration and management of TPA staffing on the City's account
- Trouble shooting and providing effective solutions to resolve issues or problems with the service agreement and/or claims management services.
- Identify key outcome based measurements that are tracked and deliver program improvements and cost reduction results.
- Monitor claim trends and audit claim handling procedures to ensure a high level of customer service and best in class claim service deliverables.
- Coordinate regular claim reviews for the City, with participation of the appropriate dedicated claim staff, City representatives and as needed; defense attorneys.
- Assist in coordination of an annual stewardship meeting to present/discuss program changes, performance metrics, benchmarking and claim trending/loss analysis reports.
- Provide or facilitate any custom data download, report requests of the City or its agents

## **9 Key Claims Administration Requirements (Please refer to Addendum A and B for more details)**

- Fraud Control - Gardena requires the claims administrator to aggressively investigate and control fraud and report all claims meeting the State Fraud reporting guidelines. The City desires to pursue restitution in all fraud cases. The City shall be notified of all claims involving potential fraud and initiation of fraud investigation activities. SIU referrals should be approved by the City prior to referral and only to firms on the City's approved list.
- Claim Reviews - Quarterly claim reviews on-site at the City is required. The TPA is expected to send dedicated claim staff to attend claim reviews. Litigation reviews are required on a semi-annual basis and the presence of defense counsel at these reviews will be required. The City anticipates that claim reviews will be held at Gardena City Hall in the City of Gardena.
- Loss Reporting and Claim System Access – The City requires, on a monthly basis, basic loss reports detailing claim frequency, open inventory, paid and incurred costs. Gardena may need to obtain other reports for various purposes including but not limited to actuarial studies, OSIP reporting, audits, program and injury analysis. Please

provide details on your system's reporting capabilities, availability of internal IT staff to respond to custom report requests and client access to your system's reporting tool. The Gardena will also require claim system access for a minimum of two users to review and monitor its claims, review file notes and reserves.

- MMI and Permanent Disability – the City feels it is imperative that its claims be managed proactively to achieve a finding of MMI or P&S as soon as practical in order to help reduce temporary disability exposures. This may require the TPA to actively seek P&S determinations from the treating or QME physician when the medical reports do not document any change in status with ongoing treatment. the City also expects the selected TPA to aggressively pursue apportionment of PD to prior claims or pre-existing conditions/disabilities. This will require that the selected TPA conduct investigation into prior claims and/or pre-existing conditions and promptly secure the needed medical records to support apportionment on all applicable claims well **before** permanent disability evaluations occur.
- The City may amend requirements as needed, with 30 days written notice to claims administrator. These requirements will become part of the City's contract with the selected bidder. the City may conduct claims performance audits to measure TPA performance and compliance with claims administration standards and requirements.

## **10 Claim Staffing expectations and Claim Handling Philosophies**

- The City desires a dedicated senior claim examiner for its program in order to foster a partnership approach to its workers' compensation program. Senior examiner(s) must have at least 5 years of California public sector claim adjusting experience and possess a valid California Self-Insurer certification from OSIP
- Staffing – the City's objective is to secure a proactive claims management service to ensure that its claims are managed actively and resolved promptly. Examiner(s) assigned to handle indemnity claims for the Gardena program must have a minimum of five years' experience handling public entity Workers' Compensation claims including LC4850 and presumption claims. Supervisors assigned to Gardena claims must have a minimum of 5 years experience supervising Workers' Compensation claims and possess a OSIP Certificate. The City maintains the right to interview and review evidence of work experience of all personnel to be assigned to its account and to approve such personnel. The City desires dedicated claims personnel to facilitate a partnership approach to program management. the City recognizes its service requirements may be higher than that of other customers and in recognition of the higher service burden seeks to keep its examiner caseload to a maximum level of 120 open indemnity claims (including FM cases). Medical-only examiner(s) assigned to the City should have no more than 180 MO cases in total.
- Identify your proposed manager and supervisor and their experience and expertise and the proposed adjusting claim office.

- If workloads increase or decrease over the life of the Service agreement, propose how your company would meet the increased/decreased staffing needs. the City will require pre-approval of any examiner or supervisor to be assigned to its account.
- Disclose the examiner/supervisor turnover ratio in the last 3 years.
- Describe your staffing back up plan in cases when the team is not available. Describe any flex time scheduling that is available.
- Describe your index bureau process and what are the adjuster's requirements to follow up on index bureau's 'hits'?
- Describe your process for detecting duplicate medical bills.

## **11 Risk Management Information System (RMIS)**

Indicate the number of user access that are included in your proposal and the associated fees for that access, if any. Please describe your systems capabilities around

- claim system with access to view claim adjuster and supervisor notes, generate loss runs or other pre-scheduled or adhoc loss management/claim reports.
- Provide RMIS technical support for questions, problems or development of customized reporting.
- Quality control program to ensure data integrity and claimant confidentiality. Any RMIS problems will be resolved within 24 hours or less. Please provide a list of occupation codes, injury codes and payment type codes.
- Image system to scan all documents received pertaining to the case.
- Describe you system security protocols to protect client and employee data, including but not limited to; security audits, protected by intrusion prevention and intrusion detection systems, communications of any claimant's personal information or personal health information is protected (i.e. monitoring of email and internet traffic, encrypted email, access restricted by user ID and password, or other similar security methods).
- Describe your disaster recovery plan to ensure continuation of your claims management and risk management information system in the event of disaster or system compromise.
- What standard reports are provided within your service fee? Describe them in detail and provide sample reports.
- What type of customized reports are available, any fees charged for customization and provide a few samples of these customized reports.

## **12 Pricing**

Based on the staffing model described in section 10 above, please provide a 3-year quote delineated by an annual fee for each of the three years. Include pricing for two one-year extensions beyond the initial three years for a total of five years. Including a quote does not obligate the City to consider an extension. If more than one pricing alternative is available, describe in detail each option.

### 13 Ancillary Services

Complete the following table and identify the associated fees and service providers. If the service is included in the quoted claims administration fee in Section 12 above, indicate this by placing "Included" in the Fee field of the table below. Describe any products or services not specifically associated with staffing model for which there is an additional charge or that you intend to charge to the claim files as ALAE.

