

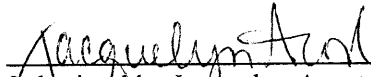


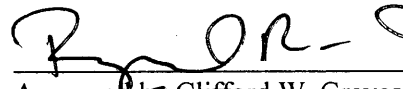
City of Carson

Report to Mayor and City Council

June 15, 2011
New Business Consent

**SUBJECT: CONSIDERATION OF RENEWAL OF THIRD PARTY ADMINISTRATOR
CONTRACT WITH CARL WARREN AND COMPANY FOR FY 2011/12**


Submitted by Jacquelyn Acosta
Administrative Services General Manager


Approved by Clifford W. Graves
Interim City Manager

I. SUMMARY

Presented for Council's consideration is the renewal of general liability claims administration services for FY 2011/12. The city of Carson has contracted for general liability claims administration services since its incorporation in 1968. The service will assist staff in addressing the numerous claims from the general public, as well as residents.

II. RECOMMENDATION

TAKE the following actions:

1. APPROVE a contract between the city of Carson and Carl Warren and Company for third party general liability claims administration services, in an amount not-to-exceed \$70,000.00 for FY 2011/12, with two, one-year extension options based on performance, and at the sole determination of the city.
2. AUTHORIZE the Mayor to execute the agreement after approval as to form by the City Attorney.

III. ALTERNATIVES

TAKE another action the City Council deems appropriate.

IV. BACKGROUND

On June 1, 2010, the City Council approved a \$60,000.00 agreement with Carl Warren and Company (Carl Warren) for FY 2010/11 for third party general liability claims administration services. To assist the city with its financial challenges, Carl Warren has not raised their \$60,000.00 contract price over the last three years despite increasing contract costs. Consequently, the contract for FY 2011/12 will increase from \$60,000.00 to \$70,000.00. Staff is recommending the renewal of Carl Warren's contract for FY 2011/12 with two, one-year extension options, based on performance, and at the sole discretion of the city.

Carl Warren has been in business in California since 1944. Carl Warren provides

administration services for liability claims to many private entities and a large number of public entities, including cities, school districts, counties, risk-sharing pools (California Joint Powers Authority) and special districts. Carl Warren has approximately 200 employees and 21 service offices located across the United States. The city has enjoyed an effective and efficient working relationship with them.

The Carl Warren adjuster is very familiar with and has an excellent working relationship with the City Attorney and city staff. In addition, the Carl Warren adjuster is a certified auto appraiser, is very familiar with all city streets, has detailed knowledge of the city's maintenance and tree trimming zones, and provides excellent customer relations with citizens and businesses.

V. FISCAL IMPACT

Funding for the general liability claims administration services is included in the proposed FY 2011/12 general fund budget in account number 01-60-690-172-6004.

VI. EXHIBITS

1. Carl Warren and Company contract. (pgs. 3-12)

Prepared by: Ed Holton, Sr. Risk Management Analyst

TC:Rev032811

Reviewed by:

City Clerk	<u>City Treasurer</u>
<u>Administrative Services</u>	<u>Development Services</u>
<u>Economic Development Services</u>	<u>Public Services</u>

Action taken by City Council

Date _____ Action _____

CITY OF CARSON
CONTRACT SERVICES AGREEMENT FOR
ADMINISTERING A PROGRAM OF SELF-INSURANCE

This CONTRACT SERVICES AGREEMENT (Agreement) is made and entered into this 1st day of July, 2011, by and between the CITY OF CARSON, a municipal corporation, (City) and Carl Warren and Company (Consultant).

NOW, THEREFORE, the parties hereto agree as follows:

1.0 SERVICES OF CONSULTANT

1.1 Scope of Services. In compliance with all of the terms and conditions of this Agreement, the Consultant shall perform the work or services set forth in the Scope of Services attached hereto as Exhibit "A" and incorporated herein by reference. Consultant warrants that all work and services set forth in the Scope of Services will be performed in a competent, professional and satisfactory manner.

1.2 Compliance With Law. All work and services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any federal, state or local governmental agency of competent jurisdiction.

1.3 Licenses, Permits, Fees and Assessments. Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement.

2.0 COMPENSATION

2.1 Contract Sum. For the services rendered pursuant to this Agreement, Consultant shall be compensated in accordance with the Schedule of Compensation attached hereto as Exhibit "B" and incorporated herein by this reference, but not exceeding the maximum contract amount of Seventy Thousand Dollars (\$70,000.00) (Contract Sum).

