

**AGREEMENT FOR SERVICES  
BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
THE SANTA CLARA STADIUM AUTHORITY,  
AND  
CARL WARREN & COMPANY**

**PREAMBLE**

This Agreement for the performance of services (“Agreement”) is made and entered into on this \_\_\_\_ day of August, 2021, (“Effective Date”) by and between Carl Warren & Company, a Limited Liability Corporation, with its principal place of business located at 175 N. Riverview Drive, Unit A, Anaheim, CA 92808 (“Contractor”), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050, on behalf of itself and its affiliated entities (“City”), and the Santa Clara Stadium Authority (“Stadium Authority”), a joint powers agency created pursuant to Section 6532 of the California Government Code with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 . City and Stadium Authority may be referred to collectively as “City.” City, Stadium Authority, and Contractor may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

**RECITALS**

- A. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled “Scope of Services”;
- B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

**AGREEMENT TERMS AND CONDITIONS**

**1. AGREEMENT DOCUMENTS**

The documents forming the entire Agreement between City and Contractor shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

## Exhibit C – Insurance Requirements

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings, whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

### **2. TERM OF AGREEMENT**

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on or about August 30, 2021 and terminate on August 29, 2024. At the City's sole discretion, there are two one-year options to extend the Agreement for a total of five years ending on or about August 29, 2026 assuming both options are exercised.

### **3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE**

Contractor shall perform those Services specified in Exhibit A within the time stated in Exhibit A. Time is of the essence.

### **4. WARRANTY**

Contractor expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect and shall conform to the specifications, requirements and instructions upon which this Agreement is based. Contractor agrees to promptly replace or correct any incomplete, inaccurate or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Contractor for the cost incurred by City.

### **5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE**

Contractor represents and maintains that it has the expertise in the professional calling necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Contractor's representations regarding its skills and knowledge. Contractor shall perform such Services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

## **6. COMPENSATION AND PAYMENT**

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES." The maximum compensation of this Agreement is Three Hundred Forty-Two Thousand and Zero cents (\$342,000), subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials, and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

## **7. TERMINATION**

- A. Termination for Convenience. City shall have the right to terminate this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Contractor.
- B. Termination for Default. If Contractor fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Contractor.
- C. Upon termination, each Party shall assist the other in arranging Contractor's close-out of services, and an orderly transfer of services to a new service provider if one is selected. If requested by the City following the notice of termination, Contractor will deliver to City all City information or material that Contractor has in its possession no later than ten (10) days after the notice of termination

## **8. ASSIGNMENT AND SUBCONTRACTING**

City and Contractor bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Contractor shall not hire subcontractors without express written permission from City.

Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it.

## **9. NO THIRD PARTY BENEFICIARY**

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

**10. INDEPENDENT CONTRACTOR**

Contractor and all person(s) employed by or contracted with Contractor to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of City. Contractor has full rights to manage its employees in their performance of Services under this Agreement.

**11. CONFIDENTIALITY OF MATERIAL**

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

**12. OWNERSHIP OF MATERIAL**

All material, which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, designs, technology, programming, works of authorship and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Contractor may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

**13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR**

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for four (4) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City. Contractor shall bear the cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the City.

Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Contractor agrees

to assist City in meeting City's reporting requirements to the State and other agencies with respect to Contractor's Services hereunder.

**14. HOLD HARMLESS/INDEMNIFICATION**

- A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Contractor pursuant to this Agreement – including claims of any kind by Contractor's employees or persons contracting with Contractor to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- B. Contractor's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

**15. INSURANCE REQUIREMENTS**

During the term of this Agreement, and for any time period set forth in Exhibit C, Contractor shall provide and maintain in full force and effect, at no cost to City, insurance policies as set forth in Exhibit C.

