



DATE: July 5, 2012

TO: Honorable Mayor and City Councilmembers

FROM: Human Resources Department

SUBJECT: **ADD THE CITY OF OCEANSIDE TO THE SAN DIEGO POOLED INSURANCE PROGRAM AUTHORITY (SANDPIPA) AS A PARTICIPANT OF THE SERVICES AGREEMENT FOR WORKERS' COMPENSATION CLAIMS ADMINISTRATION AND PROCESSING AND AUTHORIZE PAYMENT TO SANDPIPA FOR SERVICES**

SYNOPSIS

Staff recommends that the City Council authorize the City of Oceanside to join the SANDPIPA member group for the services of Tristar Risk Management for Citywide workers' compensation claims administration and processing for a one-year term (July 1, 2012, through July 31, 2013), and authorize payments to SANDPIPA in the amount of \$220,176 per year, paid on a monthly basis at an amount of \$18,348.

BACKGROUND

Workers' compensation claims administration and processing has been handled on an in-house basis in the City of Oceanside for many years. The Workers' Compensation and Safety Manager resigned from City employment on May 29, 2012, and her responsibilities included oversight of the Workers' Compensation Program including supervision of 1.0 Claims Officer, claims administration, claims processing (approximately 30 percent of the workload) and Citywide safety administration and training. Risk Management Division currently employs 1.0 Claims Officer position as well handling the other 70 percent of the claims workload). The numbers of workers' compensation claims, future-medical claims and injury claims have been steadily increasing and the workload has exceeded the recommended level of claims per staff position. With the departure of the Workers' Compensation and Safety Manager, the claims she processed (amounting to about 30 percent of the workload) have been transferred to the Claims Officer in the short term. It is not recommended that one person be tasked with carrying the current number of open claims without assistance.

In an effort to evaluate more effective ways to handle the workload of the Workers' Compensation and Safety Manager position and the Risk Management Division workload, contracting out the workers' compensation administration and claims processing has been investigated.

The City of Oceanside is a current member of SANDPIPA, an organization which is a joint powers authority of San Diego County public agencies which provides a funding mechanism to cover catastrophic losses with stable and equitable distribution of member contributions. In addition, SANDPIPA provides comprehensive risk management support services and a forum for sharing expertise and experience. SANDPIPA members include:

City of Chula Vista
City of Coronado
City of Del Mar
City of Encinitas
City of Escondido
City of Imperial Beach

City of Lemon Grove
City of National City
City of Oceanside
City of Santee
City of Solana Beach
City of Vista

SANDPIPA has contracted with Tristar Risk Management for Workers' Compensation claims management services to supervise and administer the workers' compensation claims made for participating member agencies. This contract has been in place since August 1, 1995, and there have been multiple amendments over the past 17 years refining coverage requirements as well as adding and reducing the member agencies participating in the program. The City of Oceanside has the ability to join into this agreement and transfer the responsibilities of claims management and processing as well as the liability of claim and file management to Tristar Risk Management. The terms and conditions of the agreement negotiated by SANDPIPA with Tristar Risk Management Company will remain the same and the data conversion and file transfer shall be done at no cost to the City of Oceanside. This enables the City of Oceanside to join other member agencies and have all workers' compensation claims and administration completed for the amount of \$18,348 per month.

While it is possible for the City of Oceanside to issue a Request for Proposals (RFP) for these services, the current need for these services eliminates the ability to initiate a process which could easily take six months. At this point, the most prudent action is to utilize SANDPIPA's available services under our current arrangement and transfer responsibility of all claims administration and processing to Tristar as soon as possible. At the June 14, 2012, SANDPIPA Board Meeting, an item was approved to allow the City of Oceanside to be added to the existing Tristar Risk Management agreement via a nineteenth amendment to the agreement. Copies of the Board Agenda, Staff Report and draft Amendment are attached to this report.

It would then be possible for the City of Oceanside to conduct an RFP process over the next year to determine whether it is more cost effective to renew the SANDPIPA contract next year or to contract with an alternative third party administrator (TPA) to handle claims for us. By conducting an RFP process, the City would have the option of requesting bids either in a bundled contract covering all facets of the claims administration and processing or in an unbundled contract which allows the City to select different providers for different sections of responsibility.

There is a significant liability associated with effective management of workers' compensation claims, future medical claims and first aid injury claims. The State of California has very complex regulations and requirements and conducts bi-annual audits of agencies to ensure compliance. There are significant fines which can be assessed for improper processing of claims, untimely notification and payments to claimants and recordkeeping by the State. While the staff in the Risk Management Division of Human Resources has diligently worked to minimize fines under the direction of the former Workers' Compensation and Safety Manager, the possibility of increased fines and reduced service most likely will occur if we continue to keep this work in-house with the Claims Officer handling all the work. Due to the number of claims, continued in-house management is not recommended.

