

ORIGINAL

**CONTRACT RESULTING FROM REQUEST FOR PROPOSAL NUMBER 10090053-24-G,
MANAGED CARE FOR WORKERS' COMPENSATION**

This Contract (Contract) is entered into by and between the City of San Diego, a municipal corporation (City), and the successful proposer to Request for Proposal (RFP) # 10090053-24-G, MANAGED CARE FOR WORKERS' COMPENSATION (Contractor).

RECITALS

On or about 8/17/2023, City issued an RFP to prospective proposers on services to be provided to the City. The RFP and any addenda and exhibits thereto are collectively referred to as the "RFP." The RFP is attached hereto as Exhibit A.

City has determined that Contractor has the expertise, experience, and personnel necessary to provide the services.

City wishes to retain Contractor to provide security services as further described in the Scope of Work, attached hereto as Exhibit B. (Services).

For good and valuable consideration, the sufficiency of which is acknowledged, City and Contractor agree as follows:

**ARTICLE I
CONTRACTOR SERVICES**

1.1 Scope of Work. Contractor shall provide the Services to City as described in Exhibit B which is incorporated herein by reference. Contractor will submit all required forms and information described in Exhibit A to the Purchasing Agent before providing Services.

1.2 General Contract Terms and Provisions. This Contract incorporates by reference the General Contract Terms and Provisions, attached hereto as Exhibit C.

1.3 Contract Administrator. The Risk Management Department (Department) is the Contract Administrator for this Agreement. Contractor shall provide the Services under the direction of a designated representative of the Department as follows:

Joseph Sousa
Workers' Compensation & Insurance Manager
1200 Third Ave, Suite 1000,
San Diego, CA 92101
(619) 236-5958
JSousa@sandiego.gov

**ARTICLE II
DURATION OF CONTRACT**

2.1 Term. This Contract shall be for a period of (3) years beginning on the Effective Date. City may, in its sole discretion, extend this Contract for (2) additional (1) year period (s) beginning on the Effective Date. The term of this Contract shall not exceed five years unless approved by the City Council by ordinance.

2.2 Effective Date. This Contract shall be effective on the date it is executed by the last Party to sign the Contract, and approved by the City Attorney in accordance with San Diego Charter Section 40.

ARTICLE III COMPENSATION

3.1 Amount of Compensation. City shall pay Contractor for performance of all Services rendered in accordance with this Contract in an amount not to exceed \$ 14,259,206.00 *(The not to exceed amount will be added in this final Contract prior to the final execution of the Contract by the City, with the Contractor's initials indicating acceptance.)*

ARTICLE IV WAGE REQUIREMENTS

4.1 Reserved.

ARTICLE V CONTRACT DOCUMENTS

5.1 Contract Documents. The following documents comprise the Contract between the City and Contractor: this Contract and all exhibits thereto, the RFP; the Notice to Proceed; and the City's written acceptance of exceptions or clarifications to the RFP, if any.

5.2 Contract Interpretation. The Contract Documents completely describe the Services to be provided. Contractor will provide any Services that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for or identified in the Contract Documents. Words or phrases which have a well-known technical or construction industry or trade meaning and are used to describe Services will be interpreted in accordance with that meaning unless a definition has been provided in the Contract Documents.

5.3 Precedence. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the Parties will use the order of precedence as set forth below. The 1st document has the highest priority. Inconsistent provisions in the Contract Documents that address the same subject, are consistent and have different degrees of specificity, are not in conflict and the more specific language will control. The order of precedence from highest to lowest is as follows:

- 1st Any properly executed written amendment to the Contract
- 2nd The Contract
- 3rd The RFP and the City's written acceptance of any exceptions or clarifications to the RFP, if any
- 4th Contractor's Pricing

5.4 Counterparts. This Contract may be executed in counterparts which, when taken together, shall constitute a single signed original as though all Parties had executed the same page.

5.5 Public Agencies. Other public agencies, as defined by California Government Code section 6500, may choose to use the terms of this Contract, subject to Contractor's acceptance. The City is not liable or responsible for any obligations related to a subsequent Contract between Contractor and another public agency.

IN WITNESS WHEREOF, this Contract is executed by City and Contractor acting by and through their authorized officers.

Cadence RX, Inc.

Proposer
550 N Reo Street, Ste 109

Street Address
Tampa, FL

City
888-813-0023

Telephone No.
cmorgan@cadencerx.com

E-Mail

CITY OF SAN DIEGO
A Municipal Corporation

BY: _____

Print Name: _____

Alia Khouri
Deputy Chief Operating Officer

3

Date Signed 01/18/24

BY:

Christopher Morgan
Christopher Morgan (May 27, 2024 05:23 EDT)

Signature of
Proposer's Authorized
Representative
Christopher Morgan

Print Name
CFO

Title
May 27, 2024

Date

Approved as to form this 20th day of
June, 2024.
MARA W. ELLIOTT, City Attorney

BY: Joan H. Dause

Deputy City Attorney

EXHIBIT A
PROPOSAL SUBMISSION AND REQUIREMENTS

A. PROPOSAL SUBMISSION

1. Timely Proposal Submittal. Proposals must be submitted as described herein to the Purchasing & Contracting Department (P&C).

1.1 Reserved.

1.2 Paper Proposals. The City will accept paper proposals in lieu of eProposals. Paper proposals must be submitted in a sealed envelope to the Purchasing & Contracting Department (P&C) located at 1200 Third Avenue, Suite 200, San Diego, CA 92101. The Solicitation Number and Closing Date must be referenced in the lower left-hand corner of the outside of the envelope. Faxed proposals will not be accepted.

1.3 Proposal Due Date. Proposals must be submitted prior to the Closing Date indicated on the eBidding System. E-mailed and/or faxed proposals will not be accepted.

1.4 Pre-Proposal Conference. No pre-proposal conference will be held for RFP.

1.4.1 Reserved.

1.5 Questions and Comments. Written questions and comments must be submitted electronically via the eBidding System no later than the date specified on the eBidding System. Only written communications relative to the procurement shall be considered. The City's eBidding System is the only acceptable method for submission of questions. All questions will be answered in writing. The City will distribute questions and answers without identification of the inquirer(s) to all proposers who are on record as having received this RFP, via its eBidding System. No oral communications can be relied upon for this RFP. Addenda will be issued addressing questions or comments that are determined by the City to cause a change to any part of this RFP.

1.6 Contact with City Staff. Unless otherwise authorized herein, proposers who are considering submitting a proposal in response to this RFP, or who submit a proposal in response to this RFP, are prohibited from communicating with City staff about this RFP from the date this RFP is issued until a contract is awarded.

2. Proposal Format and Organization. Unless electronically submitted, all proposals should be securely bound and must include the following completed and executed forms and information presented in the manner indicated below:

Tab A - Submission of Information and Forms.

2.1 Completed and signed Contract Signature Page. If any addenda are issued, the latest Addendum Contract Signature Page is required.

2.2 Exceptions requested by proposer, if any. The proposer must present written factual or legal justification for any exception requested to the Scope of Work, the Contract, or the Exhibits thereto. Any exceptions to the Contract that have not been accepted by the City in writing are deemed rejected. The City, in its sole discretion, may accept some or all of proposer's exceptions, reject proposer's exceptions, and deem the proposal non-responsive, or award the Contract without proposer's proposed exceptions. The City will not consider exceptions addressed elsewhere in the proposal.

2.3 The Contractor Standards Pledge of Compliance Form.

2.4 Equal Opportunity Contracting forms including the Work Force Report and Contractors Certification of Pending Actions.

2.5 Reserved.

2.6 Reserved.

2.7 Reserved.

2.8 Additional Information as required in Exhibit B.

2.9 Reserved.

Tab B - Executive Summary and Responses to Specifications.

2.10 A title page.

2.11 A table of contents.

2.12 An executive summary, limited to one typewritten page, that provides a high-level description of the proposer's ability to meet the requirements of the RFP and the reasons the proposer believes itself to be best qualified to provide the identified services.

2.13 Proposer's response to the RFP.

Tab C - Cost/Price Proposal. Proposers shall submit a cost proposal in the form and format described herein. Failure to provide cost(s) in the form and format requested may result in proposal being declared non-responsive and rejected.

3. Proposal Review. Proposers are responsible for carefully examining the RFP, the Specifications, this Contract, and all documents incorporated into the Contract by reference before submitting a proposal. If selected for award of contract, proposer shall be bound by same unless the City has accepted proposer's exceptions, if any, in writing.

4. Addenda. The City may issue addenda to this RFP as necessary. All addenda are incorporated into the Contract. The proposer is responsible for determining whether addenda were issued prior to a proposal submission. Failure to respond to or properly address addenda may result in rejection of a proposal.

5. Quantities. The estimated quantities provided by the City are not guaranteed. These quantities are listed for informational purposes only. Quantities vary depending on the

demands of the City. Any variations from the estimated quantities shall not entitle the proposer to an adjustment in the unit price or any additional compensation.

6. Quality. Unless otherwise required, all goods furnished shall be new and the best of their kind.

6.1 Items Offered. Proposer shall state the applicable trade name, brand, catalog, manufacturer, and/or product number of the required good, if any, in the proposal.

6.2 Brand Names. Any reference to a specific brand name in a solicitation is illustrative only and describes a component best meeting the specific operational, design, performance, maintenance, quality, or reliability standards and requirements of the City. Proposer may offer an equivalent or equal in response to a brand name referenced (Proposed Equivalent). The City may consider the Proposed Equivalent after it is subjected to testing and evaluation which must be completed prior to the award of contract. If the proposer offers an item of a manufacturer or vendor other than that specified, the proposer must identify the maker, brand, quality, manufacturer number, product number, catalog number, or other trade designation. The City has complete discretion in determining if a Proposed Equivalent will satisfy its requirements. It is the proposer's responsibility to provide, at their expense, any product information, test data, or other information or documents the City requests to properly evaluate or demonstrate the acceptability of the Proposed Equivalent, including independent testing, evaluation at qualified test facilities, or destructive testing.

7. Modifications, Withdrawals, or Mistakes. Proposer is responsible for verifying all prices and extensions before submitting a proposal.

7.1 Modification or Withdrawal of Proposal Before Proposal Opening. Prior to the Closing Date, the proposer or proposer's authorized representative may modify or withdraw the proposal by providing written notice of the proposal modification or withdrawal to the City Contact via the eBidding System. E-mail or telephonic withdrawals or modifications are not permissible.

7.2 Proposal Modification or Withdrawal of Proposal After Proposal Opening. Any proposer who seeks to modify or withdraw a proposal because of the proposer's inadvertent computational error affecting the proposal price shall notify the City Contact identified on the eBidding System no later than three working days following the Closing Date. The proposer shall provide worksheets and such other information as may be required by the City to substantiate the claim of inadvertent error. Failure to do so may bar relief and allow the City recourse from the bid surety. The burden is upon the proposer to prove the inadvertent error. If, as a result of a proposal modification, the proposer is no longer the apparent successful proposer, the City will award to the newly established apparent successful proposer. The City's decision is final.

8. Incurred Expenses. The City is not responsible for any expenses incurred by proposers in participating in this solicitation process.

9. Public Records. By submitting a proposal, the proposer acknowledges that any information submitted in response to this RFP is a public record subject to disclosure unless the City determines that a specific exemption in the California Public Records Act (CPRA) applies. If the proposer submits information clearly marked confidential or proprietary, the City may protect such information and treat it with confidentiality to the extent permitted by

law. However, it will be the responsibility of the proposer to provide to the City the specific legal grounds on which the City can rely in withholding information requested under the CPRA should the City choose to withhold such information. General references to sections of the CPRA will not suffice. Rather, the proposer must provide a specific and detailed legal basis, including applicable case law, that clearly establishes the requested information is exempt from the disclosure under the CPRA. If the proposer does not provide a specific and detailed legal basis for requesting the City to withhold proposer's confidential or proprietary information at the time of proposal submittal, City will release the information as required by the CPRA and proposer will hold the City, its elected officials, officers, and employees harmless for release of this information. It will be the proposer's obligation to defend, at proposer's expense, any legal actions or challenges seeking to obtain from the City any information requested under the CPRA withheld by the City at the proposer's request. Furthermore, the proposer shall indemnify and hold harmless the City, its elected officials, officers, and employees from and against any claim or liability, and defend any action brought against the City, resulting from the City's refusal to release information requested under the CPRA which was withheld at proposer's request. Nothing in the Contract resulting from this proposal creates any obligation on the part of the City to notify the proposer or obtain the proposer's approval or consent before releasing information subject to disclosure under the CPRA.

10. Right to Audit. The City Auditor may access proposer's records as described in San Diego Charter section 39.2 to confirm contract compliance.