Program Component	Service Provider	Subsidiary /Affiliate of TPA (Y/N)	Fee (explain if fee is per case, per year, per bill, etc.)
MPN			
Index/Edex			
Physician Peer Review			
RX review/Pharmacy program			
Nurse Case Management			
UR Provider			
Bill Review Provider			
Investigations/Subrosa			
MSA			
Other (describe)			

### 14 Workers' Compensation Trust Fund

Please describe your internal process for reconciling the trust fund, securing and crediting recovery payments (whether subrogation recovery, excess or overpayments, etc.).

What check and financial security procedures are in place to protect against misappropriation of funds, insure check and payment security and to verify and validate vendors and other payees?

Do you have internal controls over authority levels for check approval, issuance, etc.? Please describe.

## **15 Bid Protest Procedures**

Gardena Municipal Code Chapter 2.60 specifies the policies and procedures to be used to ensure that all purchases, franchises and services are obtained through fair and open competition. The Contract Administrator has the authority and the responsibility to ensure that all procurement is in compliance with this policy. The Contract Administrator shall also ensure that all prospective bidders are informed of the procedures to file a "Bid Protest".

Should any individual, organization or group believe that these policies have been violated they may make an appeal in writing to the Contract Administrator who is obligated to investigate the protest and provide an official response to the protest.

Protests must be submitted in writing within fourteen (14) calendar days of notification that a bid has been awarded. All protests must state specifically:

- 1) The bid title, opening or award date, purchase order or other identifying data;
- 2) The specific policy that is alleged to have been violated;
- 3) The adverse effect alleged to have resulted from the policy violation; and
- 4) The corrective action being sought as a remedy.

The Contract Administrator will respond in writing to the protester no later than fourteen (14) calendar days from receipt of the protest. The response shall include:

- 1) Review of the policy as applied in the transaction being questioned.
- 2) Response to each material issue raised in the protest.
- 3) Statement of whether a violation has indeed occurred.
- 4) Corrective action to be taken if any is warranted.

A copy of the complaint and the response will be forwarded to the City Manager for review prior to submittal to the protester.

According to City policies the decision of the Contract Administrator is appealable to the City Manager. If no appeal has been received in the office of the City Manager, the decision of the Contract Administrator shall be considered final on the fifth working day following the date of notification to the protester. Should an appeal be received by the City Manager, a response will be provided to the protester within 5 working days and shall be considered final.

Whenever possible, the award of procurement will not be made final until all bid protests have been satisfactorily resolved. Final award will not be made until five (5) calendar days after

notification of protest decision has been provided to the protesting parties. The City does reserve the right to proceed with the award pending the resolution of the bid protest when it is determined that:

- a. The items to be procured are urgently required;
- b. Delivery or performance will be unduly delayed by failure to make the award promptly; or
- c. Failure to make prompt award will otherwise cause undue harm to the City or funding agent.

Inquiries and correspondence shall be directed to:

City of Gardena

Attention: Ray Beeman, Administrative Services Director

Bid Protest – Third Party Workers’ Compensation Claims Administration

1700 W 162<sup>nd</sup> Street, Room 104

Gardena, CA 90247

**Formal protest must state on the outside of the envelope:**

**“BID PROTEST – THIRD PARTY WORKERS’ COMPENSATION CLAIMS ADMINISTRATION**

## 16 Addendum A- PRISM Claim Standards

### Addendum A – PRISM Claim Standards

#### **ADDENDUM A WORKERS' COMPENSATION CLAIMS ADMINISTRATION STANDARDS**

The following Standards have been adopted by Public Risk Innovation, Solutions, and Management (hereinafter PRISM) in accordance with Article 18(b) of the PRISM Joint Powers Agreement. It is the intent of these Standards to ensure compliance with all applicable Labor Code and California Code of Regulations Sections. In the event that there exists a conflict between the Standards, the Labor Code or the Code of Regulations, the most stringent requirement shall apply.

#### **I. CLAIMS HANDLING - ADMINISTRATIVE**

##### **A. Case Load**

1. Each claims examiner assigned to the Member should handle a targeted caseload of 150 but not to exceed 165 claims. In situations where caseloads include future medical and medical only claims, these claims shall be counted as 2:1 in the caseload limit.
2. Supervisory personnel should not handle a caseload, although they may handle specific issues or a small number of conflict claims.

##### **B. Case Review and Documentation**

1. Documentation shall reflect any significant developments in the file and include a plan of action. Plan of action statements shall be updated at the time of examiner diary review.
2. The examiner shall review indemnity and medical-only files at intervals not to exceed 45 calendar days. Future medical files shall be reviewed at intervals not to exceed 90 calendar days.
3. The supervisor shall review all new claims within 60 calendar days of initial set up and subsequently monitor activity on indemnity files at intervals not to exceed 120 calendar days. Future medical files shall be reviewed by the supervisor at intervals not to exceed 180 calendar days.



4. File contents shall comply with Code of Regulations Sections 10101, 10101.1 and 15400, and be kept in a neat and orderly fashion. If claims are maintained in a paperless system, documents shall be clearly identified (e.g., medical report, WCAB Orders, legal, etc.).
5. Medical Only Claims
  - a. If a medical-only claim is still open at 90 calendar days, it shall be transferred to an indemnity examiner.
  - b. If, at any time, it is anticipated there will be indemnity benefits paid, the claim shall be transferred to an indemnity claim type.
  - c. If the medical-only claim remains open at 180 days, the claim shall be converted to an indemnity claim type, unless there is documentation showing that medical treatment will be ending and the claimant will be discharged from care within the next 30 days, or the claimant is only seeking treatment for a blood-borne pathogen exposure protocol.

#### C. Communication

##### 1. Telephone Inquiries

Return calls shall be made within 1 working day of the original telephone inquiry. All documentation shall reflect these efforts.

##### 2. Incoming Correspondence

All correspondence received shall be clearly stamped with the date of receipt.

##### 3. Return Correspondence

All correspondence requiring a written response shall have such response completed and transmitted within 5 working days of receipt.

##### 4. Ongoing Claimant Contact

On cases involving unrepresented injured workers who are off work, telephone contact shall be made at a minimum of once every 30 days and within 3 working days after discharge from the hospital or outpatient facility following a surgical procedure. This is in addition to nurse case management involvement on claims where nurse case managers are assigned.

#### D. Fiscal Handling

1. Fiscal handling for indemnity benefits on active cases shall be balanced with appropriate file documentation on a semi-annual basis and prior to sending a benefit termination notice to verify that statutory benefits are paid appropriately. Balancing is defined as, “an accounting of the periods and amounts due in comparison with what was actually paid”.
2. In cases of multiple losses with the same person, payments shall be made on the appropriate claim file.