Contracting out the work currently performed by City staff also reduces the long-term pension obligations of the City. By entering into this agreement, one full time position will be reduced from the Human Resources Department and the costs of the salary and benefits converted to payment of this agreement.

Possible drawbacks associated with outsourcing are:

1. reduction in the level of immediate service to the employees who have workers' compensation claims by not having City staff on site to answer questions and handle requests for medical treatment and medications;
2. an increase in approval times for medical services requested by physicians and treatment facilities; and
3. the need to have existing staff increase their workload to monitor the contract to ensure compliance and coordinate with Tristar staff and the possible fluctuation in medical costs as the bill review, which is currently contracted out, transitions to the Tristar company.

The privatization of this service will not result in any immediate savings to the General Fund, even with the reduction of the Workers' Compensation and Safety Manager position, as only a portion of the duties can be contracted out. The safety administration duties will be retained in-house to ensure compliance with all regulations related to worker safety and training. This action would require the incumbent employee holding the Claims Officer position to be laid off as soon as the transition to Tristar moves all claims under their administration.

The current Claims Officer position would then be reclassified to that of a Safety Officer to handle the Citywide training and safety monitoring duties, and a permanent employee would be hired to fill this position. The Classification will be developed as the top step in a continuum of three classifications. This would enable the position to be filled at the lower levels (Safety Representative I and Safety Representative II) and result in some salary savings. This would also widen the pool of applicants who could apply for this position and may allow current City employees with safety backgrounds to apply.

ANALYSIS

The agreement is for a term of one year commencing July 1, 2012, to July 31, 2013. The cost of the base agreement is \$220,176 payable monthly at a rate of \$18,348. This cost will be covered with current budget as follows:

Reduction of the Workers' Compensation and Safety Manager position	-\$152,550
Elimination of the Bill Review contract	<u>-\$ 90,000</u>
	-\$242,550

The balance of the savings (\$22,374) would be transferred to the Worker's Compensation Claims Expense category. The reclassification of the Claims Officer position to a Safety Officer position would be cost-neutral to the General Fund.

FISCAL IMPACT

The one-year base agreement cost is \$220,176 and covers all workers' compensation claims administration and claims processing, including utilization and bill review. The Fiscal Year 2012/13 funding would be taken from the Workers' Compensation 818 fund (152010818) as follows:

Reduction of Position No. MG30CM01:	
Personnel Expense – Salary	\$113,457
Personnel Expense – Modifiers	\$ 39,003
Reduction of NPE Expense	
152010818 5483.0012 IMS Bill Review	<u>\$ 67,716</u>
	\$220,176

Reclassification of Position No. AD71CM01
From Claims Officer to Safety Officer

Personnel Expense – Claims Officer Salary	-\$ 66,387
Personnel Expense – Claims Officer Modifiers	-\$ 25,325
Personnel Expense – Safety Officer Salary	\$ 66,387
Personnel Expense – Safety Officer Modifiers	<u>\$ 25,325</u>
	-0-

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council authorize the City of Oceanside to join the SANDPIPA member group for the services of Tristar Risk Management for Citywide workers' compensation claims administration and processing for a one-year term (July 1, 2012, through July 31, 2013), and authorize payments to SANDPIPA in the amount of \$220,176 per year, paid on a monthly basis at an amount of \$18,348.

PREPARED BY:

SUBMITTED BY:



Patricia Nunez
Human Resources Director



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Teri Ferro, Financial Services Director





Exhibits:

- A. SANDPIPA Board Agenda of June 14, 2012;
- B. SANDPIPA Staff Report – Tristar Contract Amendment;
- C. Draft Nineteenth Amendment to Tristar Contract; and
- D. Original Agreement between SANDPIPA and Tristar Risk Management.



SANDPIPA San Diego Pooled Insurance Program Authority
SDCCRMA San Diego County Cities Risk Management Authority

BOARD MEETING

THURSDAY JUNE 14, 2012

**1:30 P.M.
CITY OF ENCINITAS
POINSETTIA ROOM**

	PAGE
I. ROLL CALL, ROSTER, COMMITTEES, CALENDAR	1 - 6
II. CONSENT AGENDA	7
A. Board Meeting Minutes	8 - 15
B. Treasurer's Report	16 - 23
C. Demands	24 - 33
D. Investment Policy Annual Review	34
E. Member Benefit Usage Report	35 - 37
III. COMMITTEE REPORTS	
A. EXECUTIVE	
1. Treasurer - Annual Delegation of Authority	38
2. Tristar Contract Renewal	39 - 40
3. Tristar Contract - Add City of Oceanside	41 - 42
4. Adjourn to Closed Session Pursuant to Government Code Section 54957 Public Employee Personnel Performance Evaluation: General Manager	
B. UNDERWRITING	
1. Loss Sensitive Property Premium Allocation	43 - 44
2. Memorandum of Coverage Review	45 - 46
a. Opening Paragraph of MOC - "This is Not Insurance"	47
b. Mutual Aid & Similar Agreements	48 - 49
c. Claims Settlement Without SANDPIPA's Prior Approval	50
d. Exclusion for Sexual Misconduct	51 - 52
e. Exclusion for Faulty Preparation of Bid Specs or Plans	53
f. Exclusion for Contractual Liability	54
IV. BROKER REPORT	
A. Excess Liability Insurance Renewal	55 - 63
B. Property Insurance Renewal	64 - 92
C. Excess Workers' Compensation Insurance Renewal	93 - 96
D. Pollution Liability Insurance Renewal	97-105
V. GENERAL MANAGER REPORT	
VI. LEGAL COUNSEL REPORT	
VII. MEMBER COMMENTS	



