

**REPORT TO MAYOR AND COUNCIL**

**TO THE HONORABLE MAYOR AND CITY COUNCIL:**

DATE: June 24, 2014

**SUBJECT: APPROVE A THREE-YEAR AGREEMENT WITH YORK RISK SERVICES, INC., A NEW YORK CORPORATION, FOR PROFESSIONAL SERVICES AS THE THIRD PARTY ADMINISTRATOR OF THE CITY OF CONCORD'S SELF-INSURED WORKERS' COMPENSATION PROGRAM (FUNDED BY GENERAL FUNDS)**

**Report in Brief**

The City of Concord has been in agreement with York Risk Services, Inc., a New York Corporation, (formerly York Insurance Services Group – California, Inc.), as the Third Party Administrator of the City's self-insured workers' compensation program from July 1, 2011 through June 30, 2014, and desires to continue the services agreement.

Staff is recommending that the City Council authorize the City Manager to execute a new three-year agreement (Attachment No. 1) with York Risk Services, Inc. for professional services as the Third Party Administrator of the City's self-insured workers' compensation program for the period from July 1, 2014 through June 30, 2017. The proposed annual fee for Fiscal Year 2014/15 is \$126,432, and \$132,753 for Fiscal Year 2015/16, and \$139,390 for Fiscal Year 2016/17 subject to annual budget approvals.

**Background**

York Risk Services, Inc. (York) was established in 1961 and occupies a significant presence as a claims administrator within the California public entity community, supported by 27 years of experience providing claims management and managed care services. York serves over 1,200 public entities in California and over 215 cities. Nationally, York is the top third TPA and serves over 4,500 public agencies with over 3,000 employees. York has 850 employees and 12 offices in California. York's officers are professionals with hands-on experience managing claims and providing expertise in workers' compensation claims administration and managed care programs for public entities. Three of York's officers are located in California and are directly responsible for the public entity programs. The City of Concord program is serviced and managed by the strengths and expertise of this combined, best-in-class organization.

**Discussion**

Workers' compensation is a state-mandated program that provides benefits to cover costs for medical treatment, temporary disability payments and when applicable, permanent disability awards for employees who are determined to have been injured or have become ill during the course of their employment with the

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City. Workers' compensation administration is a technical field involving a myriad of state laws and regulations. During the last several years, there have been a number of statutory and regulatory changes affecting workers' compensation benefits and costs. These changes, in part, have impacted the City's workers' compensation claims experience and service fees for administration of the workers' compensation program.

Since performing third party administration services for the City, York has become very familiar with the City's self-insured program and claims history. As a result of our partnership with York, the City of Concord has realized considerable savings arising from the medical cost containment program. Medical costs continue to rise in California and are the largest expense in workers' compensation, therefore we must maintain constant pressure on those costs. The program the City has in place is a robust bill review and utilization review service through York, insuring timely provision of medical treatment, while maintaining an ever vigilant watch on climbing expenses.

Since 2011, the City has saved over \$4 million in medical costs by having York do the administrative review of all billings and recommended injured worker services. This has resulted in an average 66% overall savings over the past three years. York's medical review of proposed services during the same three-year period has resulted in \$758,806 in savings. Combined, the two programs have realized savings of \$4,872,655. Over the last ten years, the City's claims frequency has dropped from an average 105 reported losses per fiscal year to 76 claims per fiscal year. While the number of claims does vary over time, staff believes this drop is, at least in part, attributable to the training programs offered to the employees through the City's Safety and Ergonomic programs.

The proposed three-year extension will provide program continuity with minimal increases in our contract rates for third party administration services.

**Fiscal Impact**

Legislative changes that have been implemented over the past few years have resulted in increased rates for workers' compensation administration. In recognition of the financial difficulties facing the City of Concord, Human Resources staff successfully negotiated the proposed contract renewal rates which reflect a modest increase in service fees as compared to rates in the general market. For Fiscal Year 2014/15, the proposed annual service fee is \$126,432 representing a \$2407 (1.94%) increase over the prior fiscal year. The proposed annual fees for Fiscal Year 2015/16 and 2016/17 are \$132,753 and \$139,390 respectively (5% increases each year), subject to annual budget approvals.