B. PRICING

1. Fixed Price. All prices shall be firm, fixed, fully burdened, FOB destination, and include any applicable delivery or freight charges, and any other costs required to provide the requirements as specified in this RFP. The lowest total estimated contract price of all the proposals that meet the requirements of this RFP will receive the maximum assigned points to this category as set forth in this RFP. The other price schedules will be scored based on how much higher their total estimated contract prices compare with the lowest:

$$(1 - \frac{(\text{contract price} - \text{lowest price})}{\text{lowest price}}) \times \text{maximum points} = \text{points received}$$

For example, if the lowest total estimated contract price of all proposals is \$100, that proposal would receive the maximum allowable points for the price category. If the total estimated contract price of another proposal is \$105 and the maximum allowable points is 60 points, then that proposal would receive $(1 - ((105 - 100) / 100)) \times 60 = 57$ points, or 95% of the maximum points. The lowest score a proposal can receive for this category is zero points (the score cannot be a negative number). The City will perform this calculation for each Proposal.

2. Taxes and Fees. Taxes and applicable local, state, and federal regulatory fees should not be included in the price proposal. Applicable taxes and regulatory fees will be added to the net amount invoiced. The City is liable for state, city, and county sales taxes but is exempt from Federal Excise Tax and will furnish exemption certificates upon request. All or any portion of the City sales tax returned to the City will be considered in the evaluation of proposals.

3. Escalation. An escalation factor is not allowed unless called for in this RFP. If escalation is allowed, proposer must notify the City in writing in the event of a decline in market price(s) below the proposal price. At that time, the City will make an adjustment in the Contract or may elect to re-solicit.

4. Unit Price. Unless the proposer clearly indicates that the price is based on consideration of being awarded the entire lot and that an adjustment to the price was made based on receiving the entire proposal, any difference between the unit price correctly extended and the total price shown for all items shall be offered shall be resolved in favor of the unit price.

C. EVALUATION OF PROPOSALS

1. Award. The City shall evaluate each responsive proposal to determine which proposal offers the City the best value consistent with the evaluation criteria set forth herein. The proposer offering the lowest overall price will not necessarily be awarded a contract.

2. Sustainable Materials. Consistent with Council Policy 100-14, the City encourages use of readily recyclable submittal materials that contain post-consumer recycled content.

3. Evaluation Process.

3.1 Process for Award. A City-designated evaluation committee (Evaluation Committee) will evaluate and score all responsive proposals. The Evaluation Committee may require proposer to provide additional written or oral information to clarify responses. Upon completion of the evaluation process, the Evaluation Committee will recommend to the Purchasing Agent that an award be made to the proposer with the highest-scoring proposal.

3.2 Reserved.

3.3 Mandatory Interview/Oral Presentation. The City will require proposers to interview and/or make an oral presentation if one or more proposals score within (10) points or less of the proposal with the highest score. Only the proposer with the highest scoring proposal and those proposers scoring within (10) points or less of the highest scoring proposal will be asked to interview and/or make an oral presentation. Interviews and/or oral presentations will be made to the Evaluation Committee in order to clarify the proposals and to answer any questions. The interviews and/or oral presentations will be scored as part of the selection process. The City will complete all reference checks prior to any oral interview. Additionally, the Evaluation Committee may require proposer's key personnel to interview. Interviews may be by telephone and/or in person. Multiple interviews may be required. Proposers are required to complete their oral presentation and/or interviews within seven (7) workdays after the City's request. Proposers should be prepared to discuss and substantiate any of the areas of the proposal submitted, as well as proposer's qualifications to furnish the subject goods and services. Proposer is responsible for any costs incurred for the oral presentation and interview of the key personnel.

3.4 Discussions/Negotiations. The City has the right to accept the proposal that serves the best interest of the City, as submitted, without discussion or negotiation. Contractors should, therefore, not rely on having a chance to discuss, negotiate, and adjust their proposals. The City may negotiate the terms of a contract with the winning proposer

based on the RFP and the proposer's proposal, or award the contract without further negotiation.

3.5 Inspection. The City reserves the right to inspect the proposer's equipment and facilities to determine if the proposer is capable of fulfilling this Contract. Inspection will include, but not limited to, survey of proposer's physical assets and financial capability. Proposer, by signing the proposal agrees to the City's right of access to physical assets and financial records for the sole purpose of determining proposer's capability to perform the Contract. Should the City conduct this inspection, the City reserves the right to disqualify a proposer who does not, in the City's judgment, exhibit the sufficient physical and financial resources to perform this Contract.

3.6 Evaluation Criteria. The following elements represent the evaluation criteria that will be considered during the evaluation process:

	MAXIMUM EVALUATION POINTS
A. Responsiveness to the RFP.	10
1. Requested information is all included, and the response is thorough.	
2. Executive Summary clearly presents an overview of the entire proposal and addresses all aspects of the RFP being bid on.	
3. Integration of Managed Care Services.	
4. Clear responses to all requests.	
B. Response to Scope of Services. Responses clearly address how proposer's business process will meet all services within scope.	25
C. Qualifications and Experience. Experience providing managed care services to accounts of similar size and scope. Experience dealing with continual changes customer needs and California Legislation updates.	20
D. Past Performance as Indicated by References. Positive references for service delivery, timely issue resolution, minimal problems in daily workflow, follow through and excellence in customer service.	15
E. Pricing.	15
F. Interview/Oral Demonstration/Presentation (if held pursuant to Section 3.3 above). Demonstration of the Proposers software systems for Utilization Review, Bill Review and/or FNCM offered with real-time operation and Oral Presentations And establishment of Rapport with Key Personnel, at no cost to the City.	15
SUB-TOTAL MAXIMUM EVALUATION POINTS:	100

	MAXIMUM EVALUATION POINTS
G. Participation by Small Local Business Enterprise (SLBE) or Emerging Local Business Enterprise (ELBE) Firms*	12
FINAL MAXIMUM EVALUATION POINTS INCLUDING SLBE/ELBE:	112

*The City shall apply a maximum of an additional 12 percentage points to the proposer's final score for SLBE OR ELBE participation. Refer to Equal Opportunity Contracting Form, Section V.

D. ANNOUNCEMENT OF AWARD

1. Award of Contract. The City will inform all proposers of its intent to award a Contract in writing.

2. Obtaining Proposal Results. No solicitation results can be obtained until the City announces the proposal or proposals best meeting the City's requirements. Proposal results may be obtained by: (1) e-mailing a request to the City Contact identified on the eBidding System or (2) visiting the P&C eBidding System to review the proposal results. To ensure an accurate response, requests should reference the Solicitation Number. Proposal results will not be released over the phone.

3. Multiple Awards. City may award more than one contract by awarding separate items or groups of items to various proposers. Awards will be made for items, or combinations of items, which result in the lowest aggregate price and/or best meet the City's requirements. The additional administrative costs associated with awarding more than one Contract will be considered in the determination.

E. PROTESTS. The City's protest procedures are codified in Chapter 2, Article 2, Division 30 of the San Diego Municipal Code (SDMC). These procedures provide unsuccessful proposers with the opportunity to challenge the City's determination on legal and factual grounds. The City will not consider or otherwise act upon an untimely protest.

F. SUBMITTALS REQUIRED UPON NOTICE TO PROCEED. The successful proposer is required to submit the following documents to P&C **within ten (10) business days** from the date on the Notice to Proceed letter:

1. Insurance Documents. Evidence of all required insurance, including all required endorsements, as specified in Article VII of the General Contract Terms and Provisions.

2. Taxpayer Identification Number. Internal Revenue Service (IRS) regulations require the City to have the correct name, address, and Taxpayer Identification Number (TIN) or Social Security Number (SSN) on file for businesses or persons who provide goods or services to the City. This information is necessary to complete Form 1099 at the end of each

tax year. To comply with IRS regulations, the City requires each Contractor to provide a Form W-9 prior to the award of a Contract.

3. Business Tax Certificate. Unless the City Treasurer determines a business is exempt, all businesses that contract with the City must have a current business tax certificate.

4. Reserved.

5. Reserved.

The City may find the proposer to be non-responsive and award the Contract to the next highest scoring responsible and responsive proposer if the apparent successful proposer fails to timely provide the required information or documents.

EXHIBIT B SCOPE OF WORK

A. REFERENCED TERMS AND ABBREVIATIONS.

The following terms and abbreviations in Exhibit B are used interchangeably and have the same meaning.

1. Average Whole Price is also referred to as AWP.
2. Bill Review is also referred to as BR.
3. By Report is also referred to as BYR.
4. Dispense as Written is also referred to as DAW.
5. Diagnosis Related Group is also referred to as DRG.
6. Drug Utilization Review is also referred to as DUR.
7. Electronic Data Interchange is also referred to as EDI.
8. Explanation of Review is also referred to as EOR.
9. Field Nurse Case Management is also referred to as FNCM.
10. First Report of Injury is also referred to as FROI.
11. Independent Bill Review is also referred to as IBR.
12. Medical Provider Network is also referred to as MPN.
13. Medically Unlikely Edits is also referred to as MUE.
14. No Relative Value Established is also referred to as NRVE.
15. Official Medical Fee Schedule is also referred to as OMFS.
16. Pretty Good Privacy is also referred to as PGP.
17. Pharmacy Benefit Management is also referred to as PBM.
18. Place of Service is also referred to as POS.
19. Preferred Provider Organization is also referred to as PPO.
20. Prior Authorizations is also referred to as PA.
21. Registered Nurse is also referred to as RN.
22. Request for Proposal is also referred to as RFP.
23. Subsequent Report of Injury is also referred to as SROI.
24. Third Party Biller is also referred to as TPB.
25. Utilization Review is also referred to as UR.
26. Workers' Compensation is also referred to as WC.
27. Workers' Compensation Program is also referred to as WCP.

B. INTRODUCTION.

The City of San Diego (City) is seeking comprehensive managed care services for the City's self-insured and self-administered Workers' Compensation (WC) Program (WCP), which must comply with California law.

C. BACKGROUND.

The City's Risk Management Department manages the City's WC liability. The Risk Management Department employs approximately 23 claim professionals and additional clerical staff to administer the benefits on approximately 5370 open WC files. The Department is dedicated to providing a high-level of customer service, the best medical care, and all appropriate indemnity benefits to injured employees through quality and cost-efficient claims management. The City has formed a

Medical Provider Network and works closely with the providers, specifically Sharp Rees-Stealy and Concentra Medical Groups, to provide outstanding medical services to the City's injured workforce.

The table below illustrates the budgeted number of City employees and the actual number of WC injuries by City department for fiscal year (FY) 2022 (i.e., the period from July 1, 2021 through June 30, 2022).

Department	No. of Budgeted Positions FY 2022	No. of WC Injuries FY 2022
Police Department	2634	1715
Fire Department	1354	1017
All Other Departments	7956	945
Total:	11,944	3677

Additional FY 2022 Information:

1. Number of new WC claims filed: 3834 *Includes Covid-19 claims.
2. Number of medical provider bills reviewed: 58,000
3. Number of Utilization Reviews: 1,879
4. Number of Field Nurse Case Management referrals: 161

D. OBJECTIVE.

The City intends to award a contract or contracts to qualified contractors (referred to in this Scope of Work as Proposer or Proposers), that represent the best overall value to the City while meeting or exceeding the specifications and requirements within this request for proposal (RFP). The City will determine contract awards by the services described in each section, specifically sections G1-G6 of this Scope of Work. Proposers are required to submit complete proposals for each section, in its entirety, for which they have an interest in providing the services described in the section.

There may be multiple awards to qualified contractors for the Core Requirement of Field Nurse Case Management (as described in section G5 of this Scope of Work), as may be in the best interests of the City.

E. SCOPE OF WORK.

The City is seeking the services of experienced, qualified WC Managed Care Services Providers, to provide the following scope of work as specified in the Core Requirements of this RFP, including Utilization Review Services, Bill Review Management Services, Preferred Provider Networks, Call-In Center Report and Intake, Pharmacy Benefit Management Services, and Field Nurse Case Management.

The following list of requirements are mandatory. The City will deem proposals that do not address and meet all of the mandatory requirements non-responsive. The following list is provided for the convenience of Proposers and is not exhaustive, meaning the following list does not set forth all reasons that a proposal may be deemed non-responsive.

1. Compliance with all California Labor Code requirements.
2. Prompt, accurate, and reliable services, particularly in the area of the Call-In Center Report and Intake - First Report of Injury as verified by references.
3. Utilization Review Services that involve initial review by a registered nurse dedicated to the City's account who has experience in California Utilization Review and longevity with the Proposer, as required by Exhibit B, Scope of Work, Section G, Core Requirements and Deliverables, paragraph 1, item 1.6.
4. Field Nurse Case Managers dedicated to the City's account who are experienced in handling California WC cases and have longevity with the Proposer, as required by Exhibit B, Scope of Work, Section G, Core Requirements and Deliverables, paragraph 5, item 5.1.
5. Preferred Provider Organizations that have extensive quality providers in the San Diego area and elsewhere, as required by Exhibit B, Scope of Work, Section G, Core Requirements and Deliverables, paragraph 3, items 3.3 and item 3.4.
6. References, as required by Section H, References.
7. Support the State mandated EDI transmission of WC medical bill payment records data and provide a transfer interface compatible with the current standards for the WCIS reporting, as required by Exhibit B, Scope of Work, Section G, Core Requirements and Deliverables, paragraph 2, item 2.30.
8. Support the State mandated e-billing regulations by ensuring 100% compliance with the requirements and providing the City with the means to comply with all the rules and requirements of the e-billing regulations, as required by Exhibit B, Scope of Work, Section G, Core Requirements and Deliverables, paragraph 2, items 2.1 and 2.2.
9. Import a minimum of five years of BR activity at no cost to the City.