**SANDPIPA
BOARD
AGENDA REPORT
Meeting Date: June 14, 2012**

TO: Board
FROM: Laura Seiler, General Manager
SUBJECT: Tristar Contract Amendment - Add City of Oceanside

RECOMMENDATION:

The General Manager recommends approval of the Nineteenth Amendment to the Tristar Contract for Workers' Compensation Claims Administration Services adding the City of Oceanside.

BACKGROUND:

SANDPIPA contracts with Tristar Risk Management Services to provide workers' compensation claims administration services for members who wish to participate in a group purchase. The cities currently participating in the contract with Tristar for workers' compensation claims administration services are: Chula Vista, Coronado, Encinitas, Santee, Vista, Imperial Beach, National City, Solana Beach, Del Mar and Lemon Grove. The City of Escondido contracts direct with Tristar and the City of Oceanside has historically self-administered its workers' compensation claims.

ANALYSIS:

The City of Oceanside has requested to join the Tristar contract for workers' compensation claims administration services effective July 1, 2012. The attached Nineteenth Amendment to the Tristar Contract is to add the City of Oceanside to the contract at the monthly fee of \$18,348 with a \$-0- data transfer fee for the period July 1, 2012 to July 31, 2013. This monthly fee will be billed separate and apart from the group purchase until August 1, 2013.

SANDPIPA currently has guaranteed pricing through July 31, 2013. At the August 1, 2013 contract renewal date, the City of Oceanside will be included in the group purchase pricing negotiations for the August 1, 2013 to July 31, 2014 contract term.

ATTACHMENTS:

Nineteenth Amendment - Add the City of Oceanside

**NINETEENTH AMENDMENT TO AGREEMENT BETWEEN
SAN DIEGO POOLED INSURANCE PROGRAM AUTHORITY
AND TRISTAR RISK MANAGEMENT
FOR CLAIMS ADMINISTRATION SERVICES**

This Amendment ("Amendment") is made and entered into as of the 1st day of July, 2012, by and between the San Diego Pooled Insurance Program Authority ("SANDPIPA") and Tristar Risk Management Company ("Service Company") to add the City of Oceanside to the agreement between SANDPIPA and Service Company which became effective August 1, 1995 (the "Agreement").

A. Section 9 of the Agreement provides for the addition of new participating cities to the agreement by amendment of the Agreement and Exhibit A thereto.

B. The City of Oceanside has requested that SANDPIPA and Service Company approve such an amendment upon the terms and conditions set forth herein.

NOW, THEREFORE, IT IS AGREED:

1. Exhibit A to the Agreement is hereby amended to add the City of Oceanside with the same terms and conditions of the current contract.
2. Pursuant to paragraph 9.3 of the Agreement, Service Company and SANDPIPA have agreed that the compensation due service company pursuant to section 5.1 of the Agreement shall be \$18,348 monthly for the period, beginning July 1, 2012, to July 31, 2013. A \$-0- data conversion and file transfer fee shall be imposed on the City of Oceanside in order for the Service Company to assume responsibility for the provision of service to the City of Oceanside under this Amendment.
3. Except as expressly set forth herein, all other terms and conditions of the Agreement shall remain in full force and effect. By executing this Amendment, Service Company and SANDPIPA acknowledge that they have received prior written notice of intent to amend the Agreement in compliance with section 11.2 of the Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Amendment, as of the day and year first above-mentioned.

**SAN DIEGO POOLED INSURANCE
PROGRAM AUTHORITY**

By: _____
President

TRISTAR RISK MANAGEMENT

42 By: _____
(Title) _____

**NINETEENTH AMENDMENT TO AGREEMENT BETWEEN
SAN DIEGO POOLED INSURANCE PROGRAM AUTHORITY
AND TRISTAR RISK MANAGEMENT
FOR CLAIMS ADMINISTRATION SERVICES**

This Amendment ("Amendment") is made and entered into as of the 1st day of July, 2012, by and between the San Diego Pooled Insurance Program Authority ("SANDPIPA") and Tristar Risk Management Company ("Service Company") to add the City of Oceanside to the agreement between SANDPIPA and Service Company which became effective August 1, 1995 (the "Agreement").