**16. WAIVER**

Contractor agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither City's review, acceptance nor payments for any of the Services required under this Agreement

shall be constructed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

**17. NOTICES**

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara  
Attention: Greg Bych  
1500 Warburton Avenue  
Santa Clara, CA 95050  
and by e-mail at [gbych@santaclaraca.gov](mailto:gbych@santaclaraca.gov)

And to Contractor addressed as follows:

Carl Warren & Company Attn: Richard McAbee  
PO Box 25180,  
Santa Anna, CA 92799  
602-723-5610  
And by e-mail at [rmcabee@carlwarren.com](mailto:rmcabee@carlwarren.com)

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

**18. COMPLIANCE WITH LAWS**

Contractor shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to “The Code of the City of Santa Clara, California” (“SCCC”). In particular, Contractor’s attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally, Contractor has read and agrees to comply with City’s Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

**19. CONFLICTS OF INTEREST**

Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code section 87100 and

following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

**20. FAIR EMPLOYMENT**

Contractor shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

**21. NO USE OF CITY NAME OR EMBLEM**

Contractor shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

**22. GOVERNING LAW AND VENUE**

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

**23. SEVERABILITY CLAUSE**

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

**24. AMENDMENTS**

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties to this Agreement.

**25. COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.

**SANTA CLARA STADIUM AUTHORITY**  
a Joint Exercise of Powers Entity,  
created through Government Code sections 6500 *et seq.*

APPROVED AS TO FORM:

Dated: \_\_\_\_\_

\_\_\_\_\_  
BRIAN DOYLE.  
Stadium Authority Counsel

\_\_\_\_\_  
DEANNA J. SANTANA  
Executive Director  
1500 Warburton Avenue  
Santa Clara, CA 95050

"STADIUM AUTHORITY"

**CITY OF SANTA CLARA, CALIFORNIA**  
a chartered California municipal corporation

Approved as to Form:

Dated: \_\_\_\_\_

\_\_\_\_\_  
BRIAN DOYLE  
City Attorney

\_\_\_\_\_  
DEANNA J. SANTANA  
City Manager  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

"CITY"

**CARL WARREN & COMPANY\***  
a Limited Liability Corporation

Dated: \_\_\_\_\_

By (Signature): \_\_\_\_\_

Name: Richard McAbee

Title: Chief Marketing Officer

Principal Place of Business Address: 11209 N Tatum Blvd., Suite 130

Email Address: \_\_\_\_\_

Telephone: 602-723-5610

Fax: 602-485-8228

"CONTRACTOR"



**EXHIBIT A**  
**SCOPE OF SERVICES**

The selected TPA will be required to operate under the general direction of the City's Risk Manager and consult with other City staff in developing effective procedures and practices to successfully administer the City's property and casualty claims. The Consultant will perform all services and related work necessary for claims administration and statistical reporting. Consultant services shall include, but are not limited to; general, automobile, and property liability claims administration, investigations, research, analysis, recording, reporting, subrogation, litigation management, liability trust account management and reconciliation, and related support services. The City shall retain litigation management and restitution/recovery functions but may call upon Consultant to assist in these areas on a case-by-case basis.

**1 GENERAL PROGRAM ADMINISTRATION**

*Contractor shall:*

- 1.1 Provide exceptional customer service to all claimants.
- 1.2 Provide a customer service phone number and email address to enable claimants to make inquiries on their claim.
- 1.3 Provide professional and technical staff to perform General Liability Claims Administration services. TPA will only utilize expert services or a subcontractor with prior approval from the City.
- 1.4 Represent City in all matters related to the set-up, investigation, adjustment, processing, negotiation, and resolution of liability claims against City.
- 1.5 Inform the City of changes or proposed changes in statutes, rules, regulations, and case law affecting its general liability claims program.
- 1.6 Assist in the development of policies and procedures relating to the general liability claims program.
- 1.7 Provide information and guidance regarding the general liability claims program and specified claims.
- 1.8 Provide copies of file correspondence and documentation as requested by the City.
- 1.9 Inform the City of problem areas or trends, both potential and perceived, and provide recommendations and/or solutions to address problem areas or trends.
- 1.10 Attend appointments, including but not limited to meetings, conferences, court appearances, and scene investigations at the request of the City.
- 1.11 Provide 24-hour on-call service. This can be accomplished by providing the City with a 24-hour phone number for key personnel. The City will utilize the 24-hour, on-call service as necessary to include, but not limited to, responding to an incident scene and catastrophic emergency.

