

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Matthew Fertal  
Dept: City Manager  
Subject: CARL WARREN & COMPANY  
CONSULTANT SERVICES AGREEMENT

From: Kingsley Okereke  
Dept: Finance  
Date: November 24, 2009

OBJECTIVE

To request City Council approval of the Carl Warren & Company consultant services agreement for the term July 1, 2009, through June 30, 2012.

BACKGROUND

In June 1986, the City of Garden Grove retained the services of Carl Warren & Company to adjust its third party claims. The last contract executed was in June 2006, and City Council approved a three-year agreement to retain their services. The City is once again requesting City Council's approval of a new three year consultant services agreement with Carl Warren & Company.

DISCUSSION

The City pays for claims administration services based on a schedule of fees, see Attachment 1. The fee schedule is applied to the actual kind and extent of services provided on each claim file. The fee schedule for the term July 1, 2009, through June 30, 2012, shall remain the same as the rates used for July 1, 2008, through June 30, 2009, with the exception of mileage increasing from \$.40 per mile to \$.55 per mile, and DMV fees increasing from \$6.00 per report to \$8.50 per report.

Carl Warren & Company is known for its expertise and experience in handling municipal liability claims. The City is very satisfied with the company's ability to perform the services consistent with being the City's Claims Administrator, which include:

1. Investigation of accidents, incidents, and claims;
2. Interviewing witnesses;
3. Providing assistance in legal proceedings;
4. Assisting the City in settlement of pending cases as instructed by the City;
5. Obtaining a Release Agreement on settlement of claims;
6. Maintaining complete files on the cases;
7. Recommending appropriate reserve levels on pending cases;

8. Notifying excess carriers of claims that exceed the City's self-insured retention; and
9. Furnishing monthly reports of losses and occurrences.

#### FINANCIAL IMPACT

The total amount paid to Carl Warren & Company for the term July 1, 2009, through June 30, 2012, will depend upon the number of claims received by the City and referred to Carl Warren & Company for handling and the extent of work that will be required to effectively manage those claims. The cost of the services is estimated not to exceed \$200,000 per fiscal year. The entire cost of services is funded in the Risk Management annual budget. It should be noted that Carl Warren & Company has agreed to hold their fees, with the exception of mileage and DMV reports, to the FY 2008/09 rates for three additional years.

#### COMMUNITY VISION IMPLEMENTATION

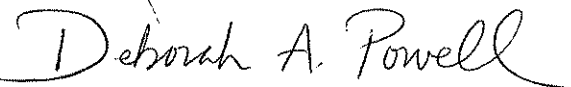
The City Council approval of this request will ensure that the handling of municipal liability claims will be managed in a timely manner, an undertaking that is consistent with the community vision of Garden Grove as a well run City.

#### RECOMMENDATION

It is recommended that the City Council:

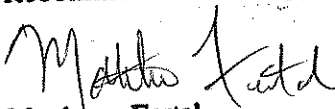
- Approve the Agreement with Carl Warren & Company to provide claims administration services for the term July 1, 2009 through June 30, 2012, and authorize the City Manager or his designee to execute the Agreement.

  
KINGSLEY OKEREKE  
Finance Director



By: Deborah A. Powell  
Administrative Analyst

**Recommended for Approval**

  
Matthew Feral  
City Manager

Attachments: 1. Fee Schedule

2. Consultant Services Agreement between City of Garden Grove and Carl Warren & Company

## FEE SCHEDULE

|   |   |
|---|---|
| Rate Year 09/10 (Client Relationship Manager)   | \$51.00 per hour  |
| Rate Year 10/11 (Client Relationship Manager)   | \$51.00 per hour  |
| Rate Year 11/12 (Client Relationship Manager)   | \$51.00 per hour  |
| Telephone Expenses  | 8% (Based on number of billable hours times the hourly rate)          |
| Photographs   | \$2.00 per color print  |
| Mileage   | \$.55 per mile  |
| Photocopies   | \$.25 per page  |
| Stenographic  | \$4.50 per page   |
| Office Expense<br>File Setup Fee  | \$24.00   |
| plus Consultant's Services Charge   | 15% (Based on number of billable hours times the hourly rate)         |
| DMV Reports   | \$8.50  |
| Miscellaneous (Example: Parking Fee)  | Dollar for Dollar (no markup)   |
| ISO/OFAC *  | \$8.50 (pass through)   |
| 1099 Preparation  | Included  |
| Cassettes   | Included  |
| Costs for hotels, airfare, meals while on overnight travel, copying court documents, etc. | At Cost   |
| Administration Fee  | \$350.00 per Month billed<br>Quarterly \$1,050.00                     |
| Data Processing (Claims data electronically;<br>Access to mycarlwarren.com)               | 3 Recipients (3 Users) Included;<br>Add'l Recipient \$250.00 per year |