D. IMPLEMENTATION/FULLY OPERATIONAL.

It is desirable that Proposers complete their implementation of the awarded Core Requirements as specified and are fully operational within 90 calendar days after the RFP is awarded. Proposers must submit a brief narrative that describes proposed methods and an overall strategic plan explaining how they will complete their implementation and stating how many calendar days it will take from date of award to be fully operational.

E. CITY'S CLAIMS MANAGEMENT SYSTEM.

The City's computerized WC claims management system is presently the Ventiv iVOS system.

F. PROPOSER'S SYSTEMS REQUIREMENTS.

The following Proposed systems requirements relate only to the Core Requirements for Bill Review, Pharmacy, and Call-In Center Report and Intake Services.

1. Proposer's computerized system must meet all applicable City technology standards outlined in Attachment A. Proposer must include the Technical Alignment Questionnaire with their submission. The Proposer's system must host the City's claim and vendor data and be able to utilize it in the Bill Review process.
2. Proposer must coordinate the testing of the final interface with the Risk Management Department. The City's Risk Management Department must approve and accept the final interface prior to implementation.
3. Proposer's systems must support bi-directional data transmissions via FTP.
4. Proposer's systems must use PGP encryption.
5. Proposer must implement, at no additional cost to the City, system upgrades and enhancements as required, including changes necessary to keep the Proposer's system in compliance with California law, and to maintain Proposer's system performance and efficiency.
6. Proposer must be able to meet the State-mandated EDI transmission of WC medical bill payment records data and provide a transfer interface compatible with the current standards for the WCIS reporting.
7. Proposer must use Information Technology (IT) best practices for database backup and storage, and data validation including numeric, alphabetic, date, and table reference values. Data including the bill image and EOR must be retained for the life of the contract.
8. Proposer must provide online access for City staff to access the bill and EOR images.
9. **Highly Desirable.** It is highly desirable that Proposer have experience interfacing with the Ventiv iVOS system. However, Proposer must be able to adjust to any change in the City's software systems.
10. **Highly Desirable.** It is highly desirable that Proposer have experience with FROI and SROI reporting.

G. CORE REQUIREMENTS AND DELIVERABLES.

1. Utilization Review (UR) Management Services.

- 1.1.1** Proposer must be URAC accredited, in ongoing compliance with all URAC Standards for WC Utilization Management, and actively applying all criteria to ensure reaccreditation.
- 1.1.2** UR Management Services (including Proposer's policies and procedures) must conform to and remain in compliance with all California WC laws, including the Department of Industrial Relations, Division of Workers Compensation Administrative Rules Utilization Review Standards, and any revisions and amendments to the laws and regulations during the term of this contract.
- 1.1.3** UR decisions must be communicated in a timely manner to the City's contracted Bill Review Services Provider.
- 1.2** Proposer must utilize registered nurses experienced in UR and knowledgeable with MTUS and ACOEM Guidelines for initial review of submitted UR requests.
- 1.3** UR nurses must have direct communication with physician reviewers for any treatment requests that require physician determination.
- 1.4** UR nurses being assigned to City cases must have a minimum of two years working for Proposer as a UR reviewer.
- 1.5** Within 24 hours of receiving a written request from either the Risk Management Department or a party to a WC case, , Proposer must provide the requesting party a copy of Proposer's current UR policies and procedures.
- 1.6** Proposer must use UR physicians who practice medicine in California and have an understanding of the California WC system, primarily the UR system, when reviewing medical treating requests for approval, modification, or denial, and for UR in areas of specialty care.
- 1.7** Proposer must use Board certified specialists of the same specialty for any spine, hips, or shoulders surgeries.
- 1.8** Proposer must conduct a peer review for all surgery requests recommended for non-certification.
- 1.9** Proposer must notify the City's Claims Representative by e-mail within MTUS stands for Medical Treatment 24 hours when a medical provider directly submits requests for UR certifications to Proposer.
- 1.10** The State of California periodically audits self-insured entities. Proposer must respond to any requests for logs or UR information needed for an audit and must either reimburse the City or pay the State directly for any

monetary penalty that the City and Proposer have determined to be Proposer's fault.

1.11 Submittal. Proposer must submit with its RFP a sample of its standard UR letter, which must contain all mandatory UR notification requirements, including certification, non-certification, modification, and request for more information. Proposer must comply with notices regarding the IMR process.

1.12 Reporting. Proposer must provide summary reports based upon the City's fiscal year (July through June) that include, at a minimum, the following information. Further, Proposer must submit with their proposal sample reports for all reports outlined in the subsections of section 1.14 below.

1.12.1 Quarterly and Annual Summary reports of the following UR categories:

1.12.1.1 Physical Therapy;

1.12.1.2 Pain Management;

1.12.1.3 Chiropractic;

1.12.1.4 Diagnostic Imaging;

1.12.1.5 Surgery;

1.12.1.6 Inpatient / Continued Stay;

1.12.1.7 Outpatient Care;

1.12.1.8 Pharmaceutical; and

1.12.1.8.1 Other. These summary reports must contain the following information for each category listed above:

1.12.1.9 Approved UR Reviews;

1.12.1.10 Denied UR Reviews;

1.12.1.11 Modified UR Reviews;

1.12.1.12 Peer Reviews;

1.12.1.12.1 Upheld Reviews; and

1.12.1.12.2 Overturned Reviews.

1.12.1.13 City Overturned Reviews; and

1.12.1.14 IMR Reviews.

1.12.1.14.1 Upheld Reviews; and

1.12.1.14.2 Overturned Reviews.

1.12.2 Total Dollar Savings Report: This report must state the number of reviews, UR savings, total UR Proposer fees, the net savings, and return on investment.

1.13 Proposer must bill for UR services by electronically transmitting UR invoices compatible to the City's iVOS system. Each bill must include a weekly electronic file that includes the UR and invoice data. Only one feed with the invoice data is required. This import must include the following information:

1.13.1 Claimant Name;

- 1.13.2 Claim Number;
 - 1.13.3 Service Date;
 - 1.13.4 Service Performed;
 - 1.13.5 Invoice Number/UR Review Number;
 - 1.13.6 Invoice Date; and
 - 1.13.7 Invoice Total.
- 1.14 Proposer must mail UR determination letters to the City's Claims Representative at the same time as mailing the determination letters to the providers and employees. The information contained in the determination letters and e-mail must comply with all California Labor Code provisions and applicable regulations.
- 1.15 **Highly Desirable.** It is highly desirable that Proposer have experience working with self-insured public agencies.
- 1.16 **Highly Desirable.** It is highly desirable that Proposer has an office located in California.
- 1.17 **Highly Desirable.** It is highly desirable that all RFAs (requiring physician review and not requiring physician review) and care coordination involved with UR handled by one entity and be responsible for audit responses to the State of California. The City requests that the Proposer handle the response, housing, and logging of all RFAs sent to the City for review.

2. **Bill Review Services.**

- 2.1 BR Services, including electronic bill review services, must be performed in accordance with California WC laws and regulations, including Title 8 of California Code of Regulations section 9702.
- 2.2 Proposers must be able to receive e-bills from providers in compliance with California Code of Regulations section 9792.5.1.
- 2.3 Bill reviewers must be certified pursuant to the California Insurance Code and California Code of Regulations.
- 2.4 Routine paper bills must be processed within five business days of receipt. Complex bills, including hospital desk audits and prompt pay negotiation bills, must be processed within ten business days of receipt. E-bills must be processed within five business days of electronic receipt.
- 2.5 The City approves or denies payment of a claim only after bill review by Proposer. The proposer's initial bill review must have an overall accuracy rate of at least 95%. The accuracy rate is based on the number of reconsiderations filed by medical providers where additional allowances were granted as a result of Proposer's error.

2.6 Reporting. Proposer must provide a quarterly report listing the number of reconsiderations that resulted in additional allowance due to Proposer's error.

2.7 Explanation of Review documents must be electronically submitted to the City's iVOS system at no additional cost to the City. Hard copies, or an electronic copy of EOR documents (in the case of e-billing), must be served to the medical provider within 24 hours of the electronic transfer.

2.8 Proposers must provide duplicate billing detection. Proposer must not send duplicate bills on to the City's iVOS system for payment.

2.9 Proposer must comprehensively apply all applicable fee schedule adjustments and medical treatment reimbursement rules for all applicable jurisdictions, in order to provide maximum appropriate reductions to medical payments.

2.10 Proposer must operate in compliance with a comprehensive, high-level BR Service protocol specified and updated from time to time by the City, which generates optimal appropriate BR Service medical savings and includes comprehensive application of the following review practices.

2.10.1 Level of Service. Right-coding of all billed procedure codes specified by the City, based on review of supporting medical documentation.

2.10.2 Multiple Procedure. Multiple procedure rules/endoscopy rules.

2.10.3 By Report (BYR)/No Relative Value Established (NRE). BR and NREV codes reviewed against documentation in reports and right-coded or cross-walked as necessary or paid at a reasonable rate.

2.10.4 Implants. Implants are confirmed per documentation in reports and jurisdiction-specific rules enforced (for example, implants must be included in DRG and outpatient procedure allowances for California).

2.10.5 DRG. Confirm that the level of DRG is correct per the documentation provided for diagnosis and procedures performed.

2.10.6 Bundling/Unbundling. Correction of codes billed separately that should be bundled.

2.10.7 National Correct Coding Initiative (NCCI) Edits. NCCI edits at times need to be identified and applied through manual review.

2.10.8 Medically Unlikely Edits (MUE). MUE at times need to be identified and applied through manual review.

2.10.9 Time codes. For codes based on time, verify time is documented in report and supported for payment.

2.10.10 Units. Verify units against documentation provided (codes with unit values and codes that include up to # of units within the procedure code).

2.10.11 Place of Service (POS). Code payment based on correct POS at times needs to be identified and applied through manual review.

2.10.12 Provider Type. Codes are paid for by the correct provider type.

- 2.10.13 Modifiers.** Correct modifiers added, per documentation in report.
- 2.10.14** Diagnosis codes support procedure codes billed; reports reviewed to verify.
- 2.10.15 Relatedness Review.** Identification and rejection of medical services unrelated to compensable injury and diagnosis.
- 2.11** Proposer must commit to servicing the City's account through a team including its most skilled senior bill review analysts.
- 2.12** Proposer must provide names and titles of principal staff that will be assigned to ongoing BR Management operations on the City's account. For each person, confirm that person will be permanently designated to the City's account. For each respective staff member, provide their primary office location, detailed professional experience, and related account experience. Provide the principal staff members with all the following account responsibilities:
 - 2.12.1** BR Operational Management
 - 2.12.2** BR Analysts
- 2.13** Proposer must specify which of its offices will perform the BR Services for the City's account, as well as the composition of Proposer's BR Service staff at this office (titles and number of associates per position).
- 2.14** Proposer must quantify in its proposal the average monthly bill volume processed by the office that will serve the City's account. Proposer must provide a list of the five largest accounts served by this office, with corresponding average monthly bill volume, and confirm whether the Proposer will need to hire additional staff at this location to serve the City's account, and if so the number of additional personnel needed for each position.
- 2.15** Proposer must identify its medical bill review software, specifying the software provider, if leased, and how long Proposer has leased the bill review software from this provider. Proposer must indicate how long its current software has been actively employed. Proposer must specify whether it is planning to move to a new software platform, and if so when this transition will occur. The Proposer must state where the data center is located and if the data center services are outsourced.
- 2.16** Proposer must scan all medical provider bills and reports as part of the payment process and be capable of exporting this scanned information to the City by providing a scanned image file and Meta Data index file compatible with the City's iVOS system.
- 2.17** Treatment Code and Description (ICD-10 Codes) must be collected by claim number.
- 2.18** Proposer must reimburse the City's Risk Management Department, within 30 calendar days of the determination of Proposer's fault, for the

California Labor Code's required penalty plus interest payment when the City determines that the medical provider payment was late due to the fault of the Proposer. The City will determine fault on a case-by-case basis.

2.19 Proposer must provide a process to receive bills with special instructions for handling, including "review only" bills.

2.20 When the medical provider requests that Proposer reconsider the first bill review, Proposer must electronically transmit an additional medical provider payment along with the EOR and an additional bill review fee, if appropriate, to the City's iVOS system.

2.21 Proposer (and its subcontractors, if any) must provide expert testimony to defend billing decisions that are brought before the Workers' Compensation Appeals Board (WCAB) at no additional cost to the City.

2.22 Reporting. Proposer must provide the monthly and quarterly fiscal year-to-date reports listed below and meet on a quarterly basis with the Risk Management Department to discuss the fiscal year-to-date reports and other issues.