2.2 Method of Payment. Provided that Consultant is not in default under the terms of this Agreement, Consultant shall be paid on a monthly basis, except as specified otherwise on the Schedule of Compensation.

2.3 Availability of Funds. This Agreement is valid and enforceable only if sufficient funds are made available by the City Council of the City for the purposes of this Agreement. The availability of funding is affected by matters outside the City's control, including other governmental entities. Accordingly, the City has the option to void the whole Agreement or to amend the Agreement to reflect unanticipated reduction in funding, for any reason.

3.0 COORDINATION OF WORK

3.1 Representative of Consultant. Michael Reed is hereby designated as being the principal and representative of Consultant authorized to act in its behalf with respect to the work and services specified herein and make all decisions in connection therewith.

3.2 Contract Officer. A City Manager Designee is hereby designated as being the representative the City authorized to act in its behalf with respect to the work and services specified herein and make all decisions in connection therewith (Contract Officer). The City Manager of City shall have the right to designate another Contract Officer by providing written notice to Consultant.

3.3 Prohibition Against Subcontracting or Assignment. Consultant shall not contract with any entity to perform in whole or in part the work or services required hereunder without the express written approval of the City. Neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City. Any such prohibited assignment or transfer shall be void.

3.4 Independent Contractor. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth. Consultant shall perform all services required herein as an independent contractor of City and shall remain under only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City.

4.0 INSURANCE AND INDEMNIFICATION

4.1 Insurance. The Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof; the following policies of insurance:

(a) Comprehensive General Liability Insurance. A policy of comprehensive general liability insurance written on a per occurrence basis in an amount not less than \$1,000,000.00 per occurrence.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the state of California and which shall indemnify, insure and provide legal defense for both the Consultant and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Consultant in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance. A policy of comprehensive automobile liability insurance written on a per-occurrence basis in an amount not less than \$1,000,000.00 per occurrence. Said policy shall include coverage for owned, non-owned, leased and hired cars.

(d) Professional Liability Insurance. A policy of professional liability insurance in an amount not less than \$1,000,000.00 per claim with respect to loss arising from the actions of Consultant performing professional services hereunder on behalf of the City.

All of the above policies of insurance shall be primary insurance and shall name the City, its officers, employees and agents as additional insureds. The insurer shall waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled without providing thirty (30) days prior written notice by registered mail to the



City. In the event any of said policies of insurance are cancelled, the Consultant shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 4.1 to the Contract Officer. No work or services under this Agreement shall commence until the Consultant has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City.

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed]

Agent Initials

The Consultant agrees that the provisions of this Section 4.1 shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages to any persons or property resulting from the Consultant's activities or the activities of any person or persons for which the Consultant is otherwise responsible.

The insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City due to unique circumstances.

4.2 Indemnification. Consultant agrees to indemnify the City, its officers, agents and employees against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, including paying any legal costs, attorneys fees, or paying any judgment (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work or services of Consultant, its agents, employees, subcontractors, or invitees, provided for herein, or arising from the negligent acts or omissions of Consultant hereunder, or arising from Consultant's negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, but excluding such claims or liabilities to the extent caused by the negligence or willful misconduct of the City.

5.0 TERM

5.1 Period of Agreement. The initial term of this Agreement shall commence on July 1, 2011, and remain in effect continuously through June 30, 2012, unless terminated in accordance with provisions of this Agreement. City, in its sole and unfettered discretion, shall have the option to renew this Agreement, on terms and conditions agreeable to both parties for up to two extended one-year terms commencing on July 1, 2012 and again on July 1, 2013, by giving to Consultant thirty (30) days advance written notice of its intention to do so.



5.2 Termination Prior to Expiration of Term. Either party may terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to the other party. Upon receipt of the notice of termination, the Consultant shall immediately cease all work or services hereunder except as may be specifically approved by the Contract Officer. In the event of termination by the City, Consultant shall be entitled to compensation for all services rendered prior to the effectiveness of the notice of termination and for such additional services specifically authorized by the Contract Officer and City shall be entitled to reimbursement for any compensation paid in excess of the services rendered.

6.0 MISCELLANEOUS

6.1 Covenant Against Discrimination. Consultant covenants that, by and for itself, its heirs, executors, assigns and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin or ancestry.

6.2 Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

6.3 Conflict of Interest. No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement. When requested by the Contract Officer, prior to the City's execution of this Agreement, Consultant shall provide the City with an executed statement of economic interest.