## **2 CLAIMS ADMINISTRATION**

**NOTE: "CONSULTANT" AND "CONTRACTOR" ARE USED SYNONYMOUSLY IN THIS EXHIBIT.**

*Contractor shall:*

- 2.1** Take in and retain claims filed against the City.
- 2.2** Create and enter new claim files into (CMIS) Claims Management Information System (CMIS) within 48 hours of receipt of a loss notice from the City's Clerk's Office.
- 2.3** Maintain an official file for each claim.
- 2.4** All claims management shall adhere to the requirements of the California Government Code for accepting, denying, and rejecting claims.
- 2.5** Establish claims handling and investigation protocols for the City in accordance with the California Tort Claims Act and provide a copy of the claims management program if there is one in place.
- 2.6** At the direction of the City, contact claimants or their attorneys within five (5) business days of receipt of a claim and maintain appropriate contact with them until the claim is closed.
- 2.7** Review the status of claims and establish reserves reasonably adequate for the expected value of the claim on all active cases at least every ninety (90) calendar days.
- 2.8** Provide narrative reports when recommending rejection or settlement of a claim, when going to trial, or other significant events have or will occur.
- 2.9** Make recommendations and obtain City's authorization on all settlements prior to taking action to settle.
- 2.10** Handle all claims to conclusion and obtain all appropriate releases.
- 2.11** Report claims in compliance with Medicare, Medicaid, and SCHIP Extension Act (MMSEA) Section 111.
- 2.12** Produce and process checks drawn on the City's trust account for payment of claims, outside vendors, legal costs, and other claims related – allocated expenses except TPA's adjusting fees and costs. TPA shall monitor and manage the trust account including reconciliation and requests for replenishment. TPA shall provide the City a monthly accounting of the trust account by the 5<sup>th</sup> business day in the following month.
- 2.13** Review vendors for appropriateness of work and cost-effectiveness.
- 2.14** Diary dates shall be established to allow for timely completion of required activity and no less frequently than every sixty (60) calendar days. Administrator shall monitor the timely completion of diary notes.
- 2.15** Written responses to requests that cannot be emailed, shall be mailed within ten (10) business days of receipt, unless an immediate response is required.
- 2.16** Identify and notify co-defendants within thirty (30) calendar days of identification.
- 2.17** Have translators available to assist with non-English speaking claimants.

### **3 INVESTIGATIONS**

*Contractor shall:*

- 3.1 Within ten (10) business days of receipt of claim, unless otherwise requested by Risk Manager, take statement of facts from claimants when not represented by an attorney.
- 3.2 Investigate claims where the initial review indicates that it is warranted. Further investigation may include, but is not limited to, on-sight investigation, photographs, interviewing witnesses and taking signed or recorded statements, verification of damage or loss, taking measurements, obtaining maps/diagrams from the City or other sources, obtaining medical releases, police reports, or other records as required.
- 3.3 If an attorney is involved, direct all communication to the claimant's attorney regarding the investigation, negotiation, and evaluation of any claims leading to a settlement.

### **4 LITIGATION MANAGEMENT**

- 4.1 The City of Santa Clara City Attorney's Office (CAO) shall retain the litigation management function for all litigated claims. The Consultant shall assist the City Attorney's Office by:
  - 4.1.1 Referring all litigated claims to the Risk Manager and City Attorney's Office.
  - 4.1.2 Maintaining an open claim file which accurately reflects all litigated claims expenses.
  - 4.1.3 Assist the CAO with monitoring defense counsel to establish case reserves, maintain accurate and timely reporting, timely communication, timely case status updates, accurate billing, and case resolution.
  - 4.1.4 Obtain fully executed release(s) on all settlements and dismissals.
  - 4.1.5 Attend Settlement Conferences, or other Alternative Dispute Resolution hearings as requested.
  - 4.1.6 Assist the CAO and defense counsel in preparing and/or answering discovery as requested.
  - 4.1.7 Timely tender litigated matters to third parties and/or insurance carriers, as applicable, and conduct (and maintain records of) all necessary communication with such parties throughout the course of the litigation.
  - 4.1.8 Accurately reflect all required data on litigated matters on the City's loss run report.
  - 4.1.9 Promptly process payment on litigation related billing after approval is received from the City Attorney's Office.
  - 4.1.10 Assist in defending the City at all Small Claims Court Hearings (whether existing or new) including court appearances as necessary and shall work in conjunction with the Risk Manager and/or defense counsel assigned to the case.