These proposed annual rate increases keep the cost for renewal under general market rates for third party administration services and will be charged to the Worker's Compensation Internal Services Fund.

**Public Contact**

Posting of the Council agenda.

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**Recommendation for Action**

Staff recommends that the City Council authorize the City Manager or her designee to execute a three-year agreement with York Risk Services, Inc. for professional services as the Third Party Administrator of the City's self-insured workers' compensation program for a three-year renewal period from July 1, 2014 through June 30, 2017 with annual service fees for Fiscal Year 2014/15 as \$126,432; and pending annual budget approvals, for Fiscal Year 2015/16 - \$132,753; and Fiscal Year 2016/17 - \$139,390.



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Attachment 1: Workers' Compensation Self-Insurance Claims Administration Agreement

WORKERS' COMPENSATION  
SELF-INSURANCE CLAIMS  
ADMINISTRATION AGREEMENT

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This Agreement is entered into by and between the City of Concord, a municipal corporation, organized under the laws of the State of California, having offices at 1950 Parkside Drive, Concord, CA 94519, hereinafter referred to as "CLIENT," and YORK RISK SERVICES GROUP, INC., a New York corporation, with its principal place of business at 99 Cherry Hill Road, Parsippany, New Jersey 07054 hereinafter referred to as "YORK."

RECITALS

1. WHEREAS CLIENT desires to retain YORK pursuant to the terms and provisions of the Agreement to provide claims administration services on claims arising out of CLIENT's self-insured program which have been assigned by CLIENT to York and that it is legally authorized to retain YORK on the terms and conditions set forth herein;
2. WHEREAS, CLIENT and YORK have agreed to enter into a Service Agreement for claims administration services on the terms and conditions set forth herein:
3. NOW THEREFORE, for and in consideration of the promises set forth hereinabove, and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, YORK and CLIENT agree as follows.

TERMS AND CONDITIONS

1. Term of Agreement

This agreement is effective July 1, 2014 and shall be continuous through June 30, 2017. The Agreement shall be automatically extended for additional one-year terms as of each anniversary of its commencement unless prior to that time it has been terminated in accordance with the provisions of this Agreement; and provided further that upon any extension of this Agreement, the extension shall be upon the same Terms and Conditions as set forth in this Agreement unless the parties mutually agree in writing to amend its provisions.

2. Consideration
  - a. York's fees shall be listed as follows:

WORKERS' COMPENSATION CLAIMS ADMINISTRATION SERVICES	FLAT ANNUAL FEE
Year 1	\$126,432
Year 2	\$132,753
Year 3	\$139,390
<b>PRICING NOTES</b>	
<p>The annual flat fee proposed contemplates handling all claims activity in a 12-month period (claims already open at the beginning of the 12-month term and any new claims reported during the 12-month term). The pricing quoted includes all indemnity, future medical and medical only claims as listed. The flat annual fee includes all services detailed in this proposal, including, but not limited to, the ancillary services listed below.</p>	
Ancillary Services included in flat annual fee	
Excess Reporting Account Management Data Management Trust Account (Excluding Check and Bank Charges) Management Attendance at Claim Review Meetings	Monthly Computer Loss Information Special Quarterly and Annual Reports Claim Reporting (fax, telephonic) On-Line 5020 Reporting Preparation of 1099's Annual Stewardship Report Standard Reporting Requirements

**Managed Care Fees:**

DETAIL	FEE
<b>BILL REVIEW</b>	
<b>Fee Per Bill</b>	\$9.50per Bill (No per Line Fee)
<b>PPO and Other Negotiated Savings</b>	23%
<b>Fee Schedule Savings</b>	
<b>Duplicates</b>	No Charge
<b>eBilling</b>	No Charge
<b>EDI Reporting</b>	No Charge
<b>MEDICAL CASE MANAGEMENT</b>	

