



## AGENDA REPORT

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**Date:** December 6, 2016

**To:** City Manager for Council Action

**From:** Director of Human Resources

**Subject:** Request for Approval and Authorization for City Manager to Execute the Agreement for the Performance of Services with Sedgwick Claims Management Services, Inc. for Workers' Compensation Claims Administration

### EXECUTIVE SUMMARY

The City has contracted with Sedgwick Claims Management Services, Inc., the City's third party workers' compensation claims administrator, for many years. This Agreement continues that relationship and if approved, will be effective through June 30, 2019. This Agreement is exempt from the City's contract bidding requirements due to the specialized skills provided by licensed professionals at and hired by Sedgwick Claims Management Services, Inc. to manage and litigate the City's worker's compensation program. A copy of the Agreement can be viewed on the City's website or is available in the City Clerk's Office for review during normal business hours.

### ADVANTAGES AND DISADVANTAGES OF ISSUE

Under the terms of the Agreement, the City will continue to receive quality administration of its workers' compensation claims, ensuring that employees receive prompt medical attention and benefits when they suffer industrially related injuries or illnesses. There are no known disadvantages at this time.

### ECONOMIC/FISCAL IMPACT

There are two components of the City's worker's compensation program covered by this Agreement – *service fees* (administrative fees the City pays Sedgwick to manage claims) and *managed care fees* (telephonic/field nurse case management, medical bill review, provider network fees, etc.). Currently, the City has 321 open claims; previous year totals are 305 (July 1, 2016), 279 (2015), 302 (2014).

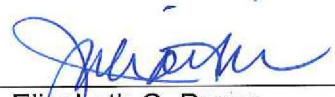
*Service fees:* For FY 2015-2016, service fees totaled \$198,482 and in FY 2014-2015 they totaled \$184,856. Under this Agreement, the City will see a service fee rate increase for claims over 24 months old, and the Human Resources Department will work to reduce the number of these older claims this fiscal year.

*Managed care fees:* These costs in FY 2015-16 totaled \$207,144 and were \$185,168 in FY 2014-2015. These fees are less predictable since they are driven by the type and quantity of claims.

Based on the combined totals for service fees and managed care fees, payments under this Agreement will not exceed \$450,000.00 per year, subject to budget appropriations.

### RECOMMENDATION

That the Council approve, and authorize the City Manager to execute, the Agreement for the Performance of Services with Sedgwick Claims Management Services, Inc. for workers' compensation claims administration, fees not to exceed \$450,000.00 per year.

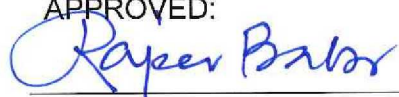
  
Elizabeth C. Brown  
Director of Human Resources

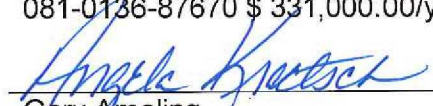
Certified as to Availability of Funds:

081-0136-87800 \$ 119,000.00/yr  
081-0136-87670 \$ 331,000.00/yr

CW

APPROVED:

  
Rajeev Batra  
Acting City Manager

  
for Gary Ameling  
Director of Finance

*Documents Related to this Report:*

- 1) Agreement for the Performance of Services

**MAJORITY VOTE OF COUNCIL**



Ebix Insurance No. S200002506

**AGREEMENT FOR THE PERFORMANCE OF SERVICES  
BY AND BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA,  
AND  
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.**

**PREAMBLE**

This agreement for the performance of services ("Agreement") is made and entered into on July 1, 2014 ("Effective Date") by and between Sedgwick Claims Management Services, Inc., an Illinois corporation, with its principal place of business located at 1100 Ridgeway Loop Road, Memphis, TN 38120 ("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 ("City"). City 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 professional 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 PROVISIONS**

**1. SERVICES TO BE PROVIDED.**

City employs Contractor to perform the services ("Services") more fully described in Exhibit A entitled, "SCOPE OF SERVICES." All of the exhibits referenced in this Agreement are attached and incorporated by this reference. Except as otherwise specified in this Agreement, Contractor shall furnish all necessary technical and professional services, including labor, material, equipment, transportation, supervision and expertise to satisfactorily complete the work required by City at his/her own risk and expense.

**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 the Effective Date of this Agreement and terminate on June 30, 2019.

**3. QUALIFICATIONS OF CONTRACTOR - STANDARD OF WORKMANSHIP.**

Contractor represents and maintains that it has the necessary expertise in the professional calling necessary to perform 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. Contractor represents that where appropriate, Services shall be performed by a qualified licensed professional.

The plans, designs, specifications, estimates, calculations, reports and other documents furnished under Exhibit A shall be of a quality acceptable to City. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well organized, that is technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by City for similar projects.