\* Index includes ISO and OFAC

## CONSULTANT SERVICES AGREEMENT

**THIS AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by the **CITY OF GARDEN GROVE**, a municipal corporation, ("CITY") and **CARL WARREN & COMPANY**, a California corporation, referred to as "CONSULTANT".

### RECITAL

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Garden Grove Council authorization dated \_\_\_\_\_.
2. CITY desires to utilize the services of CONSULTANT to provide the agreed upon services as described below.
3. CONSULTANT is qualified by virtue of experience, training, education and expertise to accomplish services.

### AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term and Termination.** The term of the agreement shall be for period of three (3) years from full execution of the agreement, with an option to extend said agreement additional two (2) years, for a total performance period of five (5) years. Option years shall be exercised one (1) year at a time, at the sole option of the CITY. This agreement may be terminated by the CITY without cause. In such event, the CITY will compensate CONSULTANT for work performed to date in accordance with fee schedule, which is attached as Attachment "A" and is hereby incorporated by reference. Consultant is required to present evidence to support performed work.
2. **Services to be Provided.** The services to be performed by CONSULTANT shall consist of: the following:
  - 2.1 **General.** CONSULTANT shall:
    - a) Supervise and administer the Self-Insurance Liability Program for CITY; and
    - b) Represent CITY in all matters related to the investigation, adjustment, processing, supervision and resolution of claims for money damages asserted by third parties against CITY; and

- c) Provide to CITY during the term of this Agreement all the services more particularly set forth hereinafter.

2.2 Investigative Services. CONSULTANT shall provide complete investigative services including, but not limited to:

- a) Receipt of, and examination of all reports of accidents, incidents, claims, or cases, which are or may be the subject of such liability claims.
- b) The investigation of such accidents, incidents, claims, or cases where examination warrants such investigation, or when requested by CITY; such investigation to include on-site investigation, photographs, interviewing witnesses, determination of losses, and other such investigative services necessary to determine liability and losses, but not to include extraordinary professional services as set forth in Paragraph 2.2-c herein.
- c) Allocated Expenses: All reasonable and supportive extraordinary services where expert and professional assistance is required, such as professional photography, independent medical examinations, professional engineering services, and laboratory services.

2.3 Claims Adjustment Services. CONSULTANT shall provide complete claims adjustment services on each accident or incident, which is, or maybe, the subject of a liability claim against CITY.

Such services shall include, but not limited to:

- a) The maintenance of a claim file on each potential or actual claim reported to CONSULTANT.
- b) Whenever its investigation results in a determination that CITY has sustained a liability to a third party, CONSULTANT shall process any such claim or potential claim for settlement in accordance with CITY's instructions for settlement of such claims.
- c) Notification of CITY's excess carriers of all claims, which exceed the CITY's self-insurance limit. Retention and maintenance of liaison between the insurance carriers and the CITY on matters affecting the adjustment of such claim.

- d) Obtain all Release Agreements on settlement of any claim or potential claim.

2.4 Administrative Services. CONSULTANT shall provide at least the following administrative services:

- a) Assignment of a Client Relationship Manager to CITY to provide liaison between CITY and CONSULTANT.
- b) Attend the CITY's Claims Board meetings set by the CITY.
- c) Participate in the CITY's Civil Response Team, on an on-call basis, to respond to emergencies.
- d) Provide CITY with tabulated Monthly Status Reports on all reported claims during the term of this Agreement, indicating the status of each reported open claim assigned to CONSULTANT, the details of each such claim, the outstanding reserves for each claim and details of all claim payments during the month. The Status Report shall be delivered to CITY within twenty (20) days of the close of each calendar month.
- e) Periodically review and adjust reserves on all open claims.
- f) Provide CITY with up to three (3) "special" loss runs per fiscal year, at no additional charge, as requested by CITY. Any and all additional "special" loss runs will be provided to CITY at a flat rate of fifty dollars (\$50.00) each.