#### E. Medicare Reporting

Mandatory reporting to the Center for Medicaid Services (CMS) shall be completed directly or through a reporting agent in compliance with Section 111 of the Medicare Medicaid and SCHIP Extension Act of 2007 (“MMSEA”). Medicare eligibility shall be documented in the claim file at time of settlement evaluation.

## II. CLAIM CREATION

#### A. Three-Point Contact

Three-point contact shall be conducted on all claims with the non-represented injured worker, employer representative and treating physician within 3 working days of receipt of the claim by the third party administrator or self-administered entity. If a nurse case manager is assigned to the claim, initial physician contact may be conducted by either the claims examiner or the nurse case manager. This initial contact should be substantive and clearly documented in the claim file. In the event a party is non-responsive, there shall be evidence of at least three documented attempts to reach the individual.

#### B. Compensability

1. The initial compensability determination (accept claim, deny claim or delay acceptance pending the results of additional investigation) and the reasons for such a determination shall be made and documented in the file within 14 calendar days of the filing of the claim with the employer. In the event the claim is not received by the third party administrator or self-administered entity within 14 calendar days of the filing of the claim with the employer, the third party administrator or self-administered entity shall make the initial compensability determination within 7 calendar days of receipt of the claim.

2. Delay of benefit letters shall be mailed in compliance with the Division of Workers' Compensation (DWC) guidelines. In the event the employer does not provide notice of lost time to the third party administrator or self-administered entity timely to comply with DWC guidelines, the third party administrator or self-administered entity shall mail the benefit letters within 7 calendar days of notification.
3. The final compensability determination shall be made by the claims examiner or supervisor within 90 calendar days of employer receipt of the claim form.

C. AOE/COE Investigation

If a decision is made to delay benefits on a claim, an AOE/COE investigation shall be initiated within 3 working days of the decision to delay. This may include, but is not limited to, assigning out for witness/injured worker statements, initiating the QME/AME process, requesting medical records, etc.

D. Reserves

1. Using the information available at claim file set up, an initial reserve shall be established for the most probable case value.
2. The initial reserve shall be electronically posted to the claim within 14 calendar days of receipt of the claim.

E. Indexing

All claims shall be reported to the Index Bureau at time of initial set up and re-indexed on an as needed basis thereafter. Blood borne pathogen exposure claims are an exception to this requirement.

PRISM maintains membership with the Index Bureau that members can access.

### **III. CLAIM HANDLING – TECHNICAL**

A. Payments

1. Initial Temporary and Permanent Disability Indemnity Payment
  - a. The initial indemnity payment shall be issued to the injured worker within 14 calendar days of knowledge of the injury and disability. In the event the third party administrator or self-administered entity is not notified of the injury and disability

within 14 calendar days of the employer's knowledge, the third party administrator or self-administered entity shall make payment within 7 calendar days of notification. Initial permanent disability payments shall be issued within 14 calendar days after the date of last payment of temporary disability. Effective 1/1/2013, permanent disability payments shall be issued upon approval of an Award pursuant to Labor Code Section 4650(b)(2). Prior to a PD Award, advances may be due if the employer has not offered the employee a position paying at least 85% of their wages and compensation at time of injury or the employee is not employed in a position paying at least 100% of their wages and compensation at time of injury. This shall not apply with salary continuation.

- b. The properly completed DWC Benefit Notice shall be mailed to the employee within 14 calendar days of the first day of disability. In the event the third party administrator or self-administered entity is not notified of the first day of disability until after 14 calendar days, the DWC Benefit Notice shall be mailed within 7 calendar days of notification.
- c. Self-imposed penalty shall be paid on late payments in accordance with Section III. A.7 of this document.
- d. Overpayments shall be identified and reimbursed timely where appropriate. The third party administrator or self-administered entity shall request reimbursement of overpaid funds from the party that received the funds. If necessary, a credit shall be sought as part of any resolution of the claim.

## 2. Subsequent Temporary and Permanent Disability Payments

- a. Eligibility for indemnity payments subsequent to the first payment shall be verified, except for established long-term disability.
- b. Ongoing indemnity payments shall be paid in accordance with Labor Code Section 4650(c).
- c. Subsequent DWC benefit notices shall be issued in accordance with CCR 9812.
- d. Self-imposed penalty shall be paid on late payments in accordance with Section III. A.7 of this document.

## 3. Final Temporary and Permanent Disability Payments

- a. All final indemnity payments shall be issued timely.
- b. The appropriate DWC benefit notices shall be issued in accordance with CCR 9812.
- c. Self-imposed penalty shall be paid on late payments in accordance with Section III. A.7. of this document.

4. Award Payments

- a. The claim file shall reflect demonstrated efforts to initiate/batch payments on undisputed Awards, Commutations, or Compromise and Release agreements within 10 working days following receipt of the appropriate document, unless the Award indicates payment is due sooner.
- b. For all claims in the Primary Workers' Compensation (PWC) Program and/or excess reportable claims, copies of all Awards shall be provided to PRISM at time of payment.

5. Medical Payments

- a. Medical treatment billings (physician, pharmacy, hospital, physiotherapist, etc.) shall be reviewed for correctness, approved for payment and paid within 60 days of receipt.
- b. The medical provider shall be notified in writing within 30 days of receipt of an itemized bill if a medical bill is contested, denied or incomplete.
- c. A bill review process should be utilized whenever possible. There should be participation in a PPO and/or MPN whenever possible.

6. Injured Worker Reimbursement Expense

- a. Reimbursements to injured workers shall be issued within 15 working days of the receipt of the claim for reimbursement.
- b. Advance travel expense payments shall be issued to the injured worker 10 working days prior to the anticipated date of travel.

7. Penalties

- a. Penalties shall be coded so as to be identified as a penalty payment.
- b. If the Member utilizes a third party administrator, the Member shall be advised of the assessment of any penalty for delayed payment and the reason thereof, and the administrator's plans for payment of such penalty, on a monthly basis.
- c. If the Member utilizes a third party administrator, the Member, in their contract with the administrator, shall specify who is responsible for specific penalties.