<b>Telephonic Nurse Case Management</b>	\$98.00 per hour
<b>Field Case Management</b>	\$98.00 per hour, plus IRS Mileage Rate
<b>UTILIZATION REVIEW</b>	
<b>Utilization Review Procedure Rate – Level 1</b>	\$68.00 per event
<b>Utilization Review Procedure Rate – Level 2</b>	\$149.00 per event
<b>Utilization Review Procedure Rate – Level 3</b>	\$149.00 per event
<b>Medical Director Review/Peer Review</b>	\$200.00 per hour
<b>Specialty Review/Appeals</b>	\$400.00 per hour
<b>\$1,500 for Application</b>	
\$48.00 per Claim Access (For the Life of the Contract)	

<b>Optional Medicare Reporting &amp; Medicare Set Asides (MSAs)</b>	
<b>Medicare Reporting</b>	No charge
<b>Standard MSA with or without submission to CMS for approval</b>	\$2,750.00 flat rate
<b>Final Settlement Document Submission</b>	\$75.00 flat rate
<b>SSA and SSDI Checks</b>	\$125.00 per hour
<b>Medicare Check</b>	\$50.00 flat rate
<b>Conditional Payment Investigation</b>	\$150.00 flat rate
<b>Conditional Payment Resolution</b>	\$125.00 per hour

### Optional Investigation Services

York charges \$81.00 per hour plus expenses at the rates outlined below.

### **Allocated Expenses for Investigation Services**

<i>Expenses</i>	<i>Rates</i>
Miles	Prevailing IRS rate
Photographs	\$2.50 per color print
Photocopying	\$ .25 per page
Telephone Charges	Included
Secretarial Services	\$6.00 per page
File Set Up	\$25.00 per file
Audio Cassettes	\$3.00 per cassette
Video Cassettes	\$15.00 per cassette
Other Expenses	At cost
Data Conversion	Included

### Allocated Loss Adjustment Expense (ALAE)

- Fees of outside counsel for claims in suit, coverage opinions and litigation and for representation at hearings or pretrial conferences.
- Fees of court reporters and all court costs, court fees and court expenses
- Fees for service of process
- Costs of undercover operatives and detectives
- Costs for employing experts for the preparation of maps, professional photographs, accounting, chemical or physical analysis, diagrams
- Costs of legal transcripts of testimony taken at coroner's inquests, criminal or civil proceedings
- Costs for independent medical examination or evaluation for rehabilitation
- Costs for copies of any public records or medical records
- Costs of depositions and court reported or recorded statements
- Costs and expenses of subrogation
- Costs of engineers, handwriting experts or any other type of expert used
- Witness fees and travel expenses
- Costs of photographers and photocopy services
- Costs of appraisal fees and expenses
- Costs of outside investigation, signed or recorded statements
- Managed care services, excluding NCM/TCm which are medical expenses or the flat annual option

- b. The Claims Administration fees are payable monthly, due on the first (1<sup>st</sup>) and payable by the tenth (10<sup>th</sup>) of the month.
- c. It is recognized that the Claims Administration fee as negotiated each year represents the expense of administering and adjusting Workers' Compensation claims that arise out of CLIENT'S self-insured workers' compensation program and that are assigned by the CLIENT. The Claims Administration fee covers the expense involved in processing claims to their ultimate conclusion as long as YORK continues to provide Claims Administration services pursuant to the terms of this Service Agreement or any renewal or further Service Agreement.
- d. During the period of this contract, YORK will store, at its expense, closed files for the period of five years from the date of closure. After this period, files will either be returned to CLIENT or stored by YORK at CLIENT'S option and expense. If stored by YORK, CLIENT will be charged a one-time inventorying fee of \$1.00 per file and monthly storage at the greater of \$1.50 or our current cost per box of files per month.

## Responsibilities of YORK

### a. Claims Administration

York agrees to provide claims service for CLIENT's Workers' Compensation exposure in the State of California as required by the regulatory bodies of said State and at a level acceptable to CLIENT.