2.22.1.1 A monthly report showing performance of the BR Services system, which must include the following information:

- 2.22.1.1** Type of bill, as determined by the Risk Management Department (*e.g.*, medical, hospital, chiropractic, or other);
- 2.22.1.2** Number of bills reviewed and sorted by type of bill;
- 2.22.1.3** Number of bills reviewed that hit the PPO Networks sorted by type of bill;
- 2.22.1.4** Total medical provider charges in dollars sorted by type of bill;
- 2.22.1.5** Total BR reduction amount in dollars sorted by type of bill;
- 2.22.1.6** Total PPO Networks reduction in dollars sorted by type of bill;
- 2.22.1.7** Other reductions and charges sorted by type of bill;
- 2.22.1.8** Total medical provider reductions, including sum of BR and PPO Network and other reductions, in dollars sorted by type of bill;
- 2.22.1.9** Total medical provider allowance in dollars, including total medical provider charges less total medical provider reductions, sorted by type of bill;
- 2.22.1.10** Total medical provider reductions as a percentage, defined by, total medical provider allowance divided by total medical provider charges, sorted by type of bill; medical provider charges, sorted by type of bill;
- 2.22.1.11** Total BR fees in dollars sorted by type of bill;
- 2.22.1.12** Total PPO Networks fees in dollars sorted by type of bill;
- 2.22.1.13** Other fees in dollars sorted by type of bill;
- 2.22.1.14** Total fees, including the sum of BR, PPO Network, and other fees, sorted by type of bill;

- 2.22.1.15 Total net medical provider reduction in dollars, defined by, the total medical provider allowance with duplicate BR reductions, less fees, sorted by type of bill;
 - 2.22.1.16 Net medical provider reduction as a percentage, defined by the total medical provider allowance divided by net medical provider reduction, sorted by type of bill;
 - 2.22.1.17 Total duplicate BR reductions by type;
 - 2.22.1.18 Net medical provider reduction in dollars, excluding duplicate BR reductions;
 - 2.22.1.19 Net medical provider reduction as a percentage, excluding duplicate BR reductions;
 - 2.22.1.20 Number of bills electronically exported or mailed within five business days or less;
 - 2.22.1.21 Number of bills electronically exported or mailed within six, seven, eight, nine, and ten or more business days of receipt, including a reason stating why each bill was not exported or mailed within five business days of receipt by Proposer;
 - 2.22.1.22 Number of medical provider reconsiderations;
 - 2.22.1.23 Number of medical provider reconsiderations found to be the result of Proposer error; and
 - 2.22.1.24 Number of duplicate BRs.
- 2.22.2 A monthly report identifying cost drivers derived from ICD-10 Codes.
- 2.22.3 A monthly report identifying medical bills where the City Claims Representative overrides the UR non-certification.
- 2.22.4 A monthly report showing the number of medical bills that receive a Preferred Provider Organization network reduction and the percentage of PPO network reduction cases, defined as the number of PPO network hits divided by total medical provider bills received.
- 2.22.5 A monthly report showing the number of medical bills and hospital bills that are part of the City's Medical Provider Network.
- 2.22.6 A quarterly report tracking the following cost categories:
- 2.22.6.1 Total medical provider charges;
 - 2.22.6.2 Total BR reductions;
 - 2.22.6.3 Total PPO Network reductions;
 - 2.22.6.4 Total other reductions, including City's MPN reductions;
 - 2.22.6.5 Total BR fees;
 - 2.22.6.6 Total PPO Network fees;
 - 2.22.6.7 Total other fees;
 - 2.22.6.8 Total duplicate medical provider charges;
 - 2.22.6.9 Total medical provider bill count; and
 - 2.22.6.10 Total In-PPO Network bills.

The cost categories must be sorted by the following medical cost identifiers:

- 2.22.6.11 The City's industrial medical contractors;
- 2.22.6.12 Hospital; and
- 2.22.6.13 All other medical costs.

2.22.7 **Submittal.** Proposer must submit with their RFP samples of all standard BR Services system reports.

2.22.8 Proposer must explain their ad hoc reporting capabilities.

2.22.9 Proposers must attach a batch number or other identifying code to each payment transmitted to the City in a format compatible with the iVOS system. The Proposer's online system must support search queries by batch number.

2.23 Proposer must bill the City for BR Services by electronically transmitting all necessary invoice data (i.e., Proposer's fees) in a file format compatible with the City's iVOS system.

2.24 Proposer must provide a daily file for the Explanation of Review. This import is required for the creation of invoices with the City's iVOS system. Data elements in the City's iVOS system include the following elements:

- 2.24.1 Vendor number;
- 2.24.2 Case number;
- 2.24.3 Review Date;
- 2.24.4 Paid Date;
- 2.24.5 File Number;
- 2.24.6 Reviewer;
- 2.24.7 Carrier Received Date;
- 2.24.8 Social Security Number;
- 2.24.9 Date of Injury;
- 2.24.10 Claimant Name;
- 2.24.11 Patient Account;
- 2.24.12 Provider Name;
- 2.24.13 Provider Address;
- 2.24.14 Provider Tax ID;
- 2.24.15 Dates of Service;
- 2.24.16 Treatment Code/Description;
- 2.24.17 Service Description;
- 2.24.18 Units;
- 2.24.19 Charge;
- 2.24.20 BR Reduction;
- 2.24.21 PPO Reduction;
- 2.24.22 UM Reduction;
- 2.24.23 Allowance;

- 2.24.24 Explanation Code;
- 2.24.25 ICD10 Codes; and
- 2.24.26 CPT Codes.

2.25 Proposer must be able to receive and maintain a daily file of new and updated claims information from the City's IVOS system to assist in BR, which must include the claim number, medical provider number, and date of injury.

2.26 Proposer must be able to receive and maintain a daily vendor file of new and updated payment medical provider information to assist in BR, which must include the medical provider's ID, name, address, city, state, zip code, and telephone number.

2.27 Medical Provider Network: The City has developed a State-approved MPN, which provides medical treatment for employees who have sustained a work-related injury or illness, at an Official Medical Fee Schedule (OMFS). Proposer must be able to identify MPN providers and capture data for reporting on costs and savings related to the MPN.

2.28 Bill reviewers must be accessible, at a minimum, by toll free phone number or by e-mail, during regular business hours PST 8:00 am to 5:00 pm, excluding City holidays as specified on the City's internet site www.sandiego.gov.

2.29 Proposer must be able to comply with the State-mandated EDI transmission of WC medical bill payment records data and provide a transfer interface compatible with the current standards for the WCIS reporting.

2.30 If the original BR reduction is overturned, either partially or entirely, due to a reconsideration from a medical provider or as a result of an IBR decision, Proposer must reimburse the City as follows:

2.30.1 **Partially Overturned.** Proposer must reimburse the City the difference between the original BR review fee or Network fee and the medical BR fee or Network fee established by the medical provider reconsideration or IBR decision.

2.30.2 **Entirely Overturned.** If, after the original BR, the medical bill is paid in its entirety based upon a medical provider reconsideration or IBR decision, Proposer must reimburse the City the entire medical BR fee or Network fee, as determined.

2.31 Proposer must commit to reimbursing the City in full for all medical provider overpayments resulting from incorrect payment recommendations Proposer or any of Proposer's subcontractors' issue, if, after 90 days, the overpayment has not been recaptured from the provider and reimbursed to the City.

3. Network Services.

3.1 PPO Networks must comply with California Labor Code section 4609, as amended in the future, and applicable regulations.

3.2 Proposer must bill the City for PPO Network Services by electronically transmitting all necessary invoice data (i.e., Proposer's fees) to the City's iVOS system.

3.3 As most of the City's WC cases are in the County of San Diego, Proposer must provide at least one PPO Network with primary coverage in San Diego County, having approximately 6,500 physician locations, 250 orthopedic treatment facility locations, 20 ambulatory surgery centers, 10 hospitals, and multiple durable equipment vendors. Additionally, Proposer must provide one PPO Network with national coverage. This may be the same PPO Network as proposed for having primary coverage in San Diego County.

3.4 Submittal. Proposer must submit with their RFP the name of each PPO Network offered, including the coverage area and a directory of facilities and physicians located in San Diego County. Physicians must be listed by specialty.

3.5 Proposer must stack PPO Networks, if more than one PPO Network is offered, and provide the order in which the PPO Networks will be stacked.

3.6 PPO Networks offered by Proposer must include the following selection criteria for hospitals: malpractice insurance, State of California Licensing, state and federal survey reports, Joint Commission on Accreditation of Healthcare (JCAHO) Score and Report, and Accreditation Association of Ambulatory Healthcare (AAAHC) certification. Proposer must provide any additional hospital selection criteria.

3.7 PPO Networks offered by Proposer must include the following selection criteria for physicians:

- 3.7.1** Board certification;
- 3.7.2** Valid state license;
- 3.7.3** Active DEA registration (if applicable);
- 3.7.4** Staff privileges at one or more network hospitals;
- 3.7.5** Professional malpractice liability coverage;
- 3.7.6** No suspensions, limitations, or revocations of hospital privileges;
- 3.7.7** No sanctions or disciplinary actions as a Medicare or other government provider;
- 3.7.8** No state license investigations, restrictions, suspensions, or revocations;
- 3.7.9** No DEA license investigations, restrictions, suspensions, or revocations;
- 3.7.10** No professional liability insurance cancellations;
- 3.7.11** No chronic illness or physical defect that impairs practice; and
- 3.7.12** No mental illness or chemical dependency.

Submittal. Proposer must submit with their proposal any additional physician selection criteria.

3.8 Proposer must identify out-of-area and out-of-network medical provider bills and negotiate a discount. "Out of area" means any medical provider who practices outside of the San Diego County area. Proposer must state their guaranteed discount.

3.9 Desirable. It is desirable for Proposer to guarantee a per bill savings of 10%-15%.

4. Call-In Center Report and Intake – First Report of Injury.

4.1 The Injury Reporting Hotline electronically transmits all new injury data to the City's iVOS system.

Highly Desirable. Proposer must allow for online reporting of Employer's First Report of Injury or illness via a web-based portal as an addition to a telephonic reporting system.

4.2 Telephonic Reporting System (TRS) must be available 24 hours a day, 7 days a week, including holidays.

4.3 Trained technicians must accurately collect the following seven data items when a first report of injury is received by the TRS:

- 4.3.1** Injured employee's name;
- 4.3.2** Injured employee's Social Security Number or Employee ID number;
- 4.3.3** Injured employee's City Department and Division;
- 4.3.4** Description of injury;
- 4.3.5** Date of injury;
- 4.3.6** Name of injured employee's supervisor; and
- 4.3.7** Telephone number of injured employee's supervisor.

4.4 Error rate of TRS must not exceed 0.005 percent of the monthly data intake.

4.4.1 Calculation of Monthly Error Rate:

(Number of data items collected by Proposer per claim) x (Number of new claims submitted to Proposer for the month) x (Error Rate) = Number of errors allowed per month

Example calculation based on 166 new claims in a month:

$$(7) \times (166) \times (.005) = 5.8$$

- 4.5 TRS must provide a multiple rollover capacity equipped with an Automatic Call Distribution (ACD).
- 4.6 Calls must be answered within 4-7 seconds.
- 4.7 Calls must be answered live by a trained technician, and calls must not be transferred to any phone queues or to phone mail or recordings.
- 4.8 Trained Call-In Center technicians must ask callers specific injury assessment questions using a script provided by the City's Risk Management Department to capture critical information necessary to complete the State of California required injury report form. Call-In Center technicians must not deviate from the script and must not determine compensability or provide advice or counsel. Callers with questions regarding these issues must be directed to call the City's Workers' Compensation Division.
- 4.9 Proposer must have backup and contingency plans in order to maintain uninterrupted TRS service.
- 4.10 Proposer must only bill for one Call-In Center fee per claim transferred to the City's iVOS system. Proposer must not bill for follow-up calls with additional injury information or other matters unrelated to an industrial injury.
- 4.11 Call-In Center fees must be electronically submitted to the City's iVOS system at no additional cost to the City.
- 4.12 **Reporting.** Proposer must provide a Billing Detail Report that includes Proposer's Report Case Number, date and time reported, date of loss, and claimant name.
- 4.13 Proposer must provide a daily file of new incident data from the Call-In Center to the City's iVOS system. This import is required for the creation of new claims within the City's iVOS system. This data includes the following:
- 4.13.1 Social Security Number or employee ID number;
 - 4.13.2 Employee First Name;
 - 4.13.3 Employee Middle Name;
 - 4.13.4 Employee Last Name;
 - 4.13.5 Supervisor Notified Date;
 - 4.13.6 Date of Injury;
 - 4.13.7 Nature of Injury Code;
 - 4.13.8 Body Part Code;
 - 4.13.9 Cause of Injury;
 - 4.13.10 Injury Description;
 - 4.13.11 Death Date;
 - 4.13.12 Supervisor First Name;
 - 4.13.13 Supervisor Last Name;

- 4.13.14 Incident Address;
- 4.13.15 Incident City;
- 4.13.16 Incident State;
- 4.13.17 Incident Zip Code;
- 4.13.18 Reported By Name;
- 4.13.19 Reported Date; and
- 4.13.20 Report Taken By.