**B. Medical Treatment**

- 1. Each Member shall have in place a Utilization Review process as set forth in Labor Code Section 4610.
- 2. Disputes regarding utilization review determinations shall be resolved using the Independent Medical Review process set forth in Labor Code Section 4610.5.
- 3. Nurse case managers shall be utilized where appropriate. Rationale for assignment and continued necessity shall be documented in the claim notes at each regular diary review.
- 4. If enrolled in a Medical Provider Network, the network shall be utilized whenever appropriate.

**C. Apportionment**

- 1. Investigation into the existence of apportionment shall be documented.
- 2. If potential apportionment is identified, all efforts to reduce exposure shall be pursued.

**D. Disability Management**

- 1. The third party administrator or self-administered entity shall work proactively to obtain work restrictions and/or a release to full duty on all cases. The TPA or self-administered entity shall notify a designated Member representative immediately upon receipt of temporary work restrictions or a release to full duty, and work closely with the Member to establish a return to work as soon as possible.

2. The third party administrator or self-administered entity shall notify a designated Member representative immediately upon receipt of an employee's permanent work restrictions so that the Member can determine the availability of alternative, modified or regular work.
3. If there is no response within 20 calendar days, the third party administrator or self-administered entity shall follow up with the designated Member representative.
4. Members shall have in place a process for complying with laws preventing disability discrimination, including Government Code Section 12926.1, which requires an interactive process with the injured worker when addressing a return to work particularly with permanent work restrictions.
5. Third party administrators or self-administered claims professional shall cooperate with members to the fullest extent, in providing medical and other information the member deems necessary for the member to meet its obligations under federal and state disability laws.

E. Supplemental Job Displacement Benefits

1. Supplemental Job Displacement Benefits – Dates of injury on or after 1/1/04 and before 1/1/13: Benefits pursuant to Labor Code Section 4658.5 shall be timely provided. Dates of injury on or after 1/1/13: Benefits pursuant to Labor Code 4658.7 shall be timely provided.
2. The third party administrator or self-administered entity shall secure the prompt conclusion of SJDB.

F. Reserving

1. Reserves shall be reviewed at regular diary and at time of any significant event, e.g. - surgery, P&S/MMI, return to work, etc., and adjusted accordingly. This review shall be documented in the file regardless of whether a reserve change was made. Where the SIP model does not apply, claims shall be reserved for the most probable value.
2. Indemnity reserves shall reflect actual temporary disability indemnity exposure with 4850 differential listed separately.
3. Permanent disability indemnity exposure shall include life pension reserve if appropriate.

4. Future medical claims shall be reserved in compliance with CCR 15300 (b)(4) allowing adjustment for reductions in the approved medical fee schedule, undisputed utilization review, medically documented non-recurring treatment costs and medically documented reductions in life expectancy.
5. Allocated expense reserves shall include medical cost containment, legal, investigation, copy service and other related fees.
6. A reserve worksheet shall be utilized and/or detailed rationale substantiating reserve levels shall be documented within the claim file.

G. Resolution of Claim

1. Within 10 working days of receiving medical information indicating that a claim can be finalized, the claims examiner shall begin appropriate action to finalize the claim.
2. Follow up finalization efforts shall continue and be documented at regular diary reviews until resolution is complete.
3. Settlement value shall be documented appropriately utilizing all relevant information.
4. Where settlement includes resolution of future medical for a Medicare beneficiary or an expected Medicare beneficiary, the settlement shall document the strategy to protect Medicare's secondary payer status.
5. Pursuant to CCR15400.2, claim files with awards for future benefits shall be reviewed for administrative closure two years after the last provision of benefits.

H. Settlement Authority

1. No agreement shall be authorized involving liability, or potential liability, of PRISM without the advance written consent of PRISM. The member shall be notified of any settlement request submitted to PRISM.
2. The third party administrator shall obtain the Member's authorization on all settlements or stipulations in excess of the settlement authority provided in any provision of the individual contract between the Member and the claims administrator.



3. Proof of settlement authorization(s) shall be maintained in the claim file.

#### **IV. LITIGATED CASES**

The third party administrator or self-administered entity shall establish written guidelines for the handling of litigated cases. The guidelines should, at a minimum, include the points below, which may be adopted and incorporated by reference as "the Guidelines".

1. The third party administrator or self-administered entity shall promptly initiate investigation of issues identified as material to potential litigation. The Member shall be alerted to the need for in-house investigation, or the need for a contract investigator who is acceptable to the Member. The Member shall be kept informed on the scope and results of investigations.
2. The third party administrator or self-administered entity shall, in consultation with the Member, assign defense counsel from a list approved by the Member. Initial referral and ongoing litigation management shall be timely and appropriate. The third party administrator or self-administered entity shall maintain control of the ongoing claim activities.
3. Settlement proposals directed to the Member shall be forwarded by the third party administrator, self-administered entity or defense counsel in a concise and clear written form with a reasoned recommendation. Settlement proposals shall be presented to the Member as directed so as to insure receipt in sufficient time to process the proposal.
4. Knowledgeable Member personnel shall be involved in the preparation for medical examinations and trial, when appropriate or deemed necessary by the Member so that all material evidence and witnesses are utilized to obtain a favorable result for the defense.
5. The third party administrator or self-administered entity shall comply with any reporting requirement of the Member.

#### **V. SUBROGATION**

1. In all cases where a third party (other than a Member employee or agent) is responsible for the injury to the employee, attempts to obtain information regarding the identity of the responsible party shall be made within 14 calendar days of recognition of subrogation potential.

2. Once identified, the third party shall be contacted within 14 calendar days with notification of the Member's right to subrogation and the recovery of certain claim expenses.
3. If the third party is a governmental entity, a claim shall be filed with the governing board (or State Board of Control as to State entities) within 6 months of the injury or notice of the injury. If the third party is a non-governmental entity, a complaint shall be filed in civil court within two years in order to preserve the statute of limitations.
4. Periodic contact shall be made with the responsible party and/or insurer to provide notification of the amount of the estimated recovery to which the Member shall be entitled.
5. If the injured worker brings a civil action against the party responsible for the injury, the claims administrator shall consult with the Member about the value of the subrogation claim and other considerations. Upon Member authorization, subrogation counsel shall be assigned to file a Lien or a Complaint in Intervention in the civil action.
6. Whenever practical, the claims administrator shall aggressively pursue recovery in any subrogation claim. They should attempt to maximize the recovery for benefits paid, and assert a credit against the injured worker's net recovery for future benefit payments.
7. Member (and PRISM if applicable) approval is required to waive pursuit of subrogation or agree to a settlement of a third party recovery. This approval shall be documented in the claim file. In cases of self-administered entities, a process shall be documented noting the authority levels within the member organization to waive pursuit of subrogation or agree to a settlement of a third party recovery.