**4. MONITORING OF SERVICES.**

City may monitor the Services performed under this Agreement to determine whether Contractor's operation conforms to City policy and to the terms of this Agreement. City may also monitor the Services to be performed to determine whether financial operations are conducted in accord with applicable City, county, state, and federal requirements. If any action of Contractor constitutes a breach, City may terminate this Agreement pursuant to the provisions described herein.

**5. RESERVED.**

**6. PERFORMANCE OF SERVICES.**

Contractor shall perform all requested services in an efficient and expeditious manner and shall work closely with and be guided by 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. Contractor will perform all Services in a safe manner and in accordance with all federal, state and local operation and safety regulations.

**7. BUSINESS TAX LICENSE REQUIRED.**

Contractor must comply with Santa Clara City Code section 3.40.060, as that section may be amended from time to time or renumbered, which requires that any person who transacts or carries on any business in the City of Santa Clara pay business license tax to the City. A business tax certificate may be obtained by completing the Business Tax Affidavit Form and paying the applicable fee at the Santa Clara City Hall Municipal Services Division.



## **8. RESPONSIBILITY OF CONTRACTOR.**

Contractor shall be responsible for the professional quality, technical accuracy and coordination of the Services furnished by it under this Agreement. Neither City's review, acceptance, nor payments for any of the Services required under this Agreement shall be construed 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 and Contractor shall be and remain liable to City in accordance with applicable law for all damages to City caused by Contractor negligent performance of any of the Services furnished under this Agreement.

Any acceptance by City of plans, specifications, construction contract documents, reports, diagrams, maps and other material prepared by Contractor shall not in any respect absolve Contractor from the responsibility Contractor has in accordance with customary standards of good professional practice in compliance with applicable federal, state, county, and/or municipal laws, ordinances, regulations, rules and orders.

## **9. COMPENSATION AND PAYMENT.**

In consideration for Contractor's performance of Services, City shall pay Contractor for all materials provided and services rendered by Contractor as outlined in Exhibit B, entitled "SCHEDULE OF FEES."

Contractor will bill City on a monthly basis for Services provided by Contractor during the preceding month, subject to verification by City. City will pay Contractor within thirty (30) days of City's receipt of invoice.

## **10. TERMINATION OF AGREEMENT.**

Either Party may terminate this Agreement without cause by giving the other Party written notice ("Notice of Termination") which clearly expresses that Party's intent to terminate the Agreement. Notice of Termination shall become effective no less than thirty (30) calendar days after a Party receives such notice. After either Party terminates the Agreement, Contractor shall discontinue further services as of the effective date of termination, and City shall pay Contractor for all Services satisfactorily performed up to such date.

## **11. NO ASSIGNMENT OR SUBCONTRACTING OF AGREEMENT.**

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.

## **12. 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.

**13. 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, however, to manage its employees in their performance of Services under this Agreement. Contractor is not authorized to bind City to any contracts or other obligations.

**14. NO PLEDGING OF CITY'S CREDIT.**

Under no circumstances shall Contractor have the authority or power to pledge the credit of City or incur any obligation in the name of City. Contractor shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Contractor under this Agreement.

**15. CONFIDENTIALITY OF MATERIAL.**

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions, employee information 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.

**16. 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.

**17. OWNERSHIP OF MATERIAL.**

All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports 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.



**18. 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 three (3) 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 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.

**19. CORRECTION OF SERVICES.**

Contractor agrees to correct any incomplete, inaccurate or defective Services at no further costs to City, when such defects are due to the negligence, errors or omissions of Contractor.

**20. FAIR EMPLOYMENT.**

Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law.

**21. HOLD HARMLESS/INDEMNIFICATION.**

Each Party (the "Indemnitor") shall defend, indemnify and hold harmless the other Party (the "Indemnitee") its agents, subcontractors and/or assigns, from and against any and all liability, loss, cost and/or expenses incurred by the Indemnitee, including reasonable fees for legal counsel, consultants and/or experts, as a result of (i) the breach or inaccuracy in any of the representations, warranties, covenants and/or agreements of the Indemnitor contained in this Agreement, or (ii) the Indemnitor's negligent, reckless, or wrongful performance or non-performance, of its obligations pursuant to this Agreement.