6.4 Notice. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, CITY OF CARSON, 701 E. Carson Street, Carson, California 90745-2224, and in the case of the Consultant, to the person at the address designated on the execution page of this Agreement.

6.5 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

6.6 Integration: Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.



6.7 Severability. In the event that part of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

6.8 Waiver. No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

6.9 Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees, whether or not the matter proceeds to judgment.

6.10 Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing; (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first written above.

ATTEST:

CITY:

CITY OF CARSON,
a municipal corporation

City Clerk Helen S. Kawagoe

Mayor Jim Dear

ATTEST:

City Clerk Helen S. Kawagoe



APPROVED AS TO FORM:

City Attorney

CONSULTANT:

CARL WARREN AND COMPANY

By: _____
Name:
Title:

By: _____
Name:
Title:

Address: P.O. Box 25161
Santa Ana, CA 92799-5161

[END OF SIGNATURES]



EXHIBIT "A"

SCOPE OF SERVICES1. 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. INVESTIGATIVE SERVICES.

- A. Consultant shall provide complete investigative services including, but not limited to:
 - (1) Receipt of, and examination of all reports of accidents, incidents, claims or causes which are or may be the subject of such liability claims.
 - (2) 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 investigative services necessary to determine liability and losses, but not to include extraordinary professional services as set forth in Paragraph 2-B herein.
- C. Allocated Expenses: All reasonable and supportive extraordinary services requiring expert or professional assistance, such as professional photography, independent medical examination, professional engineering services, and laboratory services.

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 are 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 primary and 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. Consultant shall have discretionary settlement authority up to \$2,500.00.



- E. Obtain all Release Agreements and tax identification information on settlement of any claim or potential claim.
4. ADMINISTRATIVE SERVICES. Consultant shall provide at least the following administrative services.
- A. Assignment of a City Account Adjuster to City to act as a liaison between City and Consultant.
 - B. 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 and details of all claim payments during the month. This service is also available on-line at no charge to City. Each printed Monthly Status Report shall be delivered to City within twenty (20) days of the close of each calendar month.
 - D. Periodically review and adjustment of reserves on all open claims.
5. 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 assigned to handle the case by City and provide such 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 pre-trial and trial stages.
 - C. Assist City's trial attorney in answering and responding to interrogatories and other written discovery propounded by the claimant.
 - D. Assist City's personnel in small claims actions filed 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.
6. CITY'S RESPONSIBILITIES. City shall provide Consultant with copies of all relevant documents upon request from Consultant 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.
7. CONFLICT OF INTEREST. In the event a claim or incident is reported to Consultant by City and it is determined that the actual or potential claimants therein are also clients of Consultant, then Consultant shall immediately notify City of such potential conflict of interest. If City elects to have an independent investigator and adjuster, Consultant shall provide such an investigator and adjuster.

8. 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 listed on *Exhibit "B,"* 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 Consultant's Rate Manual at the time such services are rendered.



EXHIBIT "B"

SCHEDULE OF COMPENSATION

CONSIDERATION

- A. City hereby agrees to pay to Consultant and Consultant hereby agrees to accept in full satisfaction for its services provided hereunder, compensation in the following amounts:
- (I) Consultant shall be compensated in the amount of \$225.00 per month for its claims supervision, and other necessary administrative duties and the computerized Monthly Status Reports.
 - (2) Consultant shall be compensated for its claims handling services, other than those in subsection (1) above, at the rate of \$54.00 per hour. In addition, Consultant shall be reimbursed for its expenses, excluding expenses incurred in the performance of subsection (1) above, and including mileage @.51 per mile, \$2.25 per print for color photographs, typing at \$4.50 per page, photocopy expenses at \$0.25 per page, telephone expenses at eight (8) percent of Consultant's services, and office expense calculated at \$21.00 for file make-up.
 - (3) Consultant shall be reimbursed for any Allocated Expenses (defined in Exhibit "A" Section 2-B) which are advanced by Consultant. Consultant shall only order such services after obtaining prior written authorization from City, except that such authorization may be given orally by City's City Manager or Risk Manager if the services are urgently required.

TIME OF PAYMENT. Upon execution of this Agreement by both parties, City shall remit to Consultant the sum of \$675.00 as payment for the first three (3) months of Consultant's services hereunder, and will remit a payment of \$675.00 for each following three (3) months' period by the first day of each such period.

If requested by City, Consultant will interim bill all charges incurred at the end of each quarter.