## **VI. EXCESS COVERAGE**

- A. Claims meeting the definition of reportable excess workers' compensation claims as defined by the Memorandum of Coverage Conditions Section shall be reported to PRISM within five working days of the day on which it is known the criterion is met. Utilize the Excess Workers' Compensation First Report Form available through PRISM's website.
- B. Subsequent reports shall be transmitted to PRISM on a quarterly basis on all indemnity claims and on a semi-annual basis on all future medical claims or sooner if claim activity warrants, or at such other intervals as requested by PRISM, in accordance with Underwriting and Claims Administration Standards. Utilize the Excess Workers' Compensation Status Report Form

available through PRISM's website, or a comparable form to be approved by PRISM.

- C. Reimbursement requests shall be submitted in accordance with PRISM's reporting and reimbursement procedures on a quarterly or semi-annual basis depending on claims payment activity. Utilize the Excess Workers' Compensation Claim Reporting and Reimbursement Procedures available through PRISM's website.
- D. A closing report with a copy of any settlement documents not previously sent shall be sent to PRISM.

Following is the history of amendments to this document:

Amended: March 4, 1988  
Amended: October 7, 1988  
Amended: October 6, 1995  
Amended: October 1, 1999  
Amended: June 6, 2003  
Amended: March 2, 2007  
Amended: July 1, 2009  
Amended: July 1, 2011  
Amended: March 2, 2012  
Amended: October 4, 2013  
Amended: July 1, 2019

## 17 Addendum B– Gardena Claim Service Instructions

### Addendum B– Gardena Claim Service Instructions

#### Client Contacts

Ray Beeman, CPA – Director of Administrative Services, City of Gardena ([rbeeman@cityofgardena.org](mailto:rbeeman@cityofgardena.org))

Diana Schnur – Acting Human Resource Manager, City of Gardena ([DSchnur@cityofgardena.org](mailto:DSchnur@cityofgardena.org))

Mr. Beeman and Ms. Schnur should be copied in on all outgoing claims correspondence. This will include both email and mailed letters to and from claimant, defense attorney, physicians, etc. Assignment of cases to defense counsel should be run by the City for concurrence prior to assignment to defense counsel.

All SAR requests must be in writing and sent to Mr. Beeman and Ms. Schnur with sufficient time for City Council approval as needed (City Council meets twice per month-2<sup>nd</sup> and 4<sup>th</sup> Tuesday of the month).

Settlement authority levels

Up to \$24,999 - City Manager

\$25,000 and above – City Council Approval is required.

#### Police Department Claims

Todd Fox – Captain, City of Gardena Police Dept – ([tfox@gardenapd.org](mailto:tfox@gardenapd.org))

PD requires bi-monthly meeting to review their active cases to discuss status of PD employees out on 4850 benefits and/or mod-duty/return to work/IDR options.

#### GTrans Claims

Ernie Crespo – Director GTrans – ([ECrespo@gardenabus.com](mailto:ECrespo@gardenabus.com))

GTrans requires monthly claim status meeting to go over any pending case issues, updates on AOE/COE investigation results including review of bus videos, cases with pending decision dates, third-party subrogation status, etc.

#### Banking

Danny Rodriguez – Deputy City Treasurer ([drodriguez@cityofgardena.org](mailto:drodriguez@cityofgardena.org))

Mr. Rodriguez manages the City's bank account, replenishment, reconciliation, and voids/stop payments. Daily check register is required and TPA is expected to provide positive pay report directly to the bank.

**WC Defense Attorney Panel**

Dave Thomas, Esq Hanna, Brophy 1500 Iowa Ave Riverside, CA 92507 951-824-2984	
Vanessa Coe, Esq Coleman, Chavez 320 W. 4th St, 9 <sup>th</sup> Floor Los Angeles, CA 90013 213-212-6004	
Andrew Yen, Esq Coleman, Chavez 320 W. 4th St, 9 <sup>th</sup> Floor Los Angeles, CA 90013 213-212-6004	

**SIU/Subrosa**

SIU Consultant Group  
Siuconsultantgroup.com  
888-748-1130

RJN Investigations  
Rjninv.com  
888-323-3832

**General Claims Administration Requirements**

In addition to the claims management standards required by PRISM (the City's excess insurance carrier), Gardena also requires the following:

- A. RTW/Modified Duty - Gardena has implemented a disability management program. The selected TPA will be required to assist with securing clear work restriction in the form of physical capabilities from the treating physician. This information will be used in placing the injured employees in suitable job duties. Any changes in the work restrictions should be communicated promptly to Gardena so that modifications to temporary or permanent work assignments can be made consistent with medical restrictions and physical capabilities. This may involve coordination of benefits with individual department payroll contact.
- B. Permanent Disability - The claims administrator, as soon as it receives notice of P&S status, shall secure clarification of the permanent physical limitations and communicate this information to Gardena so that permanent accommodation consideration can be initiated.
- C. Fraud Control- Gardena requires the claims administrator to aggressively control fraud and pursue restitution in all fraud cases. Risk Management shall be notified of all claims involving potential fraud and recommendations for initiation of fraud investigation activities. Gardena requires all cases meeting the State Fraud reporting guidelines be reported.
- D. Claim Reviews - Quarterly claim reviews on-site at the City of Gardena is required. The TPA is expected to send dedicated claim staff to attend claim reviews, coordinate defense counsel participation when it litigated claims are reviewed and prepare written claim summary reports.
- E. Loss Reporting and Data - Gardena requires that the claims administrator provide electronically, on a monthly basis, basic loss reports detailing claim frequency, paid and incurred costs. In addition, Gardena may have need on occasion to obtain other reports for various purposes including but not limited to actuarial studies, OSIP reporting, audits, program, injury and departmental analysis. Please provide details on your system's reporting capabilities, availability of internal IT staff to respond to custom report requests and client access to your system's reporting tool. Gardena will also require claim system access for multiple users (up to 3 users) to review and monitor its claims, review file notes and reserves.
- F. Claims Personnel Qualifications - The claim assistant(s) assigned to handle medical only claims for Gardena must have a minimum of three years' experience in the Workers' Compensation field. Examiners assigned to handle Gardena's indemnity claims must have a minimum of five years' experience handling public entity Workers' Compensation claims, LC4850 and presumptions, and possess a Self-Insured Plans (SIP) Certificate. Supervisors serving Gardena must have a minimum of 5 years' experience handling or supervising Workers' Compensation claims and possesses an OSIP Certificate. It is desirable that the claim assistants, examiners and supervisors have experience with a multiple-location, public

sector client. Gardena maintains the right to interview and review evidence of work experience of all personnel to be assigned to its account and to approve such personnel. Gardena desires dedicated claims personnel to facilitate a partnership approach to program management.