A. Section 9 of the Agreement provides for the addition of new participating cities to the agreement by amendment of the Agreement and Exhibit A thereto.

B. The City of Oceanside has requested that SANDPIPA and Service Company approve such an amendment upon the terms and conditions set forth herein.

NOW, THEREFORE, IT IS AGREED:

1. Exhibit A to the Agreement is hereby amended to add the City of Oceanside with the same terms and conditions of the current contract.

2. Pursuant to paragraph 9.3 of the Agreement, Service Company and SANDPIPA have agreed that the compensation due service company pursuant to section 5.1 of the Agreement shall be \$18,348 monthly for the period, beginning July 1, 2012, to July 31, 2013. A \$-0- data conversion and file transfer fee shall be imposed on the City of Oceanside in order for the Service Company to assume responsibility for the provision of service to the City of Oceanside under this Amendment.

3. Except as expressly set forth herein, all other terms and conditions of the Agreement shall remain in full force and effect. By executing this Amendment, Service Company and SANDPIPA acknowledge that they have received prior written notice of intent to amend the Agreement in compliance with section 11.2 of the Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Amendment, as of the day and year first above-mentioned.

**SAN DIEGO POOLED INSURANCE
PROGRAM AUTHORITY**

By: _____
President

TRISTAR RISK MANAGEMENT

42 By: _____

(Title) _____

**AGREEMENT BETWEEN
SAN DIEGO POOLED INSURANCE PROGRAM AUTHORITY AND
TRISTAR RISK MANAGEMENT
FOR CLAIMS ADMINISTRATION SERVICES**

THIS AGREEMENT IS MADE AND ENTERED INTO this 1st day of August, 1995, by and between the SAN DIEGO POOLED INSURANCE PROGRAM AUTHORITY (hereinafter "SANDPIPA" or "Authority"), a California public joint powers agency organized and operating in San Diego County, and TRISTAR RISK MANAGEMENT (hereinafter "Service Company") in view of the following understandings:

A. SANDPIPA is desirous of retaining a qualified claims management service company to supervise and administer the workers' compensation claims made upon each participating member in the Authority's self-insurance program.

B. Service Company is a qualified and California-certified self-insurance administrator in the workers' compensation field.

C. Service Company is familiar with the agreement and bylaws governing the operation of the Authority. Participating member cities ("Participants") are all members of the Authority.

D. SANDPIPA represents that it is authorized to act on behalf of the participating member cities ("Participants") who are members of the Authority, and identified in Exhibit A, hereto.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. **SCOPE OF WORK:**

The Service Company shall provide the following services:

1.1 Forms. Consult with personnel of each Participant to supply and distribute necessary forms to establish program procedures and practices.

1.2 Process Claims. Review and process all reported industrial injury and occupational disease claims in accordance with State requirements.

1.3 Compensability Determinations. Determine compensability of injury or illness claims in accordance with all rules and regulations governing the administration of self-insurance pursuant to Section 3700 of the California Labor Code and California administrative regulations. Denial of claims shall be made only after prior discussion and agreement with the involved Participant.

1.4 Master Panel. Develop, recommend, and update for Authority and Participants a master panel of physicians, dentists, chiropractors, and other practitioners for the initial treatment of injured employees, and recommend such specialists as may be required for long term or other disabilities requiring special treatment. Present the initial master panel to the Authority within 90 days of commencement of services hereunder.

1.5 Medical Treatment. Determine eligibility for and authorize appropriate medical treatment for injured employees, including arranging appointments. Monitor all medical reports and statements of charges to insure that treatment and charges are compatible with injuries reported.

1.6 Education. Conduct or assist in orientation or educational meetings with personnel of Authority and Participants who are involved directly or indirectly with the processing of claims.

1.7 Reviews. Periodically review program progress with personnel of Authority and Participants, identifying problem areas and recommending a plan of remedial action. This shall include projections of cash flow and actual projections of annual incurred costs, as requested.

1.8 Index Use. Utilize the Index Bureau on cases where such use is merited, provided the Authority or Participant subscribes to such service.

1.9 File Maintenance. Maintain claim files, case logs, check voucher disbursement copies and all other records, files, and data as may be required by California law, statute and rules and regulations of the Participants' self-insurance plans, on each reported claim, which shall be available to Authority and the Participant involved during normal business hours for inspection.

1.10 Approve Payments. Determine extent and degree of all disability and death benefits payable to injured employees in accordance with acceptable and standard practices. Authorize payments in accordance with Findings and Awards of the Workers' Compensation Appeals Board (WCAB) or approved Compromise and Release Settlements, acting or recommending action to preclude unnecessary litigation to the extent that acceptable claims practice permits.

1.11 Reserves. Establish, maintain and revise individual claim file reserves as the situation at any given time may warrant, and as payments are made. Reserve levels shall be reviewed at least quarterly on active claims.