4.14 Desirable.

It is desirable for Proposer to have experience working with at least one California public agency, such as a state, county, or municipal public agency, in the last three years. Proposer must explain their experience working with public agencies.

5. Field Nurse Case Management Services.

- 5.1** Proposer must maintain during the term of the contract a minimum of three FNCM nurses available to be dedicated to the City's account. These FNCM nurses must each have a minimum of two years of California workers' compensation experience within the last two years and must have been employed by, or if an independent contractor, contracted with, Proposer for at least two consecutive years.

5.1.1. Submittal. Proposer must submit with their proposal a list of the FNCM nurses who will be available to the City's Risk Management Department and provide their length of service with Proposer, their number of years of WC experience, a description of their experience with WC cases, and their educational background.

5.1.2. Highly Desirable. It is highly desirable for FNCM nurses to have the following experience: (a) a minimum of two recent years of experience handling California WC claims for public agencies that include injured public safety members and (b) experience working with presumptive injuries for safety members, including heart disease, cancer, and post-traumatic stress disorder (PTSD).

- 5.2** Proposer must notify the City within 48 hours of any departing FNCM assigned to the City account. The City may approve or deny any new recommended FNCM for the City's account based upon the criteria and requirements listed in 5.1, 5.2, and 5.3 of this section.

- 5.3** FNCM nurses must maintain an RN certification.

5.3.1 Desirable. It is desirable that FNCM nurses maintain certifications in Certified Case Manager (CCM), Certified Rehabilitation Nurse (CRRN) or Certified Managed Care Nurse (CMCN).

- 5.4 Caseloads must not exceed 25 cases per FNCM nurse including City cases. Task assignments may be excluded from the overall case count, at the discretion of Proposer.
- 5.5 Cases must be assigned to a FNCM nurse within 24 hours of notification by the City's Claims Representative, and Proposer must immediately notify the City's Claims Representative of the name and contact information of the FNCM nurse assigned to the case.
- 5.6 **Highly Desirable.** It is highly desirable that Proposer have a contact number available for after business hours in the event of a catastrophic incident or after hour needs.
- 5.7 FNCM nurses must contact the City's Claims Representative to discuss the expectations and needs of a case within two business days of the assignment.
- 5.8 FNCM nurses must complete a two-point contact, as example the injured worker or applicant attorney if they are represented and the physician, within two business days of assignment of the case. At a minimum, the two-point contact must include telephone contact to set up an in-person contact with the employee or their attorney and the physician when necessary. Certain catastrophic cases will require in-person contact within two business days or sooner.
- 5.9 FNCM nurses must submit to the City's Claims Representative a report of initial contact, initial evaluation, or initial task within 14 calendar days of assignment of a case. Case updates must be submitted to the City's Claims Representative in 30 calendar day increments following the initial contact, evaluation, or task, or earlier if requested by the City's Claims Representative.
- 5.10 FNCM nurses must notify the City's Claims Representative of initial evaluation outcome and must obtain approval to proceed with appropriate level of clinical intervention, such as case closure, ongoing FNCM, or task assignments that may be warranted.
- 5.11 FNCM nurses must verbally discuss the status of each case and schedule to be agreed upon with the City's Claims Representative, either by phone or in person based on the needs of the case.
- 5.12 FNCM nurses must direct treatment to the City's MPN or PPO Networks at every possible opportunity.
- 5.13 FNCM nurses must aggressively pursue medical treatment and injured worker's Return to Work release.
- 5.14 Proposer must update City's Claim Representative on task assignments once the charges for a case reach \$1,800.
- 5.15 When a FNCM has left Proposer's employment, Proposer must not assign a replacement nurse without the prior approval from the City.

5.16 Proposer must have the ability to electronically transmit invoices to the City in a format compatible with the City's iVOS system. An image attachment to the invoice must include the date the service was rendered, a description of the service rendered, the number of hours, and the amount billed to date. Proposer must attach copies of the appropriate initial, follow-up, and closure reports to the invoice. Additionally, Proposer's invoice must include identifying the injured employee's name, date of injury, nurse case manager's name, the City's file number, and the City Claim Representative's name.

5.17 Reporting of Closed Cases. Proposer must provide a quarterly FNCM report listing all cases closed during the quarter. The report must provide the name of the employee, City claim number, date of injury, type of nurse task, the date referred, closure date, reason for closure, number of days between the date of injury and referred date, length of time open, total billed and hard dollar savings. The report must be sorted by City department and or division and then by employee's last name.

5.18 Reporting of Open Cases. Proposer must provide a quarterly FNCM report listing all open cases as of the last day in the quarter. The report must provide the name of the employee, City claim number, Proposer's case number, type of nurse task, date of injury, date referred, number of days between date of injury and referred date, total dollar amount billed during quarter and total dollar amount bill since referral date. The report must be sorted by City department and or division and then by employee's last name.

5.19 Reporting of New Cases. Proposer must provide a quarterly FNCM report listing all new cases referred by the City during the quarter. The report must provide the number of new referrals during the quarter and the number of those new referrals that were closed during the quarter. The report must be sorted by City Department and or Division.

5.20 Submittal Reporting. Proposer must submit with their RFP a sample of each of the following three reports: Initial, Follow-up, and Closure.

Reports submitted must be substantive in the current case status to include the actions taken by the FNCM nurse and include recommendation for further action. The reports submitted must not be a substantive reiteration of medical reports that have already been received by the City's Risk Management Department.

6. Pharmacy Benefit Management (PBM).

The City of San Diego receives approximately 15,000 prescription bills per year (based on FY 2022 data) with associated costs of \$2,973,948 (based on FY 2022 data). The PBM must:

6.1 Provide compliant, cost effective and accurate prescription dispensing covering all medication costs for accepted claims for the City's injured employees.

- 6.2 Have direct relationships with major retail pharmacy chains and independents.
- 6.3 Ensure there is no out of pocket expense for the City's injured employees who have accepted WC claims.
- 6.4 Provide a Customer Help Desk to respond to questions by injured workers, pharmacies, and City Claim Representatives during regular business hours PST 8:00 am to 5:00 pm.
- 6.5 Submit with their RFP a list of all pharmacies offered under the PBM program.
- 6.6 Provide customized reports as requested by the City, at no additional cost.
- 6.7 Specific to high-risk claims (and in particular high-risk opioid use), provide a report of red flag medication usage by a claim. Proposer must concisely describe the standard metrics Proposer uses to identify red flag claims and provide a sample of this report. Proposer must list the value-added techniques Proposer offers to address red flag claims.
- 6.8 Provide 24/7 call center availability/outreach for prior authorizations). Proposer must specify the shortest timeframe it can support for escalation of PA requests from examiners to supervisors.
- 6.9 Import Data within drug utilization review and point-of-service edits and clinical management practices, apply the City's full prescription history data, at no cost to the City.
- 6.10 As directed by the City, prospectively identify opportunities for step therapy and communicate to the City any recommendations.
- 6.11 Comprehensively enforce all provisions of the California state formulary for Workers' Compensation prescriptions, including providing pharmaceutical fulfillment, communication to stakeholders, prior authorization and prescription denials or modifications in full compliance with state requirements, and customize formulary application as directed by the City at a drug and injury-specific level (*i.e.*, the set of drugs and injuries allowing automatic approval, and the set of drugs and injuries requiring PA,UR, or both). Concisely describe the key operational elements required to implement a PBM program in compliance with the California formulary, and how you would address these program components for the City. Identify any of the above aspects of formulary application that are not currently supported by your PBM software system.
- 6.12 Proposer must use the following definitions:
 - 6.12.1 "Brand Drug" or "Brand" means drugs coded as "M" or "N" in the MediSpan Master Drug Database's Multi Source Code field, or drugs coded as "O" in the MediSpan Master Drug Database's Multi Source Code field when a corresponding prescription is not filled with a DAW

code of 3,4,5,6, or 9. In the event MediSpan changes its Multi Source Codes with respect to the above, Proper must notify the city within ten business days of being informed of any changes, and the definition of "Brand Drug" and "Brand" may only be modified by mutual written agreement of Proposer and the City.

6.12.2 "Generic Drug" or "Generic" means drugs coded as "Y" in the MediSpan Master Drug Database's Multi Source Code field, drugs coded as "O" in the MediSpan Master Drug Database's Multi Source Code field when a corresponding prescription is filled with no DAW code or a DAW code of 3,4,5,6, or 9, and drugs coded as "G" in MediSpan's Master Drug Database's Brand/Generic field regardless of Multi Source Code. In the event MediSpan changes its Multi-Source Codes with respect to the above, Vendor must notify the City within ten business days of being informed of such change(s), and the definition of "Generic Drug" and "Generic" may only be modified by mutual written agreement of Proposer and the City.

6.12.3 DAW is the series of single digit codes numbered 1-9 marked on prescriptions by prescribing physicians, which represent additional information, specific instructions, or both, regarding that prescription.

- 6.13** Specify what arrangements or practices PBM employs with third party billers, whereby TPB activity is recaptured in-network for current and/or future billings.
- 6.14** Specify the methods employed to maximize network penetration, providing clear numeric results for your total California book-of-business impact achieved through these methods.
- 6.15** Specify the network processor Proposer employs.
- 6.16** Provide a concise list of all clinical management programs Proposer offers, inclusive under drugs costs billed by the PBM, as well as a list of any added-cost clinical services provided and the proposed fee for each service. Proposer must only bill additional fees for in-depth prescription history reviews and peer reviews.

H. AUDIT FOR OVERPAYMENTS AND UNPAID BILLS. This section applies to Proposer's Bill Review, Utilization Review, Field Nurse Case Management, Pharmacy Benefit Management and Call-In- Center report and intake services charges.

- 1.** At least every 60 calendar days, Proposer must audit the accounts payable system to identify duplicate payments made by the City and duplicate invoices covering the same service dates made by the Proposer or Subcontractor.

2. Reimbursements to the City must be performed within 30 calendar days of the audit and include the invoice number, invoice type, service dates, and the dollar amount of the reimbursement. Reimbursements must be made electronically to the City's iVOS system.

3. The 60-day audit must also include the identification of unpaid charges due by the City; requests must include dates of service and claim number. Requests for payment from the City must be within 30 calendar days of completion of the audit; failure to comply will result in the Proposer's or Subcontractor's waiver of any outstanding unpaid charges.

I. **TRAINING.** Proposer must provide training to the City's technical staff for any changes in legislation that result in a change of process for managed care. Training must also be provided to City of San Diego staff on navigating any software systems utilized by the provider that will be accessed by City staff. Training must be conducted on site at City facilities at no charge to the City.

J. **COOPERATIVE WORK ENVIRONMENT.** Proposer must work closely with Risk Management and other City staff; daily contact may be necessary during the performance of some of the Core Requirements but is not typical. Proposer is required to foster a cooperative and responsive work environment with the Risk Management Department and any other City staff.

K. **ONGOING COORDINATION/STATUS MEETINGS.** While much of the work will be conducted with the City by telephone and e-mail, Proposer must meet in person at the City's Risk Management Department with the Technical Representative or designee, quarterly, at no additional cost to the City.

L. **TRANSPORTATION.** Proposer must provide all required transportation and travel, including any related fees and charges, at no additional cost to the City (including mileage and parking fees, even when parking on City property).

M. **CUSTOMER SERVICE.** All levels of Proposer's personnel must respond to all telephone and e-mail inquiries by the City's Risk Management Department and medical providers within 24 hours.

N. **COOPERATION AND TRANSITION.** At the end of this contract, Proposer must cooperate with the City and the incumbent contractor, to accomplish a smooth phase-out and transition of responsibility, including transferring of historical data maintained by Proposer.

O. **QUALIFICATIONS AND EXPERIENCE.** The following experience, qualifications, and skills are requirements of this FRP.

1. Proposer must provide a company or corporate organizational chart and staffing profile that includes subcontractors, if applicable.

2. Proposer must provide resumes of key personnel, including background, knowledge, and experience dealing with similar projects and years of tenure for key personnel who will be assigned and dedicated to the City's account. Years of experience dealing with California Workers' Compensation insurers, California self-administered or self-insured employers, and California public agencies must be included. Key personnel must be dedicated to the City's account and not be substituted or replaced during the term of the contract without the City's prior written approval.

3. Proposer must provide the names and contact information, including e-mail addresses, of the key personnel assigned to the City's account.

4. Proposer must assign a highly motivated, senior-level Account Manager with a technical background and a proven track record of ensuring the successful implementation and ongoing performance to the City's account. Account Manager must have prior experience in accounts of similar type, size, and scope, and the ability to work independently with people from all organizational levels across multiple agencies, as well as external vendors. The Account Manager must have a minimum of three out of the last five years of experience handling accounts of similar size and scope that provide services regarding California Workers' Compensation claims. The City has the right to request a change in the Account Manager, at any time, if unsatisfied.

5. Proposer must assign a senior-level Bill Review contact who is knowledgeable in BR, including system issues.

6. Proposer must assign to the City's account a senior-level information technology point of contact available to meet contractual requirements and timeframes.