- G. Transmission of Injury Reports and Claims Access - The claims administrator must be able to receive initial injury reports (5020 form) from Gardena via fax or electronically.
- H. Gardena may amend requirements as needed, with 30 days written notice to claims administrator. These requirements will become part of Gardena's contract with the selected bidder. Gardena may conduct claims performance audits to measure TPA performance and compliance with claims administration standards and requirements.
- I. Excess – Gardena has maintained excess insurance for most of the last 25 years, the most recent five years through PRISM (formerly CSAC-EIA). The selected TPA will be required to report on all qualifying excess claims as required by the excess policy to the applicable excess carrier, provide to Gardena and document in the claim file a copy of each excess report completed and, pursue when appropriate excess reimbursements from the carrier. All recovery checks must be documented in the claim file (date, check numbers, amount or a scanned image) before forwarding the checks to the City of Gardena's Risk Management Department. Gardena will provide a list of applicable excess policy info, carrier and retention levels to the successful TPA.
- J. Settlement Authorization - Prepare and submit settlement authorization request (SAR) for approval by Gardena prior to initiating settlement negotiations. City Council approval is required on all settlements in excess of \$25,000 thus the successful TPA will need to plan for this delay in authorization on all claims requiring City Council approval. Settlements under \$25,000 must be approved by the City Manager. Written settlement authorization request are required on all settlements.
- K. Gardena may implement various programs (RTW, ADA, ergonomics, etc.) that may require special coordination between the selected TPA and the applicable City function. TPA will be required to provide documentation and information as needed for Gardena to effectively implement these programs.

## 18 Addendum C - City of Gardena Professional Services Agreement

### Addendum C - City of Gardena Professional Services Agreement

AGREEMENT BETWEEN THE  
THE CITY OF GARDENA  
AND  
XXXXXXXXXXXX  
FOR THIRD PARTY WORKERS' COMPENSATION CLAIMS ADMINISTRATION

This contract, hereinafter referred to as Agreement, is entered into by and between THE CITY OF GARDENA ("City") and xxxxxx, a CORPORATION ("Consultant"). Based on the mutual promises and covenants contained herein, the Parties hereto agree as follows:

1. Recitals.

- A. City is desirous of obtaining services necessary to provide third party workers' compensation claims administration.
- B. Consultant is qualified by virtue of experience, training, education, and expertise to provide these services.
- C. City has determined that the public interest, convenience, and necessity require the execution of this Agreement.

2. Services.

- A. The services to be performed by the Consultant shall consist of the following ("Services"): As specified in Exhibit "A", attached hereto, and incorporated herein by reference, unless otherwise instructed by City.
- B. The Services shall be performed in accordance with the Project Schedule set forth in Exhibit A. Consultant shall not be liable for any failure or delay in furnishing proposed services resulting from fire, explosion, flood, storm, Act of God, governmental acts, orders or regulations, hostilities, civil disturbances, strikes, labor difficulties, difficulty in obtaining parts, supplies, or shipping facilities, inability to obtain or delays in obtaining suitable material or facilities required for performance, temporary unavailability of qualified personnel, failure by City to provide appropriate access to equipment or personnel, or other causes beyond Consultant's reasonable control.

3. Additional Services. If City determines that additional services are required to be



provided by the Consultant in addition to the Services set forth above, City shall authorize the Consultant to perform such additional services in writing ("Additional Services"). Such Additional Services shall be specifically described and approved by City in writing prior to the performance thereof. Consultant shall be compensated for such Additional Services in accordance with the amount agreed upon in writing by the Parties. No compensation shall be paid to Consultant for Additional Services which are not specifically approved by City in writing.

4. Agreement Administrator. For purposes of this Agreement, City designates Ray Beeman as the Agreement Administrator who shall monitor Consultant's performance under this Agreement. All notices, invoices or other documents shall be addressed to the Agreement Administrator, as well as all substantive issues relating to this contract. City reserves the right to change this designation upon written notice to Consultant.

5. Consultant's Proposal. This Agreement shall include Consultant's proposal or bid which is incorporated herein as Exhibit A. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.

6. Timing of Performance. Time is of the essence with respect to Consultant's performance of the Services required by this Agreement. Consultant shall diligently and timely pursue and complete the performance of the Services required of it by this Agreement as set forth in Exhibit A. City, in its sole discretion, may extend the time for performance of any Service.

7. Compensation. Compensation for the Services shall be billed as set forth in Exhibit A, attached hereto. The Compensation is inclusive of all costs that may be incurred by Consultant in performance of the Services, including but not limited to such items as travel, copies, delivery charges, phone charges, and facsimile charges, unless otherwise noted.

8. Term of Agreement/Termination.

A. This Agreement shall be effect until all Services are completed as specified in Exhibit A or until terminated as provided for herein.

B. City may terminate this Agreement without cause by providing written notice to Consultant not less than three days prior to an effective termination date. City's only obligation in the event of termination will be payment of fees and allowed expenses incurred up to and including the effective date of termination.

C. Unless for cause, Consultant may not terminate this Agreement. If Consultant is terminating this Agreement for cause, it must provide the City with thirty (30) days written notice.

D. Upon receipt of a termination notice, Consultant shall: (1) promptly discontinue all Services, unless the notice directs otherwise; and (2) within ten (10) days, deliver to City all files, data, reports, estimates, summaries, and such other information and materials as may have been accumulated or prepared to date by Consultant in performing the Services under this Agreement, whether completed or in progress. Consultant shall provide these documents by both hard copy and in electronic format if available. In the event of termination for other than cause attributable to Consultant, Consultant shall be entitled to reasonable compensation for the services it performs up to the date of termination and shall be deemed released from liability for any work assigned but not completed as of the effective date of termination.