### **5 SUBROGATION**

The City retains the right to handle any subrogation in-house as it deems appropriate. If requested to do so, Consultant shall:

5.1.1 Pursue all subrogation submitted by the City involving responsible third parties and work closely with City staff to resolve subrogation issues.

5.1.2 Receive approval from the City Attorney's Office prior to filing litigation.

5.1.3 The City will provide and/or approve specific language to be used in any subrogation settlement and approve all settlements.

5.1.4 Protect all statutes of limitation and notify the City no later than 60 days prior to any expiration of statute.

## **6 EXCESS INSURANCE REPORTING**

The City is a member of the Public Risk, Innovations and Solutions Management (PRISM) risk pool and obtains excess insurance coverage above the self-insured retention through PRISM. Consultant shall comply with all PRISM excess insurance reporting requirements noted herein:

### **6.1 PRISM REPORTING REQUIREMENTS**

#### **6.1.1 First Report**

The Member shall give PRISM immediate written notice for any claims or suits which the Member becomes aware of that include injury of the following types:

- A. Death
- B. Paralysis, paraplegia, quadriplegia
- C. Loss of eye(s), or limbs
- D. Spinal cord or brain injury
- E. Dismemberment or amputation
- F. Sensory organ or nerve injury or neurological deficit
- G. Serious burns
- H. Severe scarring
- I. Sexual assault or battery including but not limited to rape, molestation, or sexual abuse
- J. Substantial disability or disfigurement
- K. Any class actions
- L. Any claim or suit in which PRISM is named as a defendant; or
- M. Any injury caused by lead

**6.1.2** Additionally, the covered party must report to PRISM an occurrence, offense, or wrongful act as follows:

- A. As respect to the General Liability 2 Program members, this includes any occurrence, offense, or wrongful act in which the amount incurred has reached fifty (50) percent of their individual self-insured retention.
- B. These reporting requirements are intended to be consistent with the requirements in the current year Memorandum of Coverage (MOC). Reporting requirements specific to a loss outside the current MOC year should be verified through the MOC effective for that loss year.
- C. Utilize the current First Report Potential Excess Liability Claims form, available through PRISM's website, and transmit to PRISM by email to [liabilityclaims@csac-eia.org](mailto:liabilityclaims@csac-eia.org).
- D. First report forms shall, at a minimum, include the following:
  - Entity name
  - Entity's claim number
  - Defense counsel's name and firm name
  - Lead Claimant's first and last name
  - Specific date of loss
  - Brief description of the incident
  - Established reserves for indemnity, litigation, and expense

### **6.1.3 Status Reports**

After the First Report to PRISM, status reports, whether provided by the Member, third party administrator or defense counsel, shall be provided at a minimum of every ninety (90) days (more frequently if warranted). Status reports shall focus on changes in liability analysis, damages, and reserves.

Photos, diagrams, estimates, statements, contracts, medical, law enforcement and coroner's reports (where applicable), claim forms, lawsuits (including amended complaints), motions for summary judgment, demurrers, dismissals, appellate briefs and orders/rulings/judgments shall be in the claims file, and provided to PRISM, within ninety (90) days of receipt of the material.

### **6.1.4 Closure Reports**

When a claim or suit that has been reported to PRISM is settled, dismissed or closed in any other fashion, PRISM shall be provided with the closing documents and an accounting of the final paid amounts on the exposure for indemnity, litigation, and expense within 90 days from the day the final defense bill is paid.