2.5 Trust Account Services. CONSULTANT shall provide at least the following trust account services:

- a) CITY shall establish a trust account and deposit into the account the sum of Seventy Five Thousand Dollars (\$75,000), which CONSULTANT will use for the settlement of claims or payment of claim expenses. Upon request of the CONSULTANT, the CITY shall deposit sufficient funds to maintain the trust account balance at Seventy Five Thousand Dollars (\$75,000).
- b) The CONSULTANT shall not issue any check for claim settlement or expense payment until authorization has been secured from CITY. In no event shall CONSULTANT be

authorized by CITY to issue any single check greater than Seventy Thousand Dollars (\$70,000).

- c) Checks issued by CONSULTANT shall require two (2) authorized signatures. CONSULTANT shall mail numbered copies of the checks immediately to CITY upon check issuance.
- d) CONSULTANT shall maintain a detailed check register, which accounts for every check in the trust account number series. CONSULTANT shall provide a copy of the check register to CITY at the end of each month. CITY shall reconcile the cancelled checks and bank statements with the check register and provide a copy of the reconciled bank statement to CONSULTANT.
- e) All employees of CONSULTANT who have access to the trust account, or the records thereof, shall be bonded. Evidence of the required bond(s) shall be maintained on file with CITY. Any cancellation, change, or amendment to said bond(s) shall be noticed to CITY prior to such cancellation, change, or amendment taking effect.

2.6 Legal Support Services. CONSULTANT shall provide at least the following legal support services on each claim wherein the claimant has commenced litigation:

- a) Upon notification by CITY that litigation has been filed on an open claim, CONSULTANT shall contact CITY's trial attorney with all information and files concerning the claim.
- b) Maintain liaison with CITY's trial attorney and provide such investigation services as are required by such attorney during pretrial and trial stages.
- c) Assist CITY's trial attorney in answering any interrogatories filed by the claimant.
- d) Assist CITY's personnel in Small Claims actions against CITY on open claims handled by CONSULTANT by providing CITY with: (1) names of any witnesses to be subpoenaed, (2) necessary evidence, and (3) assistance at the trial, including appearance as a witness, if necessary.

3. **Compensation.** CONSULTANT shall be compensated as follows:

- 3.1 **AMOUNT.** Total Compensation under this agreement shall not exceed (NTE) **Two Hundred Thousand Dollars (\$200,000.00)** per year, payable in arrears and in accordance with fee schedule, which is attached as Attachment "A", and is hereby incorporated by reference. An additional fund for unforeseen volume increase and issues of **ten (10)** percent of the contract amount not to exceed **\$20,000** per year is available at the sole discretion of the City Manager. Pricing shall remain firm for the three-year performance period. At least thirty (30) days prior to the commencement of the first option period, and thirty (30) days prior to December 1 of each year thereafter during the term of this Agreement, CONTRACTOR may request a pricing increase for the upcoming option year.
- a) CONSULTANT shall be compensated in the amount of three hundred fifty dollars (\$350.00) per month billed quarterly (\$1,050.00) for its claims supervision and other necessary administrative duties, including the computerized Monthly Status Reports, and up to three (3) "special loss runs" per fiscal year.
  - b) CONSULTANT shall be compensated for its claims handling services, other than those in subsection (a) above, at the rate of fifty-one dollars (\$51.00) per hour (07/01/09-06/30/12). In addition, CONSULTANT shall be reimbursed for its expenses, excluding expenses incurred in the performance of sub-section (a) above, in accordance with fee schedule, which is attached as Attachment "A", and is incorporated herein by reference.
  - c) CONSULTANT shall be reimbursed for the Allocated Expenses as set forth under paragraph 2.2-c above. CONSULTANT shall order such services only after obtaining prior written authorization from CITY, except that such authorization may be given orally where such services are urgently required.
- 3.2 **Payment.** Upon execution of this Agreement by both parties, CITY shall remit to CONSULTANT the sum of one thousand fifty dollars (\$1,050.00) as payment for the first three (3) months of the CONSULTANT'S services hereunder, and will remit a payment of one thousand fifty dollars (\$1,050.00) for each following three (3) months' period by the first day of each such period. Payments shall be transmitted to CONSULTANT at P.O. Box 25161, Santa Ana, California 92799-5161.