### b. Management Information System

(1) YORK agrees to maintain claims and cost data as well as estimates of future claims liability on an individual claim basis.

(2) YORK will provide management information service to CLIENT as agreed upon by the parties.

(3) YORK retains all ownership rights to its computer programs, including any improvements and/or additions made to such computer programs during and/or in the course of YORK's performance under this Agreement, whether or not such improvements and/or additions were made at the direction, request or suggestion of CLIENT. However, CLIENT retains all ownership rights to the claim-related data. In the event of a cancellation of YORK's service, CLIENT is entitled to a complete electronic data file of all claims and payment information, as well as a complete format of the electronic data file(s), and all written records maintained by YORK on behalf of CLIENT.

### c. Medical Cost Containment and Management

YORK agrees to provide medical cost containment and management services through its affiliate, WellComp Managed Care Services, Inc. ("WellComp"). Services to be provided include, but are not limited to, repricing of medical bills to the Official Medical Fee Schedule, repricing of medical based on network contracts, pre-negotiated agreements for medical services, Utilization Review pursuant to Labor Code 4610, optional use of the WellComp Medical Provider Network established pursuant to LC 4616, and nurse case management services.

#### 4. Responsibilities of CLIENT

CLIENT shall report all workers' compensation claims and provide all information available in a timely manner, cooperate and assist in the investigation of claims as may be necessary to administer its claims. CLIENT shall maintain a balance in the account administered by YORK sufficient to pay all workers' compensation benefits, costs and expenses. CLIENT may refuse the services of any vendor selected by YORK. CLIENT agrees that YORK retains ownership of its programs, processes, forms and methods and will not use or disseminate them without written consent of YORK.

#### 5. Claim Payment Fund

- a. The parties agree that YORK will pay claim expenses from a fund established by CLIENT and funded by CLIENT. CLIENT will maintain the fund at an amount sufficient to cover the expense of the Workers' Compensation claims.

YORK agrees to make its records available to CLIENT for audit purposes at all times.

- b. Claim expenses are defined as medical, temporary or permanent disability, allocated claim expense, rehabilitation expense, claim, and all other Workers'

Compensation benefits payable to the injured employees or dependents of CLIENT.

- c. Allocated claim expense includes such costs as legal fees, court costs, court reporters, expert witnesses, investigation, photocopy, subpoena, photographic, fees, to undercover operatives, depositions, bill review, utilization review, and certain special costs as may be required. YORK may perform on-site copy service. Allowable photocopy charges are billed to the file under allocated claim expense.

#### 6. Termination

Either party may terminate this Agreement by providing written notice sixty (60) days in advance to the other. In the event of termination, YORK will be obligated to provide all data, records and information developed with respect to CLIENT's business, including all loss records, to CLIENT or its designated agent on the date established by CLIENT. YORK will provide the records in good condition and will assist in any transition as may be desired by CLIENT.

## 7. Insurance Coverage

### a. Blanket Fidelity Bond

YORK shall maintain a blanket fidelity bond (or equivalent insurance such as Third Party Crime Insurance) in an amount not less than Two Million Dollars (\$2,000,000.00), with an insurer or approved corporate surety covering any and all principals, officers and employees involved in performance of the Agreement and the trust fund (imprest) account.

### b. Errors and Omissions Insurance

YORK shall maintain Errors and Omissions Insurance in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence and aggregate.

### c. Commercial General Liability Insurance

YORK shall maintain commercial general liability insurance in the amount not less than Two Million Dollars (\$2,000,000.00) which shall be primary over any other insurance carried by CLIENT. A certificate of insurance naming CLIENT as an additional insured shall be provided to CLIENT.