1.12 Investigations. Subject to prior approval of the appropriate Participants, arrange for field investigation of questionable cases, as well as surveillance on behalf of the Participants involved in each individual case. The expense for such investigation or surveillance is understood to be an "Allocated Loss Expense" as otherwise defined in this Agreement.

1.13 EDP Services. Provide at least monthly, computerized loss runs in such formats and at such times as may reasonably be required and mutually agreed upon. Such loss runs to be furnished separately for each Participant. Loss runs to be furnished within fifteen (15) days following the end of the month in which the claim is reported. A summary loss run of all claims for each Participant will be furnished quarterly to the Authority. On line computer access will be available to Authority and each Participant.

1.14 Filing Reports. Prepare and file on time, all reports of self-insured employers who are Participants as may be required by the Department of Industrial Relations or other Divisions of the State of California. Required reports will be prepared and filed separately for each Participant. A copy of the annual report for each Participant will be prepared and filed with the Risk Manager of the Authority each year not later than 30 days prior to the filing date established by the State.

1.15 Litigation and subrogation. Service Company shall be responsible for the following tasks in connection with disputed claims:

1. File and serve medical reports to all interested parties on behalf of the Participant.
2. Arrange all medical/legal evaluations, with copies of the medical records and a cover letter setting forth the issues of the case. This applies to agreed medical evaluations as well.
3. Arrange for and control outside photocopy costs by sharing with all interested parties medical or personnel records when feasible.
4. Make Workers' Compensation Appeal Board appearances on behalf of Participants on those cases that involve issues of permanent disability or future medical treatment as may be required in Service Company's capacity as claim handler.
5. Assign complex issues, including but not limited to questions of apportionment, AOE/COE, 132A, willful conduct, etc., to legal counsel with prior knowledge and consent of the Participant. However, Service Company will still continue to monitor and assist with the earliest resolution of the case. Participant retains the right to terminate legal counsel considered unsatisfactory by Participant.
6. Monitor all cases for potential subrogation, write correspondence to effect recovery, take all necessary action, including timely notification to Participants, assist in recovering through third party subrogation and recommend retaining legal counsel where litigation is necessary to effect recovery.
7. Provide a written summary of all pending litigated and subrogated cases on a semi-annual basis, if requested.

1.16 Rehabilitation. Subject to prior review with the involved Participant, initiate, coordinate, monitor and report all vocational rehabilitation activities as required by statute. Prepare all necessary reports for the Rehabilitation Bureau of the Division of Industrial Accidents. Arrange for the timely examining and testing of applicable injured employees. Supervise all long-range or extensive vocational rehabilitation programs approved by the State to insure optimum results, and maintain control over costs.

1.17 Consult with Employees. Claims personnel of Service Company will, if requested, consult with designated employee groups and safety committees of Participants regarding specific subjects of interest.

2. **WARRANTS:**

2.1 Assigned Unit; Certification; Hours of Work. Service Company warrants that it shall maintain a claim office in San Diego County to handle the Authority's claims. The claims office must maintain office hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excepting those Service Company holidays (not to exceed 12 days per calendar year) of which Authority and Participants are given not less than 14 days notice. Service Company will commit qualified state certified supervisory staff with at least three years of claims administration experience including Labor Code Section 4850 experience to the unit. Two state-certified claims examiners with Labor Code Section 4850 experience and one assistant will be assigned to Authority claims. These two examiners shall normally be available to the member cities during Service Company working hours; in any event, an examiner or supervisor with knowledge of the claims of all of the member cities shall be available during working hours. Written notice shall be provided to Authority and Participants of any change in the work schedule of the examiners. In the event Service Company replaces either current claims examiner for a period of more than 10 consecutive working days, the replacement shall also be a state-certified examiner.

2.2 Notification of Personnel Changes; Assignment of Claims. Service Company shall notify the Authority and Participants prior to any change in claims examiners, within 3 working days of the change, including temporary changes. Commencing October 1, 1995 and each month thereafter, by the 15th day of the month, Service Company shall deliver to Authority a written report for each examiner handling any claim under this agreement, showing the total number of open indemnity claims assigned to the examiner during the prior month, and detailing the number of claims assigned which are not for any Participant. Service Company expressly warrants that neither examiner shall at any time have a total claim caseload which exceeds 160 open indemnity files.

2.3 Settlement Authority. Service Company also warrants that it will confer with a duly appointed representative of Participant in accordance with the written instructions of each Participant; or, in the absence of any written instructions, on all claims which may require any payment or which may result in a denial of benefits. All claims will require duplicate case file to be provided to participant.

2.4 Payments. Service Company shall prepare and draft all checks necessary for payment of claims and claims expenses by Participants for execution by the Participants.