## **7 CLAIMS MANAGEMENT INFORMATION SYSTEM (CMIS)**

*Contractor shall:*

- 7.1 If a new Consultant is selected, they shall convert all open and closed claims data and enter new claims data into the TPA's CMIS.
- 7.2 Record all claims in a CMIS. Claims records must contain all pertinent claim information, including but not limited to claim number, date of loss, date of claim, claimant name and address, location of loss, description of incident, loss reserves, loss payments, and expense reserves.
- 7.3 Create a review system to ensure accurate data will be entered into the CMIS. All claims must be reviewed on a periodic basis, as determined by the City. The review system must include a check on all the financial documentation entered the CMIS to ensure the financial integrity of the system. In addition, the review system must include appropriate claims handling and reserving procedures, and timely file closures.
- 7.4 Use electronic notes in the CMIS to record activity which shall be updated with new developments. All significant documents (e.g. email communications, status updates form counsel, etc.) will be scanned/saved into the database by TPA.
- 7.5 Provide CMIS training, support, and access for the Risk Manager and City Attorney staff.
- 7.6 Provide specified standard loss reports as agreed upon.
- 7.7 Provide special reports as needed by the City.
- 7.8 In the event of the contract termination the TPA shall furnish all claim files and electronic records associated with the City's account to the City or its designee at no cost to the City.

## **8 CLAIMS REPORTING**

- 8.1 Provide quarterly statistical data/reports – content to be established between the TPA and the City. The TPA will provide other special reports required of the City including, but not limited to: loss trend reports, claim abstract reports, reports required by actuaries, check register reports, excess insurance carriers, etc. If new programming is required in order to provide such reports, the TPA shall pay at its own expense for new or special programming costs.
- 8.2 Comply with the Centers for Medicare & Medicaid Services' (CMS) mandatory reporting requirements per Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA). The TPA will act as the Reporting Agent for the City.

## **9 RECORDS RETENTION**

All claim files shall be maintained in accordance with statutory time requirements and the City's Record Retention Policy. The City shall be notified prior to any destruction of files to determine if the City wishes to retain the claim file.

**EXHIBIT B**  
**SCHEDULE OF FEES**

**125 Open Claims or less (\$9,500 per month):**

- A. City agrees to pay Contractor a monthly firm fixed price of Ninety-Five Hundred Dollars and Zero Cents (\$9,500.00), payable in arrears for 125 open claims or less. For invoicing purposes, the number of open claims shall be established monthly on the last day of each invoice cycle.
- B. The monthly payment amount shall be fixed for the initial three-year term of the agreement, ending on or about August 27, 2024. After the initial term, Contractor may request price adjustments, subject to City's approval.
- C. Pricing shall be *all inclusive*, including but not limited to, claims processing fees, administrative costs, and profit. The City shall not consider any additional fees.
- D. At its sole discretion, the City may exercise two one-year options to extend the agreement, ending on or about August 27, 2026 provided the City exercises both options.

**Open Claims in-excess of 125 (\$850 per month for each open claim exceeding 125 open claims):**

- A. If there are more than 125 open claims at the end of a billing cycle as described above, City agrees to pay Contractor Eight Hundred Fifty Dollars and Zero Cents (\$850) for each additional open claim greater than 125. For example, if there are 128 open claims, City shall pay \$9,500 (for the first 125) plus \$1,700 (\$850 times 2), or \$11,200 total.

Invoices shall include all required reports and information as described in Exhibit A, Scope of Services.

City shall pay Contractor within thirty days of a properly submitted invoice.

## EXHIBIT C

### INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect during the period of performance of the Agreement and for twenty-four (24) months following acceptance by the City, at its sole cost and expense, the following insurance policies from insurance companies authorized to do business in the State of California. These policies shall be primary insurance as to the City of Santa Clara so that any other coverage held by the City shall not contribute to any loss under Contractor's insurance. The minimum coverages, provisions and endorsements are as follows:

#### A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
  - \$1,000,000 Each Occurrence
  - \$2,000,000 General Aggregate
  - \$2,000,000 Products/Completed Operations Aggregate
  - \$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
  - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
  - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
  - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

#### B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than



one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned (if any), non-owned and hired autos.

#### C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

#### D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Contractor. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per claim or two million dollars (\$2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

#### E. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85, or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording

making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnitees may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnitees may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.

3. Cancellation.

a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge

City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

#### G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

#### H. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be e-mailed to [ctsantaclara@ebix.com](mailto:ctsantaclara@ebix.com) or mailed to:

EBIX Inc.  
City of Santa Clara Human Resources Department  
P.O. Box 100085 – S2  
Duluth, GA 30096

Telephone number: 951-766-2280  
Fax number: 770-325-0409  
Email address: [ctsantaclara@ebix.com](mailto:ctsantaclara@ebix.com)

## I. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.