7. Proposer must clearly define what responsibilities the Account Manager and key personnel will be charged with relative to the City's account. The Account Manager and all key personnel will work as a coordinated team to handle the City's account.

8. Account Manager and key personnel must be accessible, at a minimum, by e-mail and local telephone numbers with an area code 619, 858, or 760 or a toll free number, during regular business hours PST 8:00 am and 5:00 pm, excluding City holidays as specified on the City's internet site www.sandiego.gov.

P. REFERENCES.

1. Proposers must provide three references to demonstrate successful performance for work of similar size and scope as specified in this contract during the past three years. References should include at least one client that is a self-insured and self-administered government agency. References must be provided in the Contractor Standards Pledge of Compliance form.
2. The City will rely on references as part of the evaluation process. The City reserves the right to take any or all of the following actions: to reject a proposal based on an unsatisfactory reference, to contact any person or persons associated with the reference, to request additional references, to contact organizations known to have used in the past or currently using the services supplied by Proposer, and to contact independent consulting firms for additional information about Proposer.
3. **Highly Desirable.** It is highly desirable that references for self-insured agencies be independent of any TPA services connected with Proposer.

Q. TECHNICAL REPRESENTATIVE. The Technical Representative for this Contract is identified in the notice of award and is responsible for overseeing and monitoring this Contract.

R. POST AWARD KICK-OFF MEETING. Proposer or Proposers receiving award under this solicitation are required to attend a post award kick-off meeting within 30 thirty calendar days after award of contract to be scheduled by the Technical Representative or designee.

The Technical Representative or designee will communicate the date, time, location, and agenda for this meeting to Proposer.

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6. **Pharmacy Benefit Management Program.** Proposer must provide with their submittal a breakdown of all pricing associated with their PBM Program. Proposer may attach additional pages, as needed. Proposer's pricing must reflect either "traditional" pricing (i.e., pricing based off discounts below AWP, separate for brand or generic and retail/home delivery prescriptions) or "passthrough" pricing (i.e. pricing based of a flat fee markup to the cost paid by PBM to pharmacy).

Pricing must be the lesser of California Fee Schedule or AWP less percentage discount for brand and generic.

*Calculation: "Price Extension for Initial Contract Period Based on AWP" = ("Estimated Annual Quantity of Bills" X "Dispensing Fee per Prescription") + ((("Pricing Based on AWP" - ("Pricing Based on AWP" X "Percentage Discount Off AWP per Prescription"))

**Calculation: "Price Extension for 'X' Renewal Option Year Based on AWP" = ("Estimated Annual Quantity of Bills" X "Dispensing Fee per Prescription") + ((("Pricing Based on AWP" - ("Pricing Based on AWP" X "Percentage Discount Off AWP per Prescription"))

6.1 Initial Contract Period (Years 1 – 3 of Contract).

Item No.	Estimated Annual Quantity of Bills	Pricing Based on AWP	Description	Dispensing Fee per Prescription	Percentage Discount Off AWP per Prescription	*Price Extension for Initial Contract Period Based on AWP (Years 1 – 3 of Contract)
1.	18,000	\$2,300,000	Point of Sale: Participating Provider - Brand Drug	7.25 \$	18 %	2,016,500 \$ / Year
2.	18,000	\$2,300,000	Point of Sale: Participating Provider - Generic Drug	7.25 \$	63 %	981,500 \$ / Year
3.	2,000	\$400,000	Mail Order/Home Delivery: Brand Drug	0.00 \$	19 %	324,000 \$ / Year
4.	2,000	\$400,000	Mail Order/Home Delivery: Generic Drug	0.00 \$	70 %	120,000 \$ / Year
Total Initial Contract Period (S.6.1):						3,442,000 \$ / Year

6.2 First Renewal Option Year (Year 4 of Contract).

Item No.	Estimated Annual Quantity of Bills	Pricing Based on AWP	Description	Dispensing Fee per Prescription	Percentage Discount Off AWP per Prescription	**Price Extension for 1 st Renewal Option Year Period Based on AWP (Year 4 of Contract)
1.	18,000	\$2,300,000	Point of Sale: Participating Provider - Brand Drug	7.25 \$	18 %	2,016,500 \$ / Year
2.	18,000	\$2,300,000	Point of Sale: Participating Provider - Generic Drug	7.25 \$	63 %	981,500 \$ / Year
3.	2,000	\$400,000	Mail Order/Home Delivery: Brand Drug	0.00 \$	19 %	324,000 \$ / Year
4.	2,000	\$400,000	Mail Order/Home Delivery: Generic Drug	0.00 \$	70 %	120,000 \$ / Year
Total 1 st Renewal Option Year (S.6.2):						3,442,000 \$ / Year

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6.3 Second Renewal Option Year (Year 5 of Contract).

Item No.	Estimated Annual Quantity of Bills	Pricing Based on AWP	Description	Dispensing Fee per Prescription	Percentage Discount Off AWP per Prescription	**Price Extension for 1 st Renewal Option Year Period Based on AWP (Year 5 of Contract)
1.	18,000	\$2,300,000	Point of Sale: Participating Provider - Brand Drug	7.25 \$	18 %	2,016,500 \$ / Year
2.	18,000	\$2,300,000	Point of Sale: Participating Provider - Generic Drug	7.25 \$	63 %	981,500 \$ / Year
3.	2,000	\$400,000	Mail Order/Home Delivery: Brand Drug	0.00 \$	19 %	324,000 \$ / Year
4.	2,000	\$400,000	Mail Order/Home Delivery: Generic Drug	0.00 \$	70 %	120,000 \$ / Year
Total 2 nd Renewal Option Year (S.6.3):						3,442,000 \$ / Year

7. Grand Total Pricing (S.1 through S.6):

Grand Total Initial Contract Period (S.1 through S.5, and S.6.1):	\$ 3,442,000
Grand Total 1 st Renewal Option Year (S.1 through S.5, and S.6.2):	\$ 3,442,000
Grand Total 2 nd Renewal Option Year (S.1 through S.5, and S.6.3):	\$ 3,442,000
Grand Total (S.1 through S.6 (includes S.6.1, S.6.2, S.6.3)):	\$ 10,326,000

EXHIBIT C



THE CITY OF SAN DIEGO
GENERAL CONTRACT TERMS AND PROVISIONS
APPLICABLE TO GOODS, SERVICES, AND CONSULTANT CONTRACTS

ARTICLE I SCOPE AND TERM OF CONTRACT

1.1 Scope of Contract. The scope of contract between the City and a provider of goods and/or services (Contractor) is described in the Contract Documents. The Contract Documents are comprised of the Request for Proposal, Invitation to Bid, or other solicitation document (Solicitation); the successful bid or proposal; the letter awarding the contract to Contractor; the City's written acceptance of exceptions or clarifications to the Solicitation, if any; and these General Contract Terms and Provisions.

1.2 Effective Date. A contract between the City and Contractor (Contract) is effective on the last date that the contract is signed by the parties and approved by the City Attorney in accordance with Charter section 40. Unless otherwise terminated, this Contract is effective until it is completed or as otherwise agreed upon in writing by the parties, whichever is the earliest. A Contract term cannot exceed five (5) years unless approved by the City Council by ordinance.

1.3 Contract Extension. The City may, in its sole discretion, unilaterally exercise an option to extend the Contract as described in the Contract Documents. In addition, the City may, in its sole discretion, unilaterally extend the Contract on a month-to-month basis following contract expiration if authorized under Charter section 99 and the Contract Documents. Contractor shall not increase its pricing in excess of the percentage increase described in the Contract.

ARTICLE II CONTRACT ADMINISTRATOR

2.1 Contract Administrator. The Purchasing Agent or designee is the Contract Administrator for purposes of this Contract, and has the responsibilities described in this Contract, in the San Diego Charter, and in Chapter 2, Article 2, Divisions 5, 30, and 32.

2.1.1 Contractor Performance Evaluations. The Contract Administrator will evaluate Contractor's performance as often as the Contract Administrator deems necessary throughout the term of the contract. This evaluation will be based on criteria including the quality of goods or services, the timeliness of performance, and adherence to applicable laws, including prevailing wage and living wage. City will provide Contractors who receive an unsatisfactory rating with a copy of the evaluation and an opportunity to respond. City may consider final evaluations, including Contractor's response, in evaluating future proposals and bids for contract award.

2.2 Notices. Unless otherwise specified, in all cases where written notice is required under this Contract, service shall be deemed sufficient if the notice is personally delivered or deposited in the United States mail, with first class postage paid, attention to the Purchasing Agent. Proper notice is effective on the date of personal delivery or five (5) days after deposit in a United States postal mailbox unless provided otherwise in the Contract. Notices to the City shall be sent to:

Purchasing Agent
City of San Diego, Purchasing and Contracting Division
1200 3rd Avenue, Suite 200
San Diego, CA 92101-4195

ARTICLE III COMPENSATION

3.1 Manner of Payment. Contractor will be paid monthly, in arrears, for goods and/or services provided in accordance with the terms and provisions specified in the Contract.

3.2 Invoices.

3.2.1 Invoice Detail. Contractor's invoice must be on Contractor's stationary with Contractor's name, address, and remittance address if different. Contractor's invoice must have a date, an invoice number, a purchase order number, a description of the goods or services provided, and an amount due.

3.2.2 Service Contracts. Contractor must submit invoices for services to City by the 10th of the month following the month in which Contractor provided services. Invoices must include the address of the location where services were performed and the dates in which services were provided.

3.2.3 Goods Contracts. Contractor must submit invoices for goods to City within seven days of the shipment. Invoices must describe the goods provided.

3.2.4 Parts Contracts. Contractor must submit invoices for parts to City within seven calendar (7) days of the date the parts are shipped. Invoices must include the manufacturer of the part, manufacturer's published list price, percentage discount applied in accordance with Pricing Page(s), the net price to City, and an item description, quantity, and extension.

3.2.5 Extraordinary Work. City will not pay Contractor for extraordinary work unless Contractor receives prior written authorization from the Contract Administrator. Failure to do so will result in payment being withheld for services. If approved, Contractor will include an invoice that describes the work performed and the location where the work was performed, and a copy of the Contract Administrator's written authorization.

3.2.6 Reporting Requirements. Contractor must submit the following reports using the City's web-based contract compliance portal. Incomplete and/or delinquent reports may cause payment delays, non-payment of invoice, or both. For questions, please view the City's online tutorials on how to utilize the City's web-based contract compliance portal.

3.2.6.1 Monthly Employment Utilization Reports. Contractor and Contractor's subcontractors and suppliers must submit Monthly Employment Utilization Reports by the fifth (5th) day of the subsequent month.

3.2.6.2 Monthly Invoicing and Payments. Contractor and Contractor's subcontractors and suppliers must submit Monthly Invoicing and Payment Reports by the fifth (5th) day of the subsequent month.

3.3 Annual Appropriation of Funds. Contractor acknowledges that the Contract term may extend over multiple City fiscal years, and that work and compensation under this Contract is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. This Contract may be terminated at the end of the fiscal year for which sufficient funding is not appropriated and authorized. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by City Council.

3.4 Price Adjustments. Based on Contractor's written request and justification, the City may approve an increase in unit prices on Contractor's pricing pages consistent with the amount requested in the justification in an amount not to exceed the increase in the Consumer Price Index, San Diego Area, for All Urban Customers (CPI-U) as published by the Bureau of Labor Statistics, or 5.0%, whichever is less, during the preceding one year term. If the CPI-U is a negative number, then the unit prices shall not be adjusted for that option year (the unit prices will not be decreased). A negative CPI-U shall be counted against any subsequent increases in the CPI-U when calculating the unit prices for later option years. Contractor must provide such written request and justification no less than sixty days before the date in which City may exercise the option to renew the contract, or sixty days before the anniversary date of the Contract. Justification in support of the written request must include a description of the basis for the adjustment, the proposed effective date and reasons for said date, and the amount of the adjustment requested with documentation to support the requested change (e.g. CPI-U or 5.0%, whichever is less). City's approval of this request must be in writing.

ARTICLE IV SUSPENSION AND TERMINATION

4.1 City's Right to Suspend for Convenience. City may suspend all or any portion of Contractor's performance under this Contract at its sole option and for its convenience for a reasonable period of time not to exceed six (6) months. City must first give ten (10) days' written notice to Contractor of such suspension. City will pay to Contractor a sum equivalent to the reasonable value of the goods and/or services satisfactorily provided up to the date of suspension. City may rescind the suspension prior to or at six (6) months by providing Contractor with written notice of the rescission, at which time Contractor would be required to resume performance in compliance with the terms and provisions of this Contract. Contractor will be entitled to an extension of time to complete performance under the Contract equal to the length of the suspension unless otherwise agreed to in writing by the Parties.