2.5 Audit. Service Company agrees to accept an independent audit of its work performance whenever requested by Authority. Files on all claims are the property of Authority and Service Company agrees to provide access to such files at the request of Authority and in the event of termination of this contract Service Company agrees to turn over all files on claims hereunder to Authority within five (5) working days of such request at no cost to Authority.

2.6 San Diego Office. Service Company agrees that during the term of this Agreement, it will establish and maintain a centrally located office in San Diego County, California, from which the majority of all claims activity will be conducted, including storage of Authority members claims files.

2.7 Attendance of Meetings. Upon request of Authority, Service Company shall attend meetings called by Authority to discuss issues arising under this Agreement.

2.8 Claims Handling. In the performance of its obligations under this contract, work shall be assigned only to persons who are specially trained, experienced and competent in the administration of municipal workers' compensation claims. Authority shall have the right to direct Service Company to not use a person who, in the opinion of Authority, is not so specially trained, experienced and competent to render the required services. In addition, Authority may at its own expense assign claims over six months old to an alternate claims administrator selected by Authority.

2.9 Service Company shall review all open indemnity claims within 60 days of the commencement of work under this contract to determine their status and necessary actions, as appropriate, and provide a brief written report to the Authority and Participant on the results of that review.

3. **EXCESS POLICIES:**

Authority and Participants agree to provide a complete copy of Excess Workers' Compensation insurance policy to Service Company. Service Company agrees to notify the Excess Workers' Compensation insurer of claims as required under the policy.

4. **MUTUAL INDEMNITY; INSURANCE; PENALTIES:**

Service Company agrees to hold Authority and Participants, their officers and employees free and harmless from any claim, demand or judgment arising out of the performance or non-performance by Service Company, its officers, agents, or contractors, of any service set forth in this Agreement, unless the claim is based upon an action of Service Company that was undertaken at the specific direction of the Authority.

4.1 In order to secure Service Company's obligation to hold Authority and Participants harmless, Service Company agrees to procure and maintain the following insurance:

Errors and Omissions: \$1,000,000.00 each claim/aggregate.

Comprehensive General Liability: \$1,000,000.00 per occurrence CSL.

Comprehensive Auto-mobile Liability: \$1,000,000.00 per occurrence CSL.

Workers' Compensation Insurance:

Statutory Limits.

Fidelity Bond:

\$1,000,000.00 coverage must be on employees and owners and must name SANDPIPA and each participant as co-obligee.

4.2 All policies shall have a thirty (30) day cancellation or major change clause.

4.3 Service Company shall furnish Certificates to Authority as evidence of General Liability, Automobile Liability, and Workers' Compensation insurance, naming Authority as an additional insured for any actions of Service Company as rendered and required under this Agreement.

4.4 Service Company agrees to assist risk management consultant(s) in securing claims data which may be required for special program analysis. Any costs related thereto shall be paid by Authority.

4.5 Service Company agrees with Authority and Participants that each individual claim file is subject to audit by qualified representatives of Authority or Participant at any time during normal work day hours, subject to prior notice.

In no event, however, shall Service Company be required to indemnify or hold Authority or its participating member cities harmless, as provided in this paragraph, for liabilities of any kind or nature arising from the sole and exclusive negligence of the Authority or any participating member City, or both. Authority agrees that in the event Service Company, acting at the specific direction of the Authority, becomes liable to any third party, the Authority will indemnify Service Company and/or its employees, agents or servants.

The parties acknowledge that the California Worker's Compensation Reform Act of 1989, may result in the imposition of automatic penalties for first payment of Temporary Disability Indemnity later than 14 days after a city's knowledge of an injury to an employee. Penalties imposed as a result of the failure of Service Company to properly perform its duties under this agreement shall be and remain the responsibility of Service Company. Written notice of such penalty must be provided to participant when identified. However, where a city unreasonably delays notification to Service Company of such an injury, and Service Company has no opportunity to make provision for timely payment, and so advises the city upon being notified, any penalty resulting from late payment shall not be the responsibility of Service Company, but shall be the responsibility of such city. Notification by a city to the Service Company within 7 working days after a city's knowledge of an injury to an employee shall not be considered an unreasonable delay.

5. **COMPENSATION:**

Authority agrees to pay Service Company for its services and the Service Company agrees to accept from Authority:

5.1 A flat annual fee of \$175,000 for the period of August 1, 1995 to July 31, 1996. 1/12 of the annual fee will be paid monthly in arrears, fifteen (15) days following month end. Data transfer costs of not to exceed \$5,000 to download loss history will be paid by Authority.

5.2 For the year commencing August 1, 1996 the flat annual fee shall be increased, based upon the Consumer Price Index for San Diego County for the latest 12 months for which such data is available, by not less than 2%, nor more than 7% over the fees charged for the preceding year. The annual fee shall also be adjusted annually for any increase or decrease in the total number of indemnity claims, as of the renewal date, of up to 15 percent of the number being handled by Service Company under this agreement as of August 1, 1995, on a pro rata basis; in the event of a greater increase or decrease in the number of claims from year to year, compensation may be adjusted on a pro rata basis, or as mutually agreed upon in writing. The Authority shall have the option to renew for two additional one year periods under the above referenced pricing.

