

**Council Meeting: May 13, 2008****SUBJECT: Approval of Contract for Third Party Workers' Compensation Administration Services****REPORT IN BRIEF**

Approval is requested for a two-year contract with Gregory B. Bragg & Associates, Inc., of Roseville, to provide third party workers' compensation claim administration services for the Department of Human Resources for the period July 1, 2008 through June 30, 2010.

BACKGROUND

The City utilizes a State-licensed third party administrator (TPA) to manage workers' compensation claims of injured workers. The services provided by this firm consists of interpreting the labor code with respect to workers' compensation and paying benefits to injured workers as prescribed by the laws of the State of California. The Department of Human Resources is responsible for managing the contract for the third party administrator.

The current TPA, Gregory B. Bragg & Associates, Inc., was selected through a competitive proposal process and the contract was awarded by Council on December 2, 2003 (RTC 03-420). The initial contract term was for eighteen months with an option to extend the contract for three additional one-year periods. On July 19, 2005, Council approved the first one-year extension of the contract (RTC 05-218); on July 26, 2006, the Council approved the second one-year extension of the contract (RTC 06-250) and on May 1, 2007, the Council approved the third and final one-year extension of the contract through June 30, 2008 (RTC 07-146).

DISCUSSION

Gregory B. Bragg and Associates (Bragg & Associates) has provided professional and cost-effective third party claims administration services to the City from January 1, 2004 to the present. During this period, Bragg & Associates has worked closely with the City on managing the claims, aggressively pursuing file closures while ensuring that the City's injured workers receive appropriate treatment in a timely manner, the result of which has resulted in an overall reduction in expenses and time off work due to industrial injuries. In August 2006, the City and Bragg & Associates introduced the Early Intervention Program, assigning a nurse case manager to loss time injury claims to expedite medical treatment requests, provide

authorization for treatment when appropriate, obtain work status and to facilitate continuation of treatment. This program has been extremely successful in expediting treatment for our injured workers and returning them to work as quickly as possible.

On April 19, 2004, fundamental changes to the workers compensation laws of California were enacted by the passage of Senate Bill 899, the eighth reform in thirteen years to California's workers' compensation system. While initially viewed with great optimism, the implementation of SB899 by the Workers' Compensation Appeals Board was slow, and at times, resisted. Bragg & Associates successfully managed the complicated issues and procedures introduced by the new reform, the result of which had an overall favorable impact on the City's workers' compensation program.

During the term of the existing contract, staff of the Human Resources department worked steadfastly with the claims examiners, claims supervisors, nurse case manager and other Bragg & Associates staff to ensure that the City's injured workers received benefits and/or treatment in compliance with the law. Bragg & Associates has also played an integral role in expanding the cooperative working partnership with the departments of Public Safety and Human Resources. Through the Early Intervention Program, Bragg & Associates has diligently pursued return-to-work releases from medical providers, thereby significantly reducing the number of lost time injuries for injured workers in the Department of Public Safety, as well as other City departments.

Bragg & Associates has continued to demonstrate aggressive claims management while insuring that the City's injured workers receive appropriate treatment promptly. In the past several years, the City has realized a significant reduction in workers' compensation costs. Although the passing of SB899 clearly impacted the cost of workers' compensation state-wide, through consistent claims management, Bragg & Associates has reduced the number of open cases by over 29% since inception of the original contract.

In anticipation of the expiration of the existing contract with Bragg & Associates, staff surveyed other local agencies regarding the performance and fees of their workers' compensation third party administrators. The survey results indicate that the administrative fees paid by other agencies are comparable to those paid by the City of Sunnyvale. Several cities are paying higher administrative costs, considering the number of open claims, including Hayward, Palo Alto, Redwood City, Fremont and San Mateo. Additionally, as described elsewhere in this report, Bragg & Associates' performance has consistently met, and in some areas exceeded, the City's expectations.

As a result of their demonstrated performance record and competitive pricing, and the fact that maintaining their services will have no disruption of service to the City's injured workers, staff recommends that the City continue its contractual relationship with Bragg & Associates by entering into a two-year contract for the period July, 1, 2008 through June 30, 2010.

FISCAL IMPACT

Under the existing contract with Bragg & Associates, the annual fee for claims administration is \$250,004. Additionally, there is a \$5,000 annual fee for the following services: computer input of all open claims, monthly computer loss run information, special quarterly and annual reports, maintenance and reconciliation of a trust account and access to the online claim program for three users.