9. Invoices and Payments.

A. Payment shall be made upon receipt and approval of invoices for Services rendered. In order for payment to be made, Consultant's invoice must include an itemization as to the services rendered, date(s) of service, direct and/or subcontract costs, and be submitted on an official letterhead or invoice with Consultant's name, address, and telephone number referenced.

B. The Agreement Administrator shall review the invoices to determine whether services performed and documents submitted are consistent with this Agreement. Payment shall be made within forty-five (45) days following receipt of the invoice or the Agreement Administrator shall provide Consultant with a written statement objecting to the charges and stating the reasons therefore.

C. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to City at the time of payment.

10. Records/Audit.

A. Consultant shall be responsible for ensuring accuracy and propriety of all billings and shall maintain all supporting documentation for a minimum of three (3) years from the completion date of the Services under this agreement the following records:

1. All accounts and records, including personnel, property and financial, adequate to identify and account for all costs pertaining to this Agreement and assure proper accounting for all funds;

2. Records which establish that Consultant and any subconsultant who renders Services under this Agreement are in full compliance with the requirements of this Agreement and all federal, state and local laws and regulations

3. Any additional records deemed necessary by City to assume verification of full compliance with this Agreement.

B. City shall have the right to audit Consultant's invoices and all supporting documentation for purposes of compliance with this Agreement for a period of three years following the completion of Services under this Agreement.

C. Upon reasonable notice from City or any other governmental agency, Consultant shall cooperate fully with any audit of its billings conducted by, or of, City and shall permit access to its books, records and accounts as may be necessary to conduct such audits.

11. Successors and Assignment. This Agreement covers professional services of a specific and unique nature. Except as otherwise provided herein, Consultant shall not assign or transfer its interest in this Agreement or subcontract any services to be performed without amending this Agreement. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

12. Change in Name, Ownership or Control. Consultant shall notify the Agreement Administrator, in writing, of any change in name, ownership or control of Consultant's firm or subconsultant. Change of ownership or control of Consultant's firm may require an amendment to the Agreement.

13. Key Personnel. City has relied upon the professional training and ability of Consultant to perform the services hereunder as a material inducement to enter into this Agreement. Consultant shall provide properly skilled professional and technical personnel to perform all services under this Agreement. In the event that City, in its sole discretion, at any time during the Agreement, desires the removal of any person or persons assigned by Consultant to perform Services pursuant to this Agreement, Consultant shall remove any such person immediately upon receiving notice from City.

14. Use of Materials.

A. City shall make available to Consultant such materials from its files as may be required by Consultant to perform Services under this Agreement. Such materials shall remain the property of City while in Consultant's possession. Upon termination of this Agreement and payment of outstanding invoices of Consultant, or completion of work under this Agreement, Consultant shall return to City any property of

City in its possession and any calculations, notes, reports, electronic files, or other materials prepared by Consultant in the course of performance of this Agreement.

B. City may utilize any material prepared or work performed by Consultant pursuant to this Agreement, including computer software, in any manner, which City deems proper without additional compensation to Consultant. Consultant shall have no responsibility or liability for any revisions, changes, or corrections made by City, or any use or reuse pursuant to this paragraph unless Consultant accepts such responsibility in writing.

15. Nonuse of Intellectual Property of Third Parties. Consultant shall not use, disclose or copy any intellectual property of any third parties in connection with work carried out under this Agreement, except for intellectual property for which Consultant has a license. Consultant shall indemnify and hold City harmless against all claims raised against City based upon allegations that Consultant has wrongfully used intellectual property of others in performing work for City, or that City has wrongfully used intellectual property developed by Consultant pursuant to this Agreement.

16. Ownership of Work Product. All documents or other information created, developed, or received by Consultant shall, for purposes of copyright law, be deemed worked made for hire for City by Consultant and shall be the sole property of City. Consultant shall provide City with copies of these items upon demand, and in any event, upon termination of this Agreement.

17. Legal Requirements.

A. Consultant shall secure and maintain all licenses or permits required by law, including a City business license, and shall comply with all ordinances, laws, orders, rules, and regulations pertaining to the work.

B. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

C. Consultant covenants that there shall be no discrimination based upon race, color, creed, religion, sex, marital status, age, handicap, national origin or ancestry, or any other category forbidden by law in performance of this Agreement.

18. Conflict of Interest and Reporting.

A. Consultant shall at all times avoid conflicts of interest or the appearance of a conflict of interest in the performance of this Agreement. If required, Consultant shall comply with the City's Conflict of Interest reporting requirements. Consultant understands that pursuant to Gardena Municipal Code sections 2.24.020H and 2.24.025G, it is forbidden to make any contribution to a candidate or committee of a candidate for a municipal office of the City, or to an officeholder, until the completion of services to be performed under this Agreement.

B. Consultant and its representatives shall refrain from lobbying City of Gardena officials, employees and representatives for the duration of this Agreement.

19. Guarantee and Warranty. Consultant warrants to City that the material, analysis, data, programs and SERVICES to be delivered or rendered hereunder will be of the kind and quality designated and will be performed by qualified personnel. Without waiver of City's other rights or remedies, City may require Consultant to re-perform any of said services, which were not performed in accordance with these standards. Consultant shall perform the remedial services at its sole expense.

20. Insurance.

A. Commencement of Work. Consultant shall not commence work under this Agreement until it has obtained City approved insurance. Before beginning work hereunder, during the entire period of this Agreement, for any extensions hereto, and for periods after the end of this Agreement as may be indicated below, Consultant must have and maintain in place all of the insurance coverage required in this Section. Consultant's insurance shall comply with all items specified by this Agreement. Any subcontractors shall be subject to all of the requirements of this Section and Consultant shall be responsible to obtain evidence of insurance from each subcontractor and provide it to City before the subcontractor commences work. Alternatively, Consultant's insurance may cover all subcontractors.

B. Insurance Company Requirements. All insurance policies used to satisfy the requirements imposed hereunder shall be issued by insurers admitted to do business in the State of California. Insurers shall have a current Best's rating of not less than A-:VII, unless otherwise approved by City.

C. Coverage, Limits and Policy Requirements. Consultant shall maintain the types of coverage and limits indicated below:

1. Commercial General Liability Insurance - a policy for occurrence coverage for bodily injury, personal injury and property damage, including all coverage provided by and to the extent afforded by Insurance Services Office Form CG 2010 ed. 10/93 or 11/85, with no special limitations affecting City. The limit for all coverage under this policy shall be no less than one million dollars (\$1,000,000.00) per occurrence.