- 3.3 Records of Expenses. CONSULTANT shall keep complete and accurate records of all costs and expenses incidental to services covered by this Agreement. These records will be made available at reasonable times to CITY.
- 3.4 Termination. CITY shall have the right to terminate this Agreement, without cause, by giving thirty (30) days written notice of termination. If the Agreement is terminated by CITY, then the provisions of paragraph 3 would apply to that portion of the work completed.
- 3.5 CITY's Responsibilities. CITY shall provide CONSULTANT with copies of all relevant documents upon request, and without charge, and shall make available any CITY employee for interviews by CONSULTANT at reasonable times concerning any investigation of a claim or incident pursuant to this Agreement.
- 3.6 Disposition of Files on Termination of Agreement.
- a) All files on each claim shall be the property of CITY.
  - b) In the event of expiration of the Agreement, and non-renewal thereof, CONSULTANT shall bill CITY, subject to the rates quoted in Provision 3.1 hereinabove, for work completed by CONSULTANT on each claim, and also promptly forward all completed and pending claim files to CITY.
  - c) In the event of cancellation of the Agreement by CITY, CONSULTANT shall return all files to CITY, unless CITY requests CONSULTANT to continue to process any files, in which event CONSULTANT shall continue to process such files on a time-and-expense basis as are provided in this contract, or on a mutually agreeable rate, at the time such services are rendered.

#### 4. **Insurance Requirements.**

- 4.1 Commencement of Work. CONSULTANT shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the CITY of any material change, cancellation, or termination at least thirty (30) days in advance.
- 4.2 Workers Compensation Insurance. For the duration of this Agreement, CONSULTANT and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if

applicable. CONSULTANT shall provide a waiver of subrogation in favor of CITY waiving any and all subrogation rights against CITY.

4.3 Insurance Amounts. CONSULTANT shall maintain the following insurance for the duration of this Agreement:

- (a) Commercial general liability in the amount of \$1,000,000 per occurrence; (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-,Class VII or better, as approved by the CITY.
- (b) Automobile liability in the amount of \$1,000,000 combined single limit; (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-,Class VII or better, as approved by the CITY.
- (c) Professional liability in an amount not less than \$1,000,000. Insurance companies must be admitted and licensed in California and have a AM Best's Guide Rating of A-,Class VII or better, as approved by the City. If the policy is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of the agreement, and for a period of three (3) years from the date of the completion of services provided. In the event of termination, cancellation, or material change in the policy, CONSULTANT shall obtain continuing insurance coverage for the prior acts or omissions of CONSULTANT during the course of performing services under the term of the agreement. The coverage shall be evidenced either by a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier.
- (d) Crime coverage, including employee theft and forgery, in the amount of \$1,000,000 per occurrence; (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-,Class VII or better, as approved by the CITY.

An Additional Insured Endorsement, **ongoing and completed operations**, for the policy under section 4.3 (a) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or

on behalf of the CONSULTANT. CONSULTANT shall provide to CITY proof of insurance and endorsement forms that conform to City's requirements, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 4.3 (b) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for automobiles owned, leased, hired, or borrowed by the CONSULTANT. CONSULTANT shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

A Loss Payee Endorsement under the policy under section 4.3 (d) shall designate CITY, as Loss Payee. CONSULTANT shall provide to CITY proof of insurance and endorsement forms that conform to City's requirements, as approved by the CITY.

For any claims related to this Agreement, CONSULTANT's insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.

5. **Non-Liability of Officials and Employees of the City.** No official or employee of CITY shall be personally liable to CONSULTANT in the event of any default or breach by CITY, or for any amount which may become due to CONSULTANT.
6. **Non-Discrimination.** CONSULTANT covenants there shall be no discrimination against any person or group due to race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.
7. **Independent Contractor.** It is agreed to that CONSULTANT shall act and be an independent contractor and not an agent or employee of the CITY, and shall obtain no rights to any benefits which accrue to CITY'S employees.
8. **Compliance with Law.** CONSULTANT shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.
9. **Disclosure of Documents.** All documents or other information developed or received by CONSULTANT are confidential and shall not be disclosed without authorization by the CITY.
10. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT shall be the property of the CITY. CONSULTANT shall

provide CITY with copies of these items upon demand or upon termination of this Agreement.

11. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
12. **Notices.** All notices shall be personally delivered or mailed to the below listed address, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process.
  - a. (CONSULTANT)  
**CARL WARREN & COMPANY**  
**Attention: Caryn Siebert**  
**770 South Placentia Avenue**  
**Placentia, CA 92870**
  - b. (Address of City Purchasing) (with a copy to):  
City of Garden Grove                      Garden Grove City Attorney  
Attention: Finance Director              11222 Acacia Parkway  
11222 Acacia Parkway                      Garden Grove, CA 92840  
Garden Grove, CA 92840                      Garden Grove, CA 92840
13. **CONSULTANT'S PROPOSAL.** This Section "Intentionally left Blank".
14. **Licenses, Permits, and Fees.** At its sole expense, CONSULTANT shall obtain a **Garden Grove Business License** and all other permits and licenses as may be required by this Agreement.
15. **Familiarity with Work.** By executing this Agreement, CONSULTANT warrants that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the facilities, difficulties, and restrictions of the work under this Agreement. Should Consultant discover any latent or unknown conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY of this and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.
16. **Time of Essence.** Time is of the essence in the performance of this Agreement. Notwithstanding the foregoing, neither Consultant nor City shall be liable for delays in or including, but not limited to, acts of God, acts and/or omissions of federal, state, and local government authorities and regulatory agencies, strikes, riots, civil unrest, war, lockouts and accidents. For delays resulting from actions or inactions of City, Consultant shall be given an appropriate time extension and, where applicable, shall be compensated for all

reasonable costs of labor, equipment, and other direct and indirect costs Consultant incurs during any such delay or interruption of services.

17. **Limitations Upon Subcontracting and Assignment.** The experience, knowledge, capability, and reputation of CONSULTANT, its principals and employees were a substantial inducement for CITY to enter into this Agreement. CONSULTANT shall not contract with any other entity to perform the services required without written approval of the CITY. This Agreement may not be assigned voluntarily or by operation of law, without the prior written approval of CITY. If CONSULTANT is permitted to subcontract any part of this Agreement, CONSULTANT shall be responsible to CITY for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and CITY. All persons engaged in the work will be considered employees of CONSULTANT. CITY will deal directly with and will make all payments to CONSULTANT.
18. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.
19. **Indemnification.** CONSULTANT agrees to protect, defend, and hold harmless CITY and its elective or appointive boards, officers, agents, employees, and volunteers from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, damage to property, interference with use of property, or any other damages arising out of, or in any way connected with performance of the Agreement by CONSULTANT, CONSULTANT'S agents, officers, employees, subcontractors, or independent contractors hired by CONSULTANT. The only exception to CONSULTANT'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence of CITY, or any of its elective or appointive boards, officers, agents, employees and volunteers.  
  
This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT.
20. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified only by subsequent mutual agreements executed by the CITY and CONSULTANT.
21. **Waiver.** All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the CITY and CONSULTANT.

22. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Orange County Superior Court.

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(Agreement Signature Block On Next Page)

**IN WITNESS THEREOF**, these parties have executed this Agreement on the day and year shown below.

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

**"CITY"  
CITY OF GARDEN GROVE**

By: \_\_\_\_\_  
**City Manager**

**ATTESTED:**

\_\_\_\_\_  
**City Clerk**

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

**"CONSULTANT"  
Carl Warren & Company**

By: Carly Siebert

Name: Carly Siebert

Title: President — CEO

Date: November 9, 2009

Tax ID No. 95-291-7562

If CONSULTANT is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to CITY.

**APPROVED AS TO FORM:**

Omar Sandoval  
Garden Grove City Attorney

11-12-09

Date

## ATTACHMENT "A"

|   |   |
|---|---|
| Rate Year 09/10 (Client Relationship Manager)   | \$51.00 per hour  |
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| Costs for hotels, airfare, meals while on overnight travel, copying court documents, etc. | At Cost   |
| Administration Fee  | \$350.00 per Month billed<br>Quarterly \$1,050.00                     |
| Data Processing (Claims data electronically;<br>Access to mycarlwarren.com)               | 3 Recipients (3 Users) Included;<br>Add'l Recipient \$250.00 per year |

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