The administrative fees paid to Bragg & Associations have not been adjusted since January 2004. Under the terms of a new contract with Bragg & Associates, the annual claims administration fee for FY 08/09 shall not exceed \$257,500, and the annual claims administration fee for FY 09/10 shall not exceed \$263,938. The \$5,000 annual fee for additional services shall remain the same for each fiscal year. The fees for claims administration services reflect a maximum 3% increase for FY 08/09 and a maximum 2.5% increase for FY 09/10. Additionally, the City shall reserve the right to reduce the claims administration fee for FY 09/10, based upon the number of open indemnity claims at the conclusion of FY 08/09.

Funds are available in the Department of Human Resources Workers' Compensation Operating Budget.

PUBLIC CONTACT

Public contact was made through the posting of the Council agenda on the City's official notice bulletin board, posting of the agenda and report on the City's web page, and the availability of the report in the Library and the City Clerk's office.

ALTERNATIVES

1. Authorize a two-year contract with Gregory B. Bragg & Associates in substantially the same form as the attached Agreement and in an amount not to exceed \$257,500 for FY 08/09 and in an amount not to exceed \$263,938 for FY 09/10. The fee for additional services shall remain at \$5,000 for each fiscal year.
2. Do not authorize a two-year contract with Gregory B. Bragg & Associates and direct staff to seek other alternatives.

RECOMMENDATION

Staff recommends approval of Alternative # 1. Authorize a two-year contract in substantially the same form as the attached Agreement and in an amount not to exceed \$257,500 for FY 08/09, and \$263,938 for FY 09/10, to Gregory B. Bragg & Associates to provide workers' compensation claims administration services with the option that the City reserves the right to reduce the claims administration fee for FY 09/10, based upon the number of open indemnity claims at the conclusion of FY 08/09. The fee for additional services, as referenced in this report, shall remain at \$5,000 for FY 08/09 and FY 09/10.

Reviewed by:

Erwin H. Young, Director of Human Resources
Prepared by: Dee Schabot, Human Resources Manager

Reviewed by:

Mary Bradley, Director of Finance

Approved by:

Amy Chan
City Manager

Attachments

- A. Draft Service Agreement with Exhibits A, B & C

DRAFT
SERVICE AGREEMENT BETWEEN THE CITY OF SUNNYVALE
AND GREGORY B. BRAGG & ASSOCIATES, INC.,
FOR THIRD PARTY WORKERS' COMPENSATION CLAIMS
ADMINISTRATION SERVICES

THIS AGREEMENT dated _____ is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and GREGORY B. BRAGG & ASSOCIATES, INC., a California corporation ("ADMINISTRATOR").

WHEREAS, CITY is in need of specialized services in relation to the administration of CITY's Workers' Compensation claims; and

WHEREAS, ADMINISTRATOR possesses the skill and expertise to provide the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by ADMINISTRATOR

ADMINISTRATOR shall provide services in accordance with Exhibit "A" attached and incorporated by reference. ADMINISTRATOR shall determine the method, details and means of performing the services.

2. Time for Performance

The term of this Agreement shall be July 1, 2008, to June 30, 2010, unless otherwise terminated. ADMINISTRATOR shall deliver the agreed upon services to CITY as specified in Exhibit "A".

3. Duties of CITY

CITY shall supply any documents or information available to City required by ADMINISTRATOR for performance of its duties. All documents, materials, reports, claims and other written, photographed or electronic records provided to ADMINISTRATOR by CITY, or which are produced by ADMINISTRATOR, in connection with the duties under this Agreement, shall be maintained in confidence by ADMINISTRATOR except when disclosure is authorized by CITY or is necessary to perform the obligations of ADMINISTRATOR under this Agreement. Any materials provided shall be returned to CITY upon completion of the work.

4. Compensation

CITY agrees to pay ADMINISTRATOR at the rates set forth in Exhibit "B" attached and incorporated by reference. Total compensation shall not exceed Two hundred Fifty Thousand, Five Hundred and no/100 Dollars (\$257,500.00) for the period July 1, 2008 through June 30, 2009 and Two Hundred Sixty Three Thousand Nine Hundred Thirty

Eight and no/100 Dollars (\$263,938.00) for the period July 1, 2009 through June 30, 2010. Additional compensation for services as described in Exhibit "B" shall not exceed Five Thousand and no/100 Dollars for each year of the Agreement. ADMINISTRATOR shall submit invoices to CITY to be paid in accord with the procedures set forth in Exhibit "B".