2. Commercial Auto Liability Insurance - a policy including all coverage provided by and to the extent afforded by Insurance Services Office form CA 0001, ed. 12/93, including Symbol 1 (any auto) with no special limitations affecting City. The limit for bodily injury and property damage liability shall be no less than one million dollars (\$1,000,000.00) per accident.

3. Policy Requirements. The policies set forth above shall comply with the following, as evidenced by the policies or endorsements to the policies:

a. The City, its appointed and elected officers, employees, agents and volunteers shall be added as additional insured to the policy.

b. The insurer shall agree to provide City with thirty (30) days prior written notice, return receipt requested, of any cancellation, non-renewal or material change in coverage.

c. For any claims with respect to the Services covered by this Agreement, Consultant's insurance coverage shall be primary insurance as respects the City, its elected and appointed officers, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its elected and appointed officers, employees, agents and volunteers shall be excess of Consultant's insurance and shall not contribute with it.

4. Worker's Compensation and Employer's Liability Insurance - a policy which meets all statutory benefit requirements of the Labor Code, or other applicable law, of the State of California. The minimum coverage limits for said insurance shall be no less than one million dollars per claim. The policy shall be issued by an insurance company which is admitted to do business in the State of California and shall contain a clause that the policy may not be canceled without thirty (30) days prior written notice, return receipt requested, is mailed to City.

5. Professional Errors & Omissions - a policy with minimum limits of one million dollars (\$1,000,000.00) per claim and aggregate. This policy shall be issued by an insurance company which is admitted to do business in the State of California and shall contain a clause that the policy may not be canceled until thirty (30) days written notice, return receipt requested, is mailed to City.

D. Additional Requirements. The procuring of such required policies of insurance shall not be construed to limit Consultant's liability hereunder or to fulfill the indemnification provisions and requirements of this Agreement. There shall be no recourse against City for payment of premiums or other amounts with respect thereto. City shall notify Consultant in writing of changes in the insurance requirements. If Consultant does not deposit copies of acceptable insurance policies or endorsements with City incorporating such changes within sixty (60) days of receipt of such notice, Consultant shall be deemed in default hereunder.

E. Deductibles. Any deductible or self-insured retention over \$25,000 per occurrence must be declared to and approved by City. Any deductible exceeding an amount acceptable to City shall be subject to the following changes: either the insurer shall eliminate or reduce such deductibles or self-insured retentions with respect to City, its officers, employees, agents and volunteers (with additional premium, if any, to be paid by Consultant); or Consultant shall provide satisfactory financial guarantee for payment of losses and related investigations, claim administration and defense expenses.

F. Verification of Compliance. Consultant shall furnish City with original policies or certificates and endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by City before work commences. Not less than fifteen (15) days prior to the expiration date of any policy of insurance required by this Agreement, Consultant shall deliver to City a binder or certificate of insurance with respect to each renewal policy, bearing a notation evidencing payment of the premium therefore, or accompanied by other proof of payment satisfactory to City. Consultant shall provide full copies of any requested policies to City within three (3) days of any such request by City.

G. Termination for Lack of Required Coverage. If Consultant, for any reason, fails to have in place, at all times during the term of this Agreement, including any extension hereto, all required insurance and coverage, City may immediately obtain such coverage at Consultant's expense and/or terminate this Agreement.

21. Indemnity.

A. Consultant assumes all risk of injury to its employees, agents, and contractors, including loss or damage to property.

B. Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents, employees and volunteers, at Consultant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents, employees and volunteers arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents, employees and volunteers based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

C. No official, employee, agent or volunteer of City shall be personally liable for any default or liability under this Agreement.

22. Independent Contractor. Consultant agrees to furnish consulting services in the capacity of an independent contractor and neither Consultant nor any of its employees shall be considered to be an employee or agent of City.

23. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.



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

24. Notices. Any notice or communication given under this Agreement shall be effective when deposited, postage prepaid, with the United States Postal Service and addressed to the contracting parties. Name, address, telephone and facsimile numbers of the parties are as follows:

City of Gardena:  
1700 West 162nd Street  
Gardena, California 90247-3732  
Attn:  
Telephone Number:  
E-mail:

Consultant:  
Attn:  
Telephone Number:  
Facsimile Number:  
E-mail:

Either party may change the information to which notice or communication is to be sent by providing advance written notice to the other party.

25. Severability. If any provision of this Agreement shall be held illegal, invalid, or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it legal, valid, and enforceable, and the legality, validity, and enforceability of the remaining provisions shall not be affected thereby.

26. Jurisdiction and Venue. This Agreement shall be deemed a contract under the laws of the State of California and for all purposes shall be interpreted in accordance with such laws. Both parties hereby agree and consent to the exclusive jurisdiction of the courts of the State of California and that the venue of any action brought hereunder shall be Los Angeles County, California.

27. Waiver. No delay or failure by either Party to exercise or enforce at any time any

right or provision of this Agreement shall be considered a waiver thereof or of such Party's right thereafter to exercise or enforce each and every right and provision of this Agreement. To be valid a waiver shall be in writing but need not be supported by consideration. No single waiver shall constitute a continuing or subsequent waiver.

28. Entire Agreement.

A. This writing contains the entire agreement of the Parties relating to the subject matter hereof; and the Parties have made no agreements, representations, or warranties either written or oral relating to the subject matter hereof which are not set forth herein. Except as provided herein, this Agreement may not be modified or altered without formal amendment thereto.

B. Notwithstanding the foregoing, and to realize the purpose of this Agreement, the Agreement Administrator may issue a written modification to the Scope of Work, if this modification will not require a change to any other term of this Agreement.

29. Joint Drafting. Each party acknowledges that it has had an adequate opportunity to review each and every provision in this Agreement and to submit the same to counsel and other consultants for review and comment and that the parties jointly drafted this Agreement. No provision of this Agreement or any Assignment shall be construed more strictly against one party than the other party by reason that one or the other party proposed, drafted or modified such provision or any other existing or proposed provision.

30. Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code section 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

31. Authority to Execute. The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

32. Attorney's Fees. In the event that legal action is necessary to enforce the provisions of this Agreement, or to declare the rights of the parties hereunder, the

parties agree that the prevailing party in the legal action shall be entitled to recover attorney's fees and court costs from the opposing party.

33. Section Headings. The Section headings used in this Agreement are for reference purposes only and shall have no binding effect.