5.3 Allocated Loss Expenses shall also be paid by Authority.

5.4 Payments under this contract shall be paid monthly in arrears ten (15) days following the end of the month and presentation to Authority of an itemized statement.

5.5 Additional charges to be paid by Authority include the printing of computer compatible checks or other such printing specifically requested by Authority.

6. **TERM:**

The term of this Agreement shall be for the period commencing on August 1, 1995, and continuing until the last day of July 1996, unless extended as provided herein.

6.1 Authority may terminate this Agreement at any time upon the giving of sixty (60) days written notice to Service Company. Upon such termination or modification of Agreement, Service Company shall be entitled to a pro rata fee based upon work actually accomplished as of the effective date of such termination or modification.

6.2 Service Company may terminate this Agreement at any time upon the giving of ninety (90) days written notice to Authority. Upon such termination or modification of Agreement, Service Company shall be entitled to a pro rata fee based upon work actually accomplished as of the effective date of such termination or modification.

6.3 On termination, a final accounting will be made of the fees payable to the Service Company and of any funds belonging to Authority in possession of the Service Company, and any balance due either party will be promptly paid by the debtor party. Pending claim files and loss(es) are to revert to the control of and become the responsibility of the newly appointed "Service Company" or to Participants upon date of contract termination. Final accounting shall include any amounts due either party on account of such pending claim(s) and loss(es), including "Allocated Loss Expense."

6.4 Upon termination, it is agreed that Service Company shall file an interim annual report with the Manager, Self-Insurance Plans, State Department of Industrial Relations in accordance with applicable rules and regulations governing Workers' Compensation Self-Insurance Plans, as well as such other official reports as may be required.

7. STATUS OF AUTHORITY:

The Authority warrants to Service Company that it is authorized to enter into this Agreement on behalf of the Participants listed in Exhibit A, attached hereto, and to act on behalf of the Participants, except as expressly provided in this Agreement.

8. PARTICIPANT WITHDRAWAL:

Any Participant may withdraw from this Agreement with or without cause by giving Service Company and Authority sixty (60) days prior written notice of its intent to withdraw from participation in this Agreement. A withdrawing Participant shall be responsible for payment of all its claims administration fees incurred and payable to Service Company as mutually agreed on by the parties, up to the effective date of the Participant's withdrawal. Except as otherwise provided by any rule or regulation adopted by the Authority, a Participant's withdrawal shall be approved by resolution of the Authority setting forth the effective date and the terms and conditions of the withdrawal. Exhibit A shall be amended accordingly. In the event of a withdrawal by a participant the compensation to be paid to Service Company for the remaining participants shall be adjusted in accordance with Section 5.2 of this agreement, except that; 1) no further adjustment shall be made based on the Consumer Price Index, and 2) compensation shall also be prorated based upon the number of months of service remaining in the current contract year.

9. ADDITION OF NEW PARTICIPANTS:

9.1 Any member city not a party to this Agreement may be added thereto by giving Service Company and Authority written notice of its desire to become a "participant" under this Agreement. Exhibit A shall be amended accordingly.

9.2 Such addition of any new "participant" to this Agreement shall require approval by Service Company and by Authority. An amendment to this Agreement, naming the new "participant," shall be executed.

9.3 In the event of such an amendment, the compensation to be paid to Service Company shall be adjusted in accordance with Section 5.2 of this agreement, except that 1) no further adjustment shall be made based on the Consumer Price Index, and 2) compensation shall also be prorated based upon the number of months of service remaining in the current contract year.

10. NOTICES:

10.1 Notices required pursuant to the terms of this Agreement shall be given by United States Mail, postage pre-paid, addressed to the parties as follows:

San Diego Pooled Insurance Program
Authority on Behalf of
All Participating Member Cities
Laura Seiler, Administrator
9069 Ellingham Street
San Diego, CA 92129

Service Company
Tristar Risk Management
Kevin Burke
6133 Bristol Parkway, Suite 300
Culver City, CA 90230

10.2 Notices shall be deemed given as of the time the same are placed in the course of transmission of the said Postal Service.

10.3 Either party may, by written notice, change the address to which notices shall be provided.

11. AMENDMENTS:

11.1 No change in or addition to this Agreement or any part hereof shall be valid unless in writing and signed by Service Company and approved and executed by the Authority on behalf of all Participants.

11.2 Any party proposing any amendment to this Agreement shall give all other parties prior written notice of intent to amend setting forth the specific language of the proposed amendment.