4.2 City's Right to Terminate for Convenience. City may, at its sole option and for its convenience, terminate all or any portion of this Contract by giving thirty (30) days' written notice of such termination to Contractor. The termination of the Contract shall be effective upon receipt of the notice by Contractor. After termination of all or any portion of the Contract, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs otherwise); and (2) complete any and all additional work necessary for the orderly filing of

documents and closing of Contractor's affected performance under the Contract. After filing of documents and completion of performance, Contractor shall deliver to City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials created or received by Contractor in performing this Contract, whether completed or in process. By accepting payment for completion, filing, and delivering documents as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Contract with regard to the affected performance.

4.3 City's Right to Terminate for Default. Contractor's failure to satisfactorily perform any obligation required by this Contract constitutes a default. Examples of default include a determination by City that Contractor has: (1) failed to deliver goods and/or perform the services of the required quality or within the time specified; (2) failed to perform any of the obligations of this Contract; and (3) failed to make sufficient progress in performance which may jeopardize full performance.

4.3.1 If Contractor fails to satisfactorily cure a default within ten (10) calendar days of receiving written notice from City specifying the nature of the default, City may immediately cancel and/or terminate this Contract, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Contract.

4.3.2 If City terminates this Contract, in whole or in part, City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, equivalent goods or services and Contractor shall be liable to City for any excess costs. Contractor shall also continue performance to the extent not terminated.

4.4 Termination for Bankruptcy or Assignment for the Benefit of Creditors. If Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to, or demand upon Contractor, terminate this Contract, and terminate each and every right of Contractor, and any person claiming rights by and through Contractor under this Contract.

4.5 Contractor's Right to Payment Following Contract Termination.

4.5.1 Termination for Convenience. If the termination is for the convenience of City an equitable adjustment in the Contract price shall be made. No amount shall be allowed for anticipated profit on unperformed services, and no amount shall be paid for an as needed contract beyond the Contract termination date.

4.5.2 Termination for Default. If, after City gives notice of termination for failure to fulfill Contract obligations to Contractor, it is determined that Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of City. In such event, adjustment in the Contract price shall be made as provided in Section 4.3.2. City's rights and remedies are in addition to any other rights and remedies provided by law or under this Contract.

4.6 Remedies Cumulative. City's remedies are cumulative and are not intended to be exclusive of any other remedies or means of redress to which City may be lawfully entitled in case of any breach or threatened breach of any provision of this Contract.

ARTICLE V ADDITIONAL CONTRACTOR OBLIGATIONS

5.1 Inspection and Acceptance. The City will inspect and accept goods provided under this Contract at the shipment destination unless specified otherwise. Inspection will be made and acceptance will be determined by the City department shown in the shipping address of the Purchase Order or other duly authorized representative of City.

5.2 Responsibility for Lost or Damaged Shipments. Contractor bears the risk of loss or damage to goods prior to the time of their receipt and acceptance by City. City has no obligation to accept damaged shipments and reserves the right to return damaged goods, at Contractor's sole expense, even if the damage was not apparent or discovered until after receipt.

5.3 Responsibility for Damages. Contractor is responsible for all damage that occurs as a result of Contractor's fault or negligence or that of its' employees, agents, or representatives in connection with the performance of this Contract. Contractor shall immediately report any such damage to people and/or property to the Contract Administrator.

5.4 Delivery. Delivery shall be made on the delivery day specified in the Contract Documents. The City, in its sole discretion, may extend the time for delivery. The City may order, in writing, the suspension, delay or interruption of delivery of goods and/or services.

5.5 Delay. Unless otherwise specified herein, time is of the essence for each and every provision of the Contract. Contractor must immediately notify City in writing if there is, or it is anticipated that there will be, a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay. City may terminate this Contract as provided herein if City, in its sole discretion, determines the delay is material.

5.5.1 If a delay in performance is caused by any unforeseen event(s) beyond the control of the parties, City may allow Contractor to a reasonable extension of time to complete performance, but Contractor will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between City and Contractor. This provision does not apply to a delay caused by Contractor's acts or omissions. Contractor is not entitled to an extension of time to perform if a delay is caused by Contractor's inability to obtain materials, equipment, or labor unless City has received, in a timely manner, documentary proof satisfactory to City of Contractor's inability to obtain materials, equipment, or labor, in which case City's approval must be in writing.

5.6 Restrictions and Regulations Requiring Contract Modification. Contractor shall immediately notify City in writing of any regulations or restrictions that may or will require Contractor to alter the material, quality, workmanship, or performance of the goods and/or services to be provided. City reserves the right to accept any such alteration, including any resulting reasonable price adjustments, or to cancel the Contract at no expense to the City.

5.7 Warranties. All goods and/or services provided under the Contract must be warranted by Contractor or manufacturer for at least twelve (12) months after acceptance by City, except automotive equipment. Automotive equipment must be warranted for a minimum of 12,000 miles or 12 months, whichever occurs first, unless otherwise stated in the Contract. Contractor is responsible to City for all warranty service, parts, and labor. Contractor is required to ensure that warranty work is performed at a facility acceptable to City and that services, parts, and labor are available and provided to meet City's schedules and deadlines. Contractor may establish a warranty service contract with an agency satisfactory to City instead of performing the warranty service itself. If Contractor is not an authorized service center and causes any damage to equipment being serviced, which results in the existing warranty being voided, Contractor will be liable for all costs of repairs to the equipment, or the costs of replacing the equipment with new equipment that meets City's operational needs.

5.8 Industry Standards. Contractor shall provide goods and/or services acceptable to City in strict conformance with the Contract. Contractor shall also provide goods and/or services in accordance with the standards customarily adhered to by an experienced and competent provider of the goods and/or services called for under this Contract using the degree of care and skill ordinarily exercised by reputable providers of such goods and/or services. Where approval by City, the Mayor, or other representative of City is required, it is understood to be general approval only and does not relieve Contractor of responsibility for complying with all applicable laws, codes, policies, regulations, and good business practices.

5.9 Records Retention and Examination. Contractor shall retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Contract for five (5) years after receipt of final payment by City under this Contract. Contractor shall make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of City, including the Purchasing Agent or designee. Contractor shall make available all requested data and records at reasonable locations within City or County of San Diego at any time during normal business hours, and as often as City deems necessary. If records are not made available within the City or County of San Diego, Contractor shall pay City's travel costs to the location where the records are maintained and shall pay for all related travel expenses. Failure to make requested records available for inspection, copying, or other reproduction, or auditing by the date requested may result in termination of the Contract. Contractor must include this provision in all subcontracts made in connection with this Contract.

5.9.1 Contractor shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors and Suppliers, all purchases of materials and services from Suppliers, and all joint venture participation. Records shall show name, telephone number including area code, and business address of each Subcontractor and Supplier, and joint venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.

5.10 Quality Assurance Meetings. Upon City's request, Contractor shall schedule one or more quality assurance meetings with City's Contract Administrator to discuss Contractor's performance. If requested, Contractor shall schedule the first quality assurance meeting no later than eight (8) weeks from the date of commencement of work under the Contract. At the quality assurance meeting(s), City's Contract Administrator will provide Contractor with feedback, will note any deficiencies in Contract performance, and provide Contractor with an opportunity to address and correct such deficiencies. The total number of quality assurance meetings that may be required by City will depend upon Contractor's performance.

5.11 Duty to Cooperate with Auditor. The City Auditor may, in his sole discretion, at no cost to the City, and for purposes of performing his responsibilities under Charter section 39.2, review Contractor's records to confirm contract compliance. Contractor shall make reasonable efforts to cooperate with Auditor's requests.

5.12 Safety Data Sheets. If specified by City in the solicitation or otherwise required by this Contract, Contractor must send with each shipment one (1) copy of the Safety Data Sheet (SDS) for each item shipped. Failure to comply with this procedure will be cause for immediate termination of the Contract for violation of safety procedures.

5.13 Project Personnel. Except as formally approved by the City, the key personnel identified in Contractor's bid or proposal shall be the individuals who will actually complete the work. Changes in staffing must be reported in writing and approved by the City.

5.13.1 Criminal Background Certification. Contractor certifies that all employees working on this Contract have had a criminal background check and that said employees are clear of any sexual and drug related convictions. Contractor further certifies that all employees hired by Contractor or a subcontractor shall be free from any felony convictions.

5.13.2 Photo Identification Badge. Contractor shall provide a company photo identification badge to any individual assigned by Contractor or subcontractor to perform services or deliver goods on City premises. Such badge must be worn at all times while on City premises. City reserves the right to require Contractor to pay fingerprinting fees for personnel assigned to work in sensitive areas. All employees shall turn in their photo identification badges to Contractor upon completion of services and prior to final payment of invoice.

5.14 Standards of Conduct. Contractor is responsible for maintaining standards of employee competence, conduct, courtesy, appearance, honesty, and integrity satisfactory to the City.

5.14.1 Supervision. Contractor shall provide adequate and competent supervision at all times during the Contract term. Contractor shall be readily available to meet with the City. Contractor shall provide the telephone numbers where its representative(s) can be reached.

5.14.2 City Premises. Contractor's employees and agents shall comply with all City rules and regulations while on City premises.

5.14.3 Removal of Employees. City may request Contractor immediately remove from assignment to the City any employee found unfit to perform duties at the City. Contractor shall comply with all such requests.

5.15 Licenses and Permits. Contractor shall, without additional expense to the City, be responsible for obtaining any necessary licenses, permits, certifications, accreditations, fees and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to Contract performance. This includes, but is not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the work.

5.16 Contractor and Subcontractor Registration Requirements. Prior to the award of the Contract or Task Order, Contractor and Contractor's subcontractors and suppliers must register with the City's web-based vendor registration and bid management system. The City may not award the Contract until registration of all subcontractors and suppliers is complete. In the event this requirement is not met within the time frame specified by the City, the City reserves the right to rescind the Contract award and to make the award to the next responsive and responsible proposer of bidder.

ARTICLE VI INTELLECTUAL PROPERTY RIGHTS

6.1 Rights in Data. If, in connection with the services performed under this Contract, Contractor or its employees, agents, or subcontractors, create artwork, audio recordings, blueprints, designs, diagrams, documentation, photographs, plans, reports, software, source code, specifications, surveys, system designs, video recordings, or any other original works of authorship, whether written or readable by machine (Deliverable Materials), all rights of Contractor or its subcontractors in the Deliverable Materials, including, but not limited to publication, and registration of copyrights, and trademarks in the Deliverable Materials, are the sole property of City. Contractor, including its employees, agents, and subcontractors, may not use any Deliverable Material for purposes unrelated to Contractor's work on behalf of the City without prior written consent of City. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City, without the prior written consent of the City.

6.2 Intellectual Property Rights Assignment. For no additional compensation, Contractor hereby assigns to City all of Contractor's rights, title, and interest in and to the content of the Deliverable Materials created by Contractor or its employees, agents, or subcontractors, including copyrights, in connection with the services performed under this Contract. Contractor

shall promptly execute and deliver, and shall cause its employees, agents, and subcontractors to promptly execute and deliver, upon request by the City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials. Contractor also shall cooperate and assist in the prosecution of any action or opposition proceeding involving such intellectual property rights and any adjudication of those rights.

6.3 Contractor Works. Contractor Works means tangible and intangible information and material that: (a) had already been conceived, invented, created, developed or acquired by Contractor prior to the effective date of this Contract; or (b) were conceived, invented, created, or developed by Contractor after the effective date of this Contract, but only to the extent such information and material do not constitute part or all of the Deliverable Materials called for in this Contract. All Contractor Works, and all modifications or derivatives of such Contractor Works, including all intellectual property rights in or pertaining to the same, shall be owned solely and exclusively by Contractor.

6.4 Subcontracting. In the event that Contractor utilizes a subcontractor(s) for any portion of the work that comprises the whole or part of the specified Deliverable Materials to the City, the agreement between Contractor and the subcontractor shall include a statement that identifies the Deliverable Materials as a "works for hire" as described in the United States Copyright Act of 1976, as amended, and that all intellectual property rights in the Deliverable Materials, whether arising in copyright, trademark, service mark or other forms of intellectual property rights, belong to and shall vest solely with the City. Further, the agreement between Contractor and its subcontractor shall require that the subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to City, all titles, rights and interests in and to the Deliverable Materials, including all copyrights, trademarks and other intellectual property rights. City shall have the right to review any such agreement for compliance with this provision.

6.5 Intellectual Property Warranty and Indemnification. Contractor represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this Contract are either original, or not encumbered, and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Contractor to produce, at Contractor's own expense, new non-infringing materials, deliverables or works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Contractor further agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages, of any type, alleging or threatening that any Deliverable Materials, supplies, equipment, services or works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claim of Infringement). If a Third Party Claim

of Infringement is threatened or made before Contractor receives payment under this Contract, City shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

6.6 Software Licensing. Contractor represents and warrants that the software, if any, as delivered to City, does not contain any program code, virus, worm, trap door, back door, time or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of licensor-selected conditions or manually on command. Contractor further represents and warrants that all third party software, delivered to City or used by Contractor in the performance of the Contract, is fully licensed by the appropriate licensor.