Notwithstanding anything herein to the contrary, City shall defend, indemnify and hold Contractor wholly harmless from and against any and all liability, loss, cost and expense whatsoever (including reasonable fees of legal counsel and related disbursements) incurred by Contractor as a result of (i) the administration of City's claims by a party other than Contractor, or (ii) Contractor being named as a party, or threatened to be named as a party, to a lawsuit, and the naming of, or the threat of naming Contractor, is solely the result of Contractor's administering the claims of City, and not the result of Contractor's breach or inaccuracy in any of its representations, warranties, covenants or agreements or Contractor's negligent or wrongful performance or non-performance of its obligations, or (iii) the City providing Contractor inaccurate information, or accurate information on an untimely basis which is necessary for Contractor to file any documents

on behalf of City. City shall also indemnify, defend and hold Contractor harmless for all claims arising from the transfer of information, including but not limited to MMSEA Section 111 Data to CMS, provided by the City to Contractor where such claims do not result from any intentional tort, willful misconduct, negligence or gross negligence by Contractor.

**22. INSURANCE REQUIREMENTS.**

During the term of this Agreement, and for any time period set forth in Exhibit C, Contractor shall purchase and maintain in full force and effect, at no cost to City insurance policies with respect to employees and vehicles assigned to the Performance of Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit C.

**23. AMENDMENTS.**

This Agreement may be amended only with the written consent of both Parties.

**24. INTEGRATED DOCUMENT.**

This Agreement represents the entire agreement between City and Contractor. No other understanding, agreements, conversations, or otherwise, with any representative of City prior to execution of this Agreement shall affect or modify any of the terms or obligations of this Agreement. Any verbal agreement shall be considered unofficial information and is not binding upon City.

**25. 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.

**26. 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.

**27. NOTICES.**

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

City of Santa Clara  
Attention: Director of Human Resources  
1500 Warburton Avenue  
Santa Clara, California 95050  
or by facsimile at (408) 985-0667

And to Contractor addressed as follows:



Name: Sedgwick Claims Management Services, Inc.  
Address: 1100 Ridgeway Loop Road  
Memphis, TN 38120  
or by facsimile at (901) 415-7409

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

**28. CAPTIONS.**

The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

**29. LAW GOVERNING CONTRACT 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.

**30. DISPUTE RESOLUTION.**

- A. Unless otherwise mutually agreed to by the Parties, any controversies between Contractor and City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.
- B. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.
- C. The costs of mediation shall be borne by the Parties equally.
- D. For any contract dispute, mediation under this section is a condition precedent to filing an action in any court. In the event of mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, through mediation only. In the event of litigation, the prevailing party shall recover its reasonable costs of suit, expert's fees and attorney's fees. If mediation does not resolve the dispute, the Parties agree that the matter shall be litigated in a court of law, and not subject to the arbitration provisions of the Public Contracts Code.

**31. COMPLIANCE WITH ETHICAL STANDARDS.**

Contractor shall:

- A. Read Exhibit D, entitled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA"; and,
- B. Execute Exhibit E, entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

**32. CONFLICT OF INTERESTS.**

This Agreement does not prevent either Party from entering into similar agreements with other parties, except as stated elsewhere in this Agreement. To prevent a conflict 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.

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; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

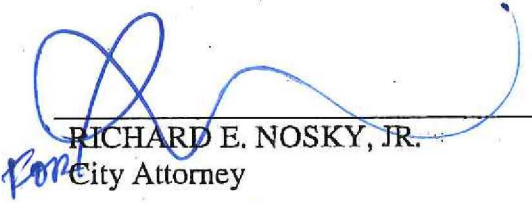
[Signatures on next page.]




The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

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

APPROVED AS TO FORM:

  
RICHARD E. NOSKY, JR.  
City Attorney

ATTEST:

  
ROD DIRIDON, JR.  
City Clerk

Dated: 12.14.16

  
RAJEEV BATRA  
Interim City Manager  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

"CITY"

**SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.**  
an Illinois Corporation

Dated: 25 October 2016

By: 

Name: Stephen R. Hurley

Title: Senior Vice President

Local Address: 1100 Ridgeway Loop Road

Memphis, TN 38120

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

Telephone: (901) 415-7400

Fax: (901) 415-7409

"CONTRACTOR"

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**AGREEMENT FOR THE PERFORMANCE OF SERVICES  
BY AND BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA  
AND  
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.**

**EXHIBIT A**

**SCOPE OF SERVICES**

The Services to be performed for the City by the Contractor under this Agreement are more fully described as follows:

**A. OBLIGATIONS OF CONTRACTOR**

CONTRACTOR agrees to perform the following services:

1. With regard to Claims Administration, CONTRACTOR shall:
  - a. Review each claim and loss report submitted by the CITY.
  - b. Conduct an investigation of EACH QUALIFIED CLAIM OR LOSS to the extent deemed necessary by CONTRACTOR or as requested by the CITY.
  - c. Maintain a file for EACH QUALIFIED CLAIM OR LOSS which shall be available for review by the CITY.
  - d. Adjust, settle or resist all QUALIFIED CLAIMS OR LOSSES:
    