5. Ownership of Documents

CITY shall have full and complete access to ADMINISTRATOR's working papers, drawings and other documents during progress of the work. All documents of any description prepared by ADMINISTRATOR shall become the property of the CITY at the completion of the project and upon payment in full to the ADMINISTRATOR. ADMINISTRATOR may retain a copy of all materials produced pursuant to this Agreement.

6. Conflict of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement, ADMINISTRATOR shall not accept employment or an obligation, which is inconsistent or incompatible with ADMINISTRATOR's obligations under this Agreement.

7. Confidential Information

ADMINISTRATOR shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of CITY of which ADMINISTRATOR may become aware in the performance of its services.

8. Compliance with Laws

(a) ADMINISTRATOR shall strictly adhere to all state and federal laws with respect to discrimination in employment and shall not discriminate against any individual on the basis of race, color, religion, gender, sexual orientation, marital status, national origin, age or disability.

(b) ADMINISTRATOR shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement, including, but not limited to, the Worker's Compensation laws of the State of California. Such obligations shall include not only an obligation to comply with California Workers' Compensation laws with respect to its employees, but also an obligation to administer CITY's Workers' Compensation claims in accordance with said laws.

9. Independent Contractor

ADMINISTRATOR is acting as an independent contractor in furnishing the services or materials and performing the work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and

telephone conversation or an original of a facsimile transmission must be sent by first class mail or commercial carrier, or hand delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of two days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

15. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

16. Termination

If ADMINISTRATOR defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to ADMINISTRATOR. If CITY fails to pay ADMINISTRATOR, ADMINISTRATOR at its option may terminate this Agreement if the failure is not remedied by CITY within thirty (30) days from the date payment is due.

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to ADMINISTRATOR. In the event of such termination, ADMINISTRATOR shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. ADMINISTRATOR shall present CITY with any work product completed at that point in time.

17. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

18. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By _____
City Clerk

By _____
City Manager

APPROVED AS TO FORM:

GREGORY B. BRAGG & ASSOC., INC.
("ADMINISTRATOR")

By _____
City Attorney

By _____

Name and Title

By _____

Name and Title

SCOPE OF SERVICES

1. Claims Management Services

ADMINISTRATOR shall:

- a. Make initial contact with claimant and establish a numbered claim file within 24 hours of receipt of the Employers' First Report of Injury from CITY. (CITY shall transfer this form electronically.) These files shall be available for review by CITY at anytime during ADMINISTRATOR'S regular business hours through remote electronic access.
- b. Administer the provision of entitlements of workers' compensation benefits under State Labor Code in a timely and accurate manner. Any and all penalties incurred as a result of due failure of ADMINISTRATOR to comply with statutory laws and/or administrative regulations shall be the sole responsibility of ADMINISTRATOR. The only exception will be those requests made to ADMINISTRATOR, in writing by CITY for specific action on a file.
- c. Discuss any unusual claims promptly with designated Department of Human Resources staff and make any necessary contact with the injured employee and his or her manager or supervisor if additional information regarding the claim is required.
- d. Maintain accurate and timely loss runs and occupational injury data, using a format and system acceptable to CITY, and establish adequate reserves and post indemnity, 4850, medical and loss adjustment expenses. Each of these records shall be individually itemized on any loss information reports.
- e. Reduce all medical bills, other than medical legal expenses, to the Relative Value Schedule (RVS) and recommended rates set by the Administrative Director, Division of Workers' Compensation. CITY will make any selection of the vendor used for bill review.
- f. Upon request, provide input to CITY which CITY may use to select defense and subrogation counsel. CITY currently uses the services of several workers' compensation law firms and retains the right to select legal counsel.
- g. Proceed against all responsible persons and/or agencies in subrogation actions in an effort to recover losses suffered by CITY due to injuries or illnesses inflicted on its employees and volunteers. Such actions can be referred to specific legal counsel or to an alternative claims agency, if agreed to by CITY.
- h. Investigate all questionable claims with the coordination and assistance of designated Department of Human Resources staff. Provide advance notice and explanation to the designated Department of Human Resources staff of any claim which may be denied by the claims examiner. Denial and acceptance of claims decisions is a joint process under the law involving ADMINISTRATOR and CITY.