6.7 Publication. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City without prior written consent from the City.

6.8 Royalties, Licenses, and Patents. Unless otherwise specified, Contractor shall pay all royalties, license, and patent fees associated with the goods that are the subject of this solicitation. Contractor warrants that the goods, materials, supplies, and equipment to be supplied do not infringe upon any patent, trademark, or copyright, and further agrees to defend any and all suits, actions and claims for infringement that are brought against the City, and to defend, indemnify and hold harmless the City, its elected officials, officers, and employees from all liability, loss and damages, whether general, exemplary or punitive, suffered as a result of any actual or claimed infringement asserted against the City, Contractor, or those furnishing goods, materials, supplies, or equipment to Contractor under the Contract.

ARTICLE VII INDEMNIFICATION AND INSURANCE

7.1 Indemnification. To the fullest extent permitted by law, Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any goods provided or performance of services under this Contract by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

7.2 Insurance. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or

in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors.

Contractor shall provide, at a minimum, the following:

7.2.1 Commercial General Liability. Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

7.2.2 Commercial Automobile Liability. Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

7.2.3 Workers' Compensation. Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

7.2.4 Professional Liability (Errors and Omissions). For consultant contracts, insurance appropriate to Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

7.2.5 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

7.2.5.1 Additional Insured Status. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

7.2.5.2 Primary Coverage. For any claims related to this contract, Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

7.2.5.3 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

7.2.5.4 Waiver of Subrogation. Contractor hereby grants to City a waiver of any right to subrogation which the Workers' Compensation insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

7.2.5.5 Claims Made Policies (applicable only to professional liability). The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

7.3 Self Insured Retentions. Self-insured retentions must be declared to and approved by City. City may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

7.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise acceptable to City.

City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

7.5 Verification of Coverage. Contractor shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

7.6 Special Risks or Circumstances. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

7.7 Additional Insurance. Contractor may obtain additional insurance not required by this Contract.

7.8 Excess Insurance. All policies providing excess coverage to City shall follow the form of the primary policy or policies including but not limited to all endorsements.

7.9 Subcontractors. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as the CG 20 38 04 13 endorsement.

ARTICLE VIII BONDS

8.1 Payment and Performance Bond. Prior to the execution of this Contract, City may require Contractor to post a payment and performance bond (Bond). The Bond shall guarantee Contractor's faithful performance of this Contract and assure payment to contractors, subcontractors, and to persons furnishing goods and/or services under this Contract.

8.1.1 Bond Amount. The Bond shall be in a sum equal to twenty-five percent (25%) of the Contract amount, unless otherwise stated in the Specifications. City may file a claim against the Bond if Contractor fails or refuses to fulfill the terms and provisions of the Contract.

8.1.2 Bond Term. The Bond shall remain in full force and effect at least until complete performance of this Contract and payment of all claims for materials and labor, at which time it will convert to a ten percent (10%) warranty bond, which shall remain in place until the end of the warranty periods set forth in this Contract. The Bond shall be renewed annually, at least sixty (60) days in advance of its expiration, and Contractor shall provide timely proof of annual renewal to City.

8.1.3 Bond Surety. The Bond must be furnished by a company authorized by the State of California Department of Insurance to transact surety business in the State of California and which has a current A.M. Best rating of at least "A-, VIII."

8.1.4 Non-Renewal or Cancellation. The Bond must provide that City and Contractor shall be provided with sixty (60) days' advance written notice in the event of non-renewal, cancellation, or material change to its terms. In the event of non-renewal, cancellation, or material change to the Bond terms, Contractor shall provide City with evidence of the new source of surety within twenty-one (21) calendar days after the date of the notice of non-renewal, cancellation, or material change. Failure to maintain the Bond, as required herein, in full force

and effect as required under this Contract, will be a material breach of the Contract subject to termination of the Contract.

8.2 Alternate Security. City may, at its sole discretion, accept alternate security in the form of an endorsed certificate of deposit, a money order, a certified check drawn on a solvent bank, or other security acceptable to the Purchasing Agent in an amount equal to the required Bond.

ARTICLE IX CITY-MANDATED CLAUSES AND REQUIREMENTS

9.1 Contractor Certification of Compliance. By signing this Contract, Contractor certifies that Contractor is aware of, and will comply with, these City-mandated clauses throughout the duration of the Contract.

9.1.1 Drug-Free Workplace Certification. Contractor shall comply with City's Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into the Contract by this reference.

9.1.2 Contractor Certification for Americans with Disabilities Act (ADA) and State Access Laws and Regulations: Contractor shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor also shall comply with the City's ADA Compliance/City Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Contract by reference. Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this contract contains language which indicates the subcontractor's agreement to abide by the provisions of the City's Council Policy and any applicable access laws and regulations.

9.1.3 Non-Discrimination Requirements.

9.1.3.1 Compliance with City's Equal Opportunity Contracting Program (EOCP). Contractor shall comply with City's EOCP Requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a Prime Contractor liable for any discriminatory practice of its subcontractors.

9.1.3.2 Non-Discrimination Ordinance. Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result

in Contract termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

9.1.3.3 Compliance Investigations. Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

9.1.4 Equal Benefits Ordinance Certification. Unless an exception applies, Contractor shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (SDMC). Failure to maintain equal benefits is a material breach of the Contract.

9.1.5 Contractor Standards. Contractor shall comply with Contractor Standards provisions codified in the SDMC. Contractor understands and agrees that violation of Contractor Standards may be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

9.1.6 Noise Abatement. Contractor shall operate, conduct, or construct without violating the City's Noise Abatement Ordinance codified in the SDMC.

9.1.7 Storm Water Pollution Prevention Program. Contractor shall comply with the City's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the SDMC, as may be amended, and any and all applicable Best Management Practice guidelines and pollution elimination requirements in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of City regardless of location.

Contractor shall comply with the City's Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City Council on January 22, 2008, via Resolution No. 303351, as may be amended.

Contractor shall comply with each City facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

9.1.8 Service Worker Retention Ordinance. If applicable, Contractor shall comply with the Service Worker Retention Ordinance (SWRO) codified in the SDMC.

9.1.9 Product Endorsement. Contractor shall comply with Council Policy 000-41 which requires that other than listing the City as a client and other limited endorsements, any advertisements, social media, promotions or other marketing referring to the City as a user of a product or service will require prior written approval of the Mayor or designee. Use of the City Seal or City logos is prohibited.

9.1.10 Business Tax Certificate. Unless the City Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City before a Contract is executed.

9.1.11 Equal Pay Ordinance. Unless an exception applies, Contractor shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. Contractor shall certify in writing that it will comply with the requirements of the EPO.

9.1.11.1 Contractor and Subcontract Requirement. The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of a Contractor to the same extent as it would apply to that Contractor. Any Contractor subject to the Equal Pay Ordinance shall require all of its subcontractors to certify compliance with the Equal Pay Ordinance in its written subcontracts.

ARTICLE X CONFLICT OF INTEREST AND VIOLATIONS OF LAW

10.1 Conflict of Interest Laws. Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices including, but not limited to, California Government Code sections 1090, *et. seq.* and 81000, *et. seq.*, and the Ethics Ordinance, codified in the SDMC. City may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Contractor shall submit the necessary documents to City.

10.2 Contractor's Responsibility for Employees and Agents. Contractor is required to establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

10.3 Contractor's Financial or Organizational Interests. In connection with any task, Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

10.4 Certification of Non-Collusion. Contractor certifies that: (1) Contractor's bid or proposal was not made in the interest of or on behalf of any person, firm, or corporation not identified; (2) Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a sham bid or proposal; (3) Contractor did not directly or indirectly induce or

solicit any other person, firm or corporation to refrain from bidding; and (4) Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.

10.5 Hiring City Employees. This Contract shall be unilaterally and immediately terminated by City if Contractor employs an individual who within the twelve (12) months immediately preceding such employment did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the selection of Contractor.

ARTICLE XI DISPUTE RESOLUTION

11.1 Mediation. If a dispute arises out of or relates to this Contract and cannot be settled through normal contract negotiations, Contractor and City shall use mandatory non-binding mediation before having recourse in a court of law.

11.2 Selection of Mediator. A single mediator that is acceptable to both parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Contract, if possible.

11.3 Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

11.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 through 1128) and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorneys, witnesses or experts present.

11.5 Mediation Results. Any agreements resulting from mediation shall be memorialized in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

ARTICLE XII MANDATORY ASSISTANCE

12.1 Mandatory Assistance. If a third party dispute or litigation, or both, arises out of, or relates in any way to the services provided to the City under a Contract, Contractor, its agents, officers, and employees agree to assist in resolving the dispute or litigation upon City's request. Contractor's assistance includes, but is not limited to, providing professional consultations,

attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

12.2 Compensation for Mandatory Assistance. City will compensate Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and employees, Contractor shall reimburse City for all fees paid to Contractor, its agents, officers, and employees for Mandatory Assistance.

12.3 Attorneys' Fees Related to Mandatory Assistance. In providing City with dispute or litigation assistance, Contractor or its agents, officers, and employees may incur expenses and/or costs. Contractor agrees that any attorney fees it may incur as a result of assistance provided under Section 12.2 are not reimbursable.

ARTICLE XIII MISCELLANEOUS

13.1 Headings. All headings are for convenience only and shall not affect the interpretation of this Contract.

13.2 Non-Assignment. Contractor may not assign the obligations under this Contract, whether by express assignment or by sale of the company, nor any monies due or to become due under this Contract, without City's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Contract at the City's sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

13.3 Independent Contractors. Contractor and any subcontractors employed by Contractor are independent contractors and not agents of City. Any provisions of this Contract that may appear to give City any right to direct Contractor concerning the details of performing or providing the goods and/or services, or to exercise any control over performance of the Contract, shall mean only that Contractor shall follow the direction of City concerning the end results of the performance.

13.4 Subcontractors. All persons assigned to perform any work related to this Contract, including any subcontractors, are deemed to be employees of Contractor, and Contractor shall be directly responsible for their work.

13.5 Covenants and Conditions. All provisions of this Contract expressed as either covenants or conditions on the part of City or Contractor shall be deemed to be both covenants and conditions.

13.6 Compliance with Controlling Law. Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for contract

termination. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Contractor may be subject to suspension, debarment, or both.

13.7 Governing Law. The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

13.8 Venue. The venue for any suit concerning solicitations or the Contract, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

13.9 Successors in Interest. This Contract and all rights and obligations created by this Contract shall be in force and effect whether or not any parties to the Contract have been succeeded by another entity, and all rights and obligations created by this Contract shall be vested and binding on any party's successor in interest.

13.10 No Waiver. No failure of either City or Contractor to insist upon the strict performance by the other of any covenant, term or condition of this Contract, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Contract, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Contract, and each and every covenant, condition, and term hereof shall continue in full force and effect without respect to any existing or subsequent breach.

13.11 Severability. The unenforceability, invalidity, or illegality of any provision of this Contract shall not render any other provision of this Contract unenforceable, invalid, or illegal.

13.12 Drafting Ambiguities. The parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms and conditions of this Contract, and the decision of whether to seek advice of legal counsel with respect to this Contract is the sole responsibility of each party. This Contract shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Contract.

13.13 Amendments. Neither this Contract nor any provision hereof may be changed, modified, amended or waived except by a written agreement executed by duly authorized representatives of City and Contractor. Any alleged oral amendments have no force or effect. The Purchasing Agent must sign all Contract amendments.

13.14 Conflicts Between Terms. If this Contract conflicts with an applicable local, state, or federal law, regulation, or court order, applicable local, state, or federal law, regulation, or court order shall control. Varying degrees of stringency among the main body of this Contract, the exhibits or attachments, and laws, regulations, or orders are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Contract.

13.15 Survival of Obligations. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Contract, as well as all continuing obligations indicated in this Contract, shall survive, completion and acceptance of performance and termination, expiration or completion of the Contract.

13.16 Confidentiality of Services. All services performed by Contractor, and any sub-contractor(s) if applicable, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by Contractor, are for the sole use of City, its agents, and employees. Neither the documents nor their contents shall be released by Contractor or any subcontractor to any third party without the prior written consent of City. This provision does not apply to information that: (1) was publicly known, or otherwise known to Contractor, at the time it was disclosed to Contractor by City; (2) subsequently becomes publicly known through no act or omission of Contractor; or (3) otherwise becomes known to Contractor other than through disclosure by City.

13.17 Insolvency. If Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the Purchasing Agent and the Contract Administrator responsible for administering the Contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of City contract numbers and contracting offices for all City contracts against which final payment has not been made. This obligation remains in effect until final payment is made under this Contract.

13.18 No Third Party Beneficiaries. Except as may be specifically set forth in this Contract, none of the provisions of this Contract are intended to benefit any third party not specifically referenced herein. No party other than City and Contractor shall have the right to enforce any of the provisions of this Contract.

13.19 Actions of City in its Governmental Capacity. Nothing in this Contract shall be interpreted as limiting the rights and obligations of City in its governmental or regulatory capacity.

10090053-24-G, MANAGED CARE FOR WORKERS' COMPENSATION - Pharmacy - Cadence

Final Audit Report

2024-05-27

Created:	2024-05-16
By:	Jerry Gibbs (jggibbs@sandiego.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAkyUqe2aCdMLyt7kXBoTjx2edV3tbgYNj

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