



AGENDA REPORT

Meeting Date: June 19, 2012
Item Number: G-14
To: Honorable Mayor & City Council
From: Karl Kirkman, Risk Manager
Subject: **AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND ATHENS INSURANCE SERVICES, INC. DBA ATHENS ADMINISTRATORS FOR THIRD PARTY ADMINISTRATION FOR WORKERS' COMPENSATION PROGRAM**

Attachments: 1. Agreement

RECOMMENDATION

Staff recommends that the City Council move to approve an agreement between City of Beverly Hills and Athens Insurance Services, Inc., DBA Athens Administrators for third party administration of workers' compensation claims services.

INTRODUCTION

The City of Beverly Hills has self-insured for workers' compensation losses since the mid 1980's. Because the number of claims is low, the City has found it to be more cost effective to contract out the claims administration. This contract will engage Athens Administrators to handle workers' compensation claims for the City.

DISCUSSION

Since self-insuring for workers' compensation claims, the claims administration has been provided by a single firm. As costs have risen significantly over the past five years, staff felt it was prudent to conduct a Request for Proposal (RFP) for third party claims administration. Ten proposals were submitted, and the firms with the top three proposals were invited to continue on in the process. The process consisted of an interview panel, an on-site visit to each location, and an in-depth presentation of their online claims reporting program.

Athens Administrators proposal was selected as the most cost effective and most responsive proposal. Staff then negotiated further and was able to reduce the pricing down by negotiating out several setup fees.

The billing for the contract is broken down into two sections, an administration fee administration and a managed care cost. With the new contract, the administration fee will increase by \$66,000 per year over the expiring contract, and this fee will contain a 3.5% increase in each of the next two years. However the City will obtain significant savings on the managed care costs. The billing for managed care costs will go from a percentage of savings to a flat fee system. The flat fees are fixed for the first three years of the contract. With a flat fee system, the City should net a savings of between \$40,000 to \$80,000 per year, depending on the number of claims and doctor bills.

FISCAL IMPACT

Funds have been budgeted and are available for this purpose.



Finance Approval



Approved By

Attachment 1

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND
ATHENS INSURANCE SERVICES, INC. DBA ATHENS
ADMINISTRATORS FOR THIRD PARTY ADMINISTRATION
SERVICES FOR WORKERS' COMPENSATION PROGRAM

NAME OF CONSULTANT: Athens Insurance Services, Inc., dba Athens Administrators

RESPONSIBLE PRINCIPAL OF CONSULTANT: Linda Slaughter
Chief Claims Officer

CONSULTANT'S ADDRESS: P.O. Box 696
Concord, CA 94522-0696

CITY'S ADDRESS: City of Beverly Hills
455 N. Rexford Drive
Beverly Hills, CA 90210
Attention: Karl Kirkman
Risk Manager

COMMENCEMENT DATE: July 1, 2012

TERMINATION DATE: Upon termination by City pursuant to Section 17 of the Agreement

CONSIDERATION: As set forth in City approved purchase orders

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND
ATHENS INSURANCE SERVICES, INC. DBA ATHENS
ADMINISTRATORS FOR THIRD PARTY ADMINISTRATION
SERVICES FOR WORKERS' COMPENSATION PROGRAM

THIS AGREEMENT is made by and between the City of Beverly Hills (hereinafter called "City"), and Athens Insurance Services, Inc., dba Athens Administrators (hereinafter called "Consultant").

RECITALS

A. City desires to have certain services provided as set forth in the Scope of Work, Exhibit A, attached hereto and incorporated herein by this reference (the "Services").

B. Consultant represents that it is qualified and able to perform the Services in accordance with the terms set forth herein.

NOW, THEREFORE, the parties agree as follows:

Section 1. Consultant's Services. Consultant shall provide Third Party Administration Services for Workers' Compensation as more particularly described in Scope of Work, Exhibit A, in a manner satisfactory to City and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.

Section 2. Time of Performance. This Agreement shall commence upon a notice to proceed, and shall terminate on the Termination Date set forth above, unless sooner terminated pursuant to Section 14 of this Agreement.

Section 3. Compensation. City agrees to compensate Consultant, and Consultant agrees to accept in full satisfaction for the services required by this Agreement the Consideration set forth above and more particularly described in Exhibit B, attached hereto and incorporated herein by this reference. Said Consideration shall constitute reimbursement of Consultant's fee for the services as well as the actual cost of any equipment, materials, and supplies necessary to provide the services (including all labor, materials, delivery, tax, assembly, and installation, as applicable).

Section 4. Method of Payment. Consultant shall submit to City a detailed invoice (as is further described in Exhibit B), on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Within 30 days of receipt of each invoice, City shall pay all undisputed amounts included on the invoice.

Section 5. Independent Contractor. Consultant is and shall at all times remain, as to City, a wholly independent contractor. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as herein set forth. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City.

Section 6. Assignment and Subcontracting. Consultant shall not assign or attempt to assign any portion of this Agreement, or subcontract any required performance hereunder, without the prior written approval of City. Consultant, however, shall at all times be responsible for the services performed by any subcontractors.

Section 7. Party Representatives.

A. Consultant: Responsible Principal. The Responsible Principal set forth above shall be principally responsible for Consultant's obligations under this Agreement and shall serve as principal liaison between City and Consultant. Designation of another Responsible Principal by Consultant shall not be made without the prior written consent of City.

B. Consultant's Onsite Representatives. Consultant shall have at least one competent representative on the project site at all times while work is in progress. At the City's direction and at the sole discretion of the City, Consultant shall immediately replace any individual who fails to perform the duties required by the work with a qualified, competent replacement that is acceptable to City's authorized representative.

C. City Representative. The City Manager or his designee shall represent City in the implementation of this Agreement.

Section 8. Personnel. Consultant represents that it has, or shall secure at its own expense, all personnel required to perform Consultant's services under this Agreement.

Section 9. Permits and Licenses. Consultant shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of services under this Agreement, including a business license.

Section 10. Interests of Consultant. Consultant affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the services contemplated by this Agreement. No person having any such interest shall be employed by or be associated with Consultant.

Section 11. Obligations of CITY. CITY may, upon reasonable notice:

A. Submit all reports of work injury to Consultant within one (1) day of City's knowledge of the injury, serializing each report with an ascending incident number.

B. Respond to written requests from Consultant for information related to the performance of this Agreement within five (5) days of such requests.

C. Provide the information specified in paragraph B which is accurate and is in a form specified by Consultant.

D. Grant settlement authority to Consultant in advance of vocational rehabilitation and legal hearings or be available by phone or in person during those hearings.

Section 12. Checking Account: City and Consultant agree that:

A. City shall establish a checking account from which all Workers' Compensation benefits and expenses are to be paid.

B. Consultant shall prepare checks and issue those checks directly to payees without delay.

C. Consultant shall sign checks with a facsimile check signing machine.

D. Consultant shall secure both checks and check signer in a locked room accessible to a limited number of personnel.

E. City shall maintain an adequate balance in the checking account to meet all Workers' Compensation obligations.

F. Consultant shall order the checks.

G. The checking account may be used to pay civil penalties in which case Consultant shall reimburse City within fifteen (15) days for any amount of the penalty which Consultant caused as provided in Section 13 of this Agreement.

Section 13. Penalties: Consultant shall be responsible for paying or appealing penalties assessed by the state of California unless the penalty results from City's failure to:

A. Provide an Employee Claim Form to an injured employee within 24 hours of knowledge of the injury.

B. Date stamp the returned Employee Claim Form

C. Provide an Employer's First Report of Work Injury to the Administrator within five (5) days from the date of knowledge of an injury.

D. Provide a wage statement within ten days from the date of knowledge of an injury where the employee is entitled to less than the maximum temporary disability rate.

E. Provide accurate information related to the performance of this Agreement by the Administrator, in a timely manner.

F. Follow a written recommendation of Consultant.

Section 14. Insurance.

A. Consultant shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

(1) A policy or policies of Comprehensive General Liability Insurance, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by Consultant.

(2) Consultant shall at all times during the term of the Agreement carry, maintain, and keep in full force and effect, a policy or policies of Professional Liability Insurance covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per claim and in the aggregate. Any deductibles or self-insured retentions attached to such policy or policies must be declared to City in writing and be approved by City. Further, Consultant agrees to maintain in full force and effect such insurance for one year after performance of work under the Agreement is completed.

(3) A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit, covering any vehicle utilized by Consultant in performing the Scope of Work required by this Agreement.

(4) Workers' compensation insurance as required by the State of California.

B. Consultant shall require each of its sub-Consultants to maintain insurance coverage which meets all of the requirements of this Agreement.

C. The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+;VII in the latest edition of Best's Insurance Guide.

D. Consultant agrees that if it does not keep the aforesaid insurance in full force and effect City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Consultant's expense, the premium thereon.

E. At all times during the term of this Agreement, Consultant shall maintain on file with the City Clerk a certificate or certificates of insurance on the form set forth in Exhibit C, attached hereto and incorporated herein, or a form acceptable to the City's Risk Manager, showing that the aforesaid policies are in effect in the required amounts. Consultant shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The general liability insurance shall contain an endorsement naming the City as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to City, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

F. The insurance provided by Consultant shall be primary to any coverage available to City. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

G. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.

Section 15. Fidelity Bond. Consultant shall provide a blanket fidelity bond or comparable honesty bond or crime coverage, in a form satisfactory to the City Attorney, protecting the City against financial loss caused by any dishonest act of Consultant or Consultant's employees. This bond shall have a minimum limit of \$500,000 and City shall be named as a loss payee.

Section 16. Indemnification.

A. Consultant agrees to indemnify, hold harmless and defend the City of Beverly Hills, the City Council and each member thereof, and every officer, employee and agent of the City from any claim, liability or financial loss (including without limitation, attorneys fees and costs) arising out of the acts or omissions of Consultant, its employees, agents, representatives, and/or subcontractors, whether intentional, reckless, negligent, or otherwise wrongful, in the performance of this Agreement.

B. Consultant agrees to indemnify, hold harmless and defend the City, the City Council and each member thereof, every officer, employee and agent of the City from and against any claim, liability or financial loss (including, without limitation, attorneys fees and costs) arising from any claim that the technology and services provided by Consultant under this Agreement

infringes upon any copyright, trade secret, trademarks, patent or other proprietary or intellectual property right of any third party.

Section 17. Termination.

A. City may cancel this Agreement, with or without cause, at any time upon five (5) calendar days written notice to Consultant. Consultant agrees to cease all work under this Agreement on or before the effective date of such notice.

B. In the event of termination or cancellation of this Agreement by City, due to no fault or failure of performance by Consultant, Consultant shall be paid full compensation for all services performed by Consultant, in an amount to be determined as follows: For work done in accordance with all of the terms and provisions of this Agreement, Consultant shall be paid an amount equal to the amount of services performed prior to the effective date of termination or cancellation; provided, in no event shall the amount of money paid under the foregoing provisions of this paragraph exceed the amount which would be paid Consultant for the full performance of the services required by this Agreement.

Section 18. City's Responsibility. City shall provide Consultant with all pertinent data, documents, and other requested information as is available for the proper performance of Consultant's services.

Section 19. Information and Documents. All data, information, documents and drawings prepared for City and required to be furnished to City in connection with this Agreement shall become the property of City, and City may use all or any portion of the work submitted by Consultant and compensated by City pursuant to this Agreement as City deems appropriate.

Section 20. Non-Disclosure. Pursuant to the terms of this Agreement, City has provided, or will provide Consultant with certain information, and/or access to certain information (the "Information"), which was or will be obtained by the City pursuant to a License Agreement with a third party, or which is the proprietary information of the City, or which is not publicly known. Consultant, its employees, agents, representatives, contractors and subcontractors shall hold the Information private and confidential, and shall not:

A. Use the Information, nor cause the Information to be used for any purpose other than in performance of its duties to the City,

B. Participate in the wrongful use, illegal use, or unauthorized disclosure of the Information, or

C. Sell, release, free trade, assign, or provide access to the Information, directly or indirectly, to third parties. This provision survives termination of Consultant's duties to the City.

Section 21. Notice. Any notice required by this Agreement shall be deemed received on: (a) the day of delivery if delivered by hand or overnight courier service during regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid, to the addresses set forth above or to such other addresses as the parties may designate in writing.

Section 22. Attorney's Fees. In the event of litigation between the parties arising out of or connected with this Agreement, the prevailing party in such litigation shall be entitled to recover, in addition to any other amounts, reasonable attorney's fees and costs of such litigation.

Section 23. Precedence. In case of conflict between any of the Exhibits attached hereto and the terms of this Agreement, this Agreement shall take precedence over the Exhibits.

Section 24. Entire Agreement. This Agreement represents the entire integrated agreement between City and Consultant, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both City and Consultant.

Section 25. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 26. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

Section 27. No Third Party Beneficiaries. This Agreement and the obligations hereunder are not intended to benefit any party other than City and Consultant, except as expressly provided otherwise herein. No entity not a signatory to this Agreement shall have any rights or causes of action against any party to this Agreement as a result of that party's performance or non-performance under this Agreement, except as expressly provided otherwise herein.

EXECUTED the ____ day of _____, 20__.

CITY OF BEVERLY HILLS
A Municipal Corporation

WILLIAM W. BRIEN, MD
Mayor of the City of
Beverly Hills, California

ATTEST:

BYRON POPE (SEAL)
City Clerk

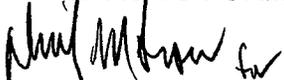
ATHENS INSURANCE SERVICES, INC., DBA
ATHENS ADMINISTRATORS

JAMES JENKINS
President

Jodi Ellington
CFO/Treasurer

[Signatures continue]

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY KOLIN
City Manager



KARL KIRKMAN
Risk Manager

EXHIBIT A

Consultant shall administer the workers' compensation program in full compliance with all law, rules and regulations that govern workers compensation and self-insurance.

Consultant shall have the authority and responsibility to provide the following services:

- I. Periodic Meetings: Consultant shall meet with City staff no more than four times per year to:
 - A. Assist City in developing internal procedures.
 - B. Provide orientation and training to City personnel involved in the administration of the Program.
 - C. Discuss specific claims and general trends in the Program.
- II. Advisory Services: Consultant shall provide written advisory bulletins to inform City of the adoption, amendment or appeal of all statutes, rules and regulations which directly affect the Program.
- III. Required Forms: Consultant shall provide City with all forms required by the State in connection with the Program.
- IV. Compliance with law: Consultant shall administer the Program in full compliance with all laws, rules and relations governing Workers' Compensation and self-insurance.
- V. Claims Administration: Consultant shall have the authority and responsibility to provide claims administration services which include:
 - A. Entering claim information on a log and establishing a claim file upon receipt of an injury report.
 - B. Setting and updating reserves.
 - C. Arranging for investigation.
 - D. Determining compensability.
 - E. Preparing and issuing benefit notices and pamphlets.
 - F. Arranging for medical treatment from specialists, as necessary.
 - G. Initiating and maintaining contact with employees or their attorneys.
 - H. Monitoring disability status by reviewing medical reports and calling doctors for updates.
 - I. Auditing and paying medical bills.
 - J. Payment mileage reimbursement to employees.
 - K. Paying temporary disability compensation when appropriate to do so or advising City of the need to adjust payroll records when salary continuation is applicable.
 - L. Arranging medical exams in conformance with State law to determine whether an employee's medical condition is permanent and stationary and what, if any permanent disability exists.
 - M. Paying permanent disability compensation in accordance with the law.
 - N. Arranging for attorney representation of City whenever the need arises, selecting attorneys from a list approved by City.
 - O. Monitoring attorneys and assisting them in preparing cases.
 - P. Auditing and paying legal expenses.
 - Q. Arranging for vocational rehabilitation services when appropriate.

- R. Monitoring vocational rehabilitation consultants and assisting them as necessary.
- S. Auditing and paying vocational rehabilitation expenses.
- T. Attending all hearings that are required by law.
- U. Preparing and issuing vocational rehabilitation notices.
- V. Preparing and issuing permanent disability compensation notices.
- W. Pursuing subrogation when there is a viable third party.
- X. Notifying City's excess insurers of all claims which exceed or may exceed City's self-insurance retention, maintaining liaison between City and its excess insurers on matters affecting the handling of such claims and arranging for reimbursement to City of losses in excess of its self-insurance retention.
- Y. Obtaining settlement authority and negotiating settlement on appropriate claims.
- Z. Closing claim files when appropriate to do so.
- AA. Setting and updating reserves (estimate of final cost of the claim).

VI. Statistical Reports. Consultant shall provide monthly statistical reports to assist City management in monitoring the Program. These reports shall include, at a minimum:

- A. A monthly loss experience report, on or before the fifteenth (15th) day of each calendar month, for the preceding month, containing the following information: employee's name, injury date, closing date, department, location, cause of injury, type of injury, days lost from work, OSHA coding, reserves and payments.
- B. A monthly transaction report, on or before the fifteenth (15th) day of each calendar month for the preceding month, containing the following information: check number, transaction date, amount, payee, name of employee and claim number.

VII. Regulatory Reporting. Consultant shall prepare all reports required by State regulatory agencies in connection with the Program, including the Self-Insurers Annual Report required by the Department of Self-Insurance Plans.

VIII. Records: Consultant shall establish and maintain claim files, claim logs, transaction documents and all other records associated with the Program. These records shall remain the property of City and shall be available on five (5) days notice, for review or for transfer to another custodian. Unless this Agreement is cancelled, closed files shall be stored by Consultant for five (5) years and shall thereafter become the responsibility of City. Upon cancellation of this Agreement, City shall be responsible for maintaining and storing all records. Consultant shall not dispose of or destroy these records without the prior, written authorization of City.

IX. Managed Case Services. Consultant shall provide all managed care services as needed including but not limited to:

- A. Utilization review of all treatment submitted by the treating physician in accordance with established guidelines acceptable to the City and in compliance with appropriate Labor Codes for the State of California.
- B. Medical and hospital bill review to ensure all medical and hospital bills are paid in accordance to the most recent fee schedule.
- C. Review billings from preferred provider organizations (PPO) to ensure billings are paid at the appropriate discounted rate.

EXHIBIT B

Fees and Charges

The Administrative fee shall be:

Program Year 1:	\$285,000
Program Year 2:	\$294,975
Program Year 3:	\$305,299
Program Year 4 and beyond:	As negotiated between Consultant and City Manager in writing

Medical Bill Review Charges:

Medical Fee Schedule (OMFS)	\$7.50 per bill
Includes medical, pharmacy and supplies	
Hospital fee schedule reductions	\$600 per bill
For both in and out patient services	
PPO Network Discount	22% of savings
Utilization Review	\$115 per review
Duplicate bills	No charge
Duplicate line items	No charge
Customized reporting	No charge



CERTIFICATE OF INSURANCE

This is to certify that the following endorsement is part of the policy(ies) described below:

NAMED INSURED

COMPANIES AFFORDING COVERAGE

- A.
- B.
- C.

ADDRESS

COMPANY (A. B. C.)	COVERAGE	POLICY NUMBER	EXPIRATIO N DATE	B.I.	LIMITS P.D.	AGGREGATE
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS <input type="checkbox"/> BLANKET CONTRACTUAL <input type="checkbox"/> CONTRACTOR'S PROTECTIVE <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> WORKERS' COMPENSATION <input type="checkbox"/>					

It is hereby understood and agreed that the City of Beverly Hills, its City Council and each member thereof and every officer and employee of the City shall be named as joint and several assureds with respect to claims arising out of the following project or agreement:

It is further agreed that the following indemnity agreement between the City of Beverly Hills and the named insured is covered under the policy: Contractor agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all costs and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of contractor's officers, employees, agents or others employed by Contractor while engaged by Contractor in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right of contribution with insurance which may be available to the City of Beverly Hills.

In the event of cancellation or material change in the above coverage, the company will give 30 days written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein.

Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE: _____

BY: _____
 Authorized Insurance Representative

AGENCY: _____

TITLE: _____
 ADDRESS: _____

RM02.DOC REVISED 10/14/96.

EXHIBIT C