12. DEFINITIONS:

12.1 The term "Allocated Loss Expense" shall mean, all WCAB or court costs, fees and expenses; fees for service of process; fees to attorneys; the cost of services of undercover operatives and detectives; fees of independent adjusters or attorneys for investigation or adjustment of claims; the cost of employing experts for the purpose of preparing maps, photographs, diagrams, chemical or physical analysis, or giving expert advice or opinions involving chemical or physical questions; the cost of copies of transcripts of testimony at coroner's inquests or criminal or civil proceedings; the cost of obtaining copies of any public records; the cost of depositions and court reporter or recorded statements; any costs involving the trustee account or printing of checks; and any similar costs or expenses properly chargeable to the defense of a particular claim or protection of the subrogation rights of Authority or Participants; provided, however, that

all of the above services performed by claims technician employees of Service Company shall not be considered allocated loss expenses.

12.2 The term "Indemnity Claim" means a work injury case which has or may result in any of the following:

1. Temporary disability or salary in lieu thereof;
2. Permanent disability;
3. Life pension;
4. Death;
5. Litigated case.

12.3 The term "Medical Only Claim" means a work injury case in which it appears that no indemnity benefits are due or payable.

12.4 The term "Reportable Loss" means every injury or occupational illness to each employee arising out of or in the course of his employment, unless disability resulting from such injury does not last through the day or does not require medical service, other than ordinary first aid treatment.

12.5 The term "Claim" shall include all new claims reported subsequent to the effective date of this Agreement, plus all previous claims remaining open upon assumption of jurisdiction by Service Company, as well as previously closed claims upon their re-opening.

13. LOSS REPORTING:

Participants agree to report to Service Company all Reportable Losses, as defined in this Agreement.

14. SEVERABILITY:

If any portion of this Agreement is held by a court or arbitrator of competent jurisdiction to be invalid, void and unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

15. ASSIGNMENT:

Neither party shall have the right or power to assign this Agreement or any of its rights hereunder without the prior written consent of all parties hereto, and any such assignment without consent shall be void and confer no rights on any such assignee to this Agreement.

16. INDEPENDENT CONTRACTOR:

Service Company, its officers, employees, and agents, shall be considered and remain in the status of an independent contractor, and not employees of Authority or Participants for the purposes of carrying out any of the terms and conditions set forth in this Agreement.

17. CITIES AS THIRD PARTY BENEFICIARIES:

The parties hereto acknowledge that although Authority has the authority described in paragraph 7 hereof, the participating member cities are third party beneficiaries as to this Agreement. Each such city shall have the right to enforce those terms and conditions of such agreement relating to Service Company's performance of services for such city. However, prior to initiating any litigation against Service Company, a member city shall give Authority reasonable prior notice of its intended action.

18. CONFIDENTIALITY:

The parties agree that, as agents for the participating member cities, they may acquire and develop knowledge concerning the employees of the participating member cities, and related litigation involving the participating member cities which is confidential in nature. The parties agree that, to the extent permitted by law, such information shall be considered to be acquired in confidence, and shall not be disclosed to others without the consent of the employee or, as to litigation, the affected member city.

19. LAW GOVERNING AGREEMENT AND JURISDICTION:

This Agreement shall be governed by and construed in accordance with the laws of the State of California with jurisdiction residing in the California court system. Accordingly, the obligations of Authority hereunder shall be limited by the laws applicable to California general law cities acting through a joint powers agreement.

20. HOLIDAYS:

Service Company must provide a list of days its office will be closed because of a holiday within 30 days of the execution of this agreement. The number of holidays on which the office is closed may not exceed 12 days per year. Service Company may submit a revised list of holidays prior to the annual adjustment in service fees pursuant to paragraph 5 hereof.

21. LIQUIDATED DAMAGES:

If the work performed by Service Company is not completed in accordance with the foregoing, it is understood Authority will suffer damage. It being impractical and infeasible to determine the amount of actual damage, it is agreed that Authority, in its discretion, may deduct from any amounts owed to Service Company or collect from Service Company, as fixed and liquidated damages, and not as a penalty, a sum equal to one half of one percent (0.5%) of the flat service fee for each day the claim office, in violation of this agreement, is closed (except those Service Company holidays, natural disasters or other events beyond Service Company's control to include fire and flood) or operates in violation of this agreement without two certified claims examiners (see paragraph 2.2), or otherwise fails to meet any of the other warrants provided in Section 2 of this agreement (except that Service Company shall have an opportunity to cure any such violation within 7 days after written notice by Authority or any member city.) This remedy shall be in addition to any rights Authority or Participants have to terminate this agreement.

22. **ATTORNEYS FEES:**

Should any party commence any legal action or proceeding against the other arising out of this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys fees.

IN WITNESS WHEREOF, the undersigned have executed this Agreement, as of the day and year first above mentioned.

**SAN DIEGO POOLED INSURANCE
PROGRAM AUTHORITY**

By: Kenneth W. Koyne
President

Service Company

By: [Signature]
(Title) President