## 8. General Conditions

a. YORK shall indemnify, hold harmless and defend CLIENT, its agents, employees, assigns, successors, officers and directors against any and all loss, damage, fines, liability, costs and expenses, including reasonable attorney fees and costs that CLIENT may become obligated to pay due, to the extent attributable to the negligent or otherwise wrongful acts or omissions of YORK, its agents, employees, officers or directors. CLIENT agrees to notify YORK immediately in writing of any claim, demand, notice of liability or action. Notwithstanding the immediately preceding two sentences, YORK shall not be obligated to indemnify CLIENT, its agents, employees, assigns, successors, officers and directors to the extent that any such loss, damage, fines, liability, costs and expenses is attributable to the negligent or otherwise wrongful acts or omissions of CLIENT, its former claims administration service provider or any other party.

b. CLIENT shall indemnify, hold harmless and defend YORK, its agents,

- employees, assigns, successors, officers and directors against any and all loss, damage, fines, liability, costs and expenses, including reasonable attorney fees and costs that YORK becomes obligated to pay due, to the extent attributable to the negligent or otherwise wrongful acts or omissions of CLIENT, its agents, employees, officers or directors.
- c. The services to be rendered by YORK are to be within the standards for administration of workers' compensation claims. In the event CLIENT directs YORK to follow a specific course of action in the handling of any claim, it shall indemnify, hold harmless and defend YORK against any loss, cost or expense, including reasonable attorney fees and costs, incurred in any claim for damages related to that course of action. Notwithstanding anything to the contrary herein, YORK shall not be held responsible or liable for any obligations pursuant to agreements or contracts between third parties and CLIENT.
- d. Penalties and self-imposed increases resulting from the failure of CLIENT to provide timely notice of claims (within seven days of CLIENT's knowledge of injury) or such other employer obligations as awarded or imposed pursuant to Labor Code Section 5814 and Labor Code Section 4650(d) are and shall be the sole responsibility of CLIENT, and CLIENT agrees to indemnify, defend and hold YORK harmless from the imposition of such penalties and self-imposed increases. Penalties and self-imposed increases resulting from the negligent otherwise wrongful acts or omissions of YORK as claim administrator are and shall be the sole responsibility of YORK, and YORK agrees to indemnify, defend and hold CLIENT harmless from the imposition of such penalties.
- e. The parties understand the administration of a self-insured workers' compensation program requires the exchange of confidential medical information between CLIENT and YORK in order to ensure the prompt delivery of benefits and to evaluate the accommodation of work restrictions, either on a temporary or permanent basis. CLIENT acknowledges the provisions of Labor Code Section 3762 and agrees that CLIENT's designated employees responsible for the administration of CLIENT's workers' compensation program shall maintain the confidentiality required and abide by the restrictions on dissemination of claimants medical information records and reports. CLIENT's designated employees shall not disseminate medical information of representations whether any

particular disclosure or dissemination of medical information of representations whether any particular disclosure or dissemination of medical information, reports or records by or between YORK and CLIENT's designated employees is or is not prohibited by Labor Code Section 3762, California Civil Code, Section 56, et seq., or any other provision of State or Federal law governing the privacy and confidentiality of medical information. In the event that a claim is made as a result of the release of confidential medical information by YORK, CLIENT authorizes YORK to pay all attorney fees and costs incurred in defense of the claim as an allocated expense.

- f. CLIENT agrees that any action to enforce the terms of this agreement or resulting from a dispute between the parties shall be filed in Contra Costa County, California. In the event of such an action, the prevailing party, in addition to any other relief it obtains, recover its attorney fees and court costs.
- g. This represents the entire agreement between the parties and may only be modified in writing signed by both.

Accepted By:

CITY OF CONCORD,  
A Municipal Corporation

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form:

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Title: \_\_\_\_\_

Accepted By:

YORK RISK SERVICES GROUP, INC.

By: \_\_\_\_\_

Jody A. Gray

Senior Vice President

Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Finance Director's Certification:  
Concord, California

Account Code: \_\_\_\_\_

Amount \_\_\_\_\_

I hereby certify that adequate funds exist or will be received during the current fiscal year 2014/2015 to pay the anticipated expenses to be incurred pursuant to this contract.

\_\_\_\_\_  
Karan Reid, Director of Finance