2. Closing of Clams

ADMINISTRATOR shall process and close claims as soon as administratively possible, such that CITY'S claim examiner does not have a caseload of open indemnity files at any one time that exceeds 150 files.

All closed files shall remain the property of CITY and shall not be disposed of without CITY'S prior authorization. CITY shall have the option of relocating such files from ADMINISTRATOR'S storage location to CITY. CITY will not pay costs or fees associated with the transfer of closed files to CITY or its agent.

ADMINISTRATOR shall:

- a. Close claims for which all medical and indemnity payment have been paid within ninety days of the last benefit payment, whenever possible.
 - b. Maintain closed files pursuant to State Labor Code provisions.
 - c. Meet on a quarterly basis with CITY staff to discuss closing of claims.
3. Additional Services
- a. Upon request by CITY, ADMINISTRATOR'S claims examiner shall attend selected Workers Compensation Appeals Board hearings, status conferences and trials along with depositions, conferences with legal defense counsel, and meetings with CITY staff, departments and employee groups.
 - b. Prompt and responsive written, oral and in person communication by the claims examiner with CITY staff is required. Communications with CITY employees is of particular concern to CITY. ADMINISTRATOR may communicate with CITY employees via e-mail but copies of messages to employees shall be sent to CITY'S Department of Human Resources.
 - c. At ADMINISTRATOR's expense ADMINISTRATOR shall provide all forms, posters, and pamphlets required by the State Labor Code and the Administrative Director for the processing of claims and benefits information. ADMINISTRATOR shall prepare and file the Public Entities Self-Insured Annual Report.
 - d. ADMINISTRATOR shall report immediately to CITY'S excess insurance carrier any claim that meets immediate reporting criteria as established by the excess insurance carrier, with a copy to CITY. ADMINISTRATOR shall provide all requested information to CITY'S excess insurer and submit requests for reimbursements on behalf of CITY.
 - e. ADMINISTRATOR will fully cooperate with, provide requested information to, and respond to recommendations and findings of CITY and the excess carrier audit and actuary consultants.
 - f. ADMINISTRATOR shall complete and provide to CITY all required Cal/OSHA logs and Summary of Occupational Injuries and Illness reports. ADMINISTRATOR shall meet with and liase with CITY Loss Control and Occupational Health and Safety staff to identify potential loss problems or trends.
4. Medical Cost Control
- a. ADMINISTRATOR shall provide details of medical service cost savings resulting from ADMINISTRATOR-maintained Preferred Provider Network, if applicable, on a quarterly basis. ADMINISTRATOR shall provide details of

medical facility cost savings resulting from any ADMINISTRATOR-maintained Preferred Provider Network. ADMINISTRATOR shall also provide details of cost savings resulting from ADMINISTRATOR operated/contracted bill review activities.

- b. Medical control on litigated claims shall remain with ADMINISTRATOR but with full communication to CITY. Mutual agreements with CITY will have to be made on the use of any Agreed Medical Examiners (AME) on an individual or case-by-case basis.

5. Litigation

- a. ADMINISTRATOR shall closely monitor litigation efforts and make regular reports to CITY. CITY'S designated Department of Human Resources staff shall authorize, in advance, any and all depositions, investigative and subrosa activities.
- b. CITY's Director of the Department of Human Resources or his designee shall approve any settlement of a litigated claim at least fourteen days in advance of its being presented or negotiated with claimant's attorney.
- c. Prior to any settlement conference, ADMINISTRATOR and/or defense counsel, whichever is appropriate, shall provide a written analysis of the case, including options and recommendations for settlement. All permanent disability rating shall be defined in dollars and degree of disability. ADMINISTRATOR shall inform CITY of all settlement offers received from the claimant or claimant's attorney. Sunnyvale City Council approval is required for all settlements over 50,000.
- d. ADMINISTRATOR shall inform CITY within twenty-four hours of receipt of any hearing, conference, or trial dates set by the Workers' Compensation Appeals Board. When an application for adjudication has been filed, an effort will be made by ADMINISTRATOR to settle the claim without assigning it to defense counsel.
- e. ADMINISTRATOR shall establish controls and procedures to manage and contain the cost of defense.

6. Financial Matters/Accounting

- a. A trust fund or account in the name of CITY and/or ADMINISTRATOR will be maintained for the purpose of paying benefits and entitlements that may be due on claims presented.

ADMINISTRATOR shall draw from that account or fund to make payments due on accounts payable and to make benefit payments; or a payment request process may be used to initiate payment, as appropriate, by CITY.

All agreed-upon processes and procedures pursuant to accounting or banking matters shall be confirmed in writing by ADMINISTRATOR.

- b. ADMINISTRATOR shall provide to CITY'S Department of Human Resources designated staff, a monthly check/voucher payment register of all transactions made for the period and a copy of all check vouchers or warrants drawn by ADMINISTRATOR to pay benefits and entitlements. CITY reserves

the right to conduct an annual financial audit of the trust account to ensure the integrity of the account.

7. Data Processing/Loss Reporting

- a. ADMINISTRATOR shall convert and/or establish loss run data base and transfer files from previous ADMINISTRATOR
- b. ADMINISTRATOR shall provide a computer-generated loss run analysis/summary report for each month throughout the contract term covering activity on all newly reported, open and newly closed claims for the period. This report shall be customized to meet CITY needs and shall, at a minimum, provide the information by claim year.
- c. All records, files, transcripts, and computer tapes, including loss run data base files and other materials related to the management and administration of CITY'S workers' compensation claims, are the property of CITY and shall be relinquished in good order and condition upon termination of the contract with ADMINISTRATOR.

COMPENSATION

FEES

ADMINISTRATOR shall be compensated at the following rates for claims management services as described in Exhibit "A":

Term of Contract

July 1, 2008 through June 30, 2009	An amount not to exceed \$257,500.00
July 1, 2009 through June 30, 2010	An amount not to exceed \$263,938.00

CITY reserves the right to reduce the compensation for claims administration services for the period July 1, 2009 through June 30, 2010, based upon the number of open indemnity claims as of June 30, 2009.

In addition, CITY shall pay ADMINISTRATOR an annual fee of \$5,000 which shall represent compensation for the following services: computer input of all open claims, orientation and onsite department training, monthly computer loss information and special quarterly and annual reports, trust account (excluding check and bank charges), and online access to claim information for three users.

INVOICING AND PAYMENT

Invoices shall be submitted no more frequently than monthly. Invoiced amounts shall be an appropriate prorated portion of the total annual fee. Payment shall be made within thirty (30) days of receipt of an accurate, itemized invoice by CITY's Accounts Payable Unit.

INSURANCE REQUIREMENTS

ADMINISTRATOR shall obtain, at its own expense and from an admitted insurer authorized to operate in California, the insurance coverage detailed below and shall submit Certificate(s) of Insurance to the City of Sunnyvale, Purchasing Division, 650 West Olive Ave, PO Box 3707, Sunnyvale, CA 94088-3707; fax (408) 730-7710.

ADMINISTRATOR shall take out and maintain during the life of the contract **Workers' Compensation and Employer's Liability Insurance** for its employees. The amount of insurance shall not be less than \$1,000,000 per accident for bodily injury or disease.

ADMINISTRATOR shall take out and maintain during the life of the contract such **Commercial General Liability Insurance** as shall protect ADMINISTRATOR, CITY, its officials, officers, directors, employees and agents from claims which may arise from services performed under the contract, whether such services are performed by ADMINISTRATOR, by CITY, its officials, officers, directors, employees or agents or by anyone directly or indirectly employed by either. The amount of insurance shall not be less than the following: Single Limit Coverage Applying to Bodily and Personal Injury Liability and Property Damage: \$1,000,000.

The liability insurance shall include, but shall not be limited to:

- Protection against claims arising from bodily and personal injury and damage to property, resulting from ADMINISTRATOR's or CITY's operations and use of owned or non-owned vehicles.
- Coverage on an "occurrence" basis.
- Broad form property damage liability. Deductible shall not exceed \$5000 without prior written approval of CITY.
- Notice of cancellation to CITY's Purchasing Division at least thirty (30) days prior to the cancellation effective date.

The following endorsements shall be attached to the liability insurance policy, and copies shall be submitted with the Certificate(s) of Insurance:

- The policy must cover complete contractual liability. Exclusions of contractual liability as to bodily injuries, personal injuries and property damage must be eliminated.
- CITY must be named as additional named insured with respect to the services being performed under the contract. *Simply indicating on the certificate that the certificate holder is named as additional insured is not acceptable; an endorsement must be provided.*
- The coverage shall be primary insurance so that no other insurance effected by CITY will be called upon to contribute to a loss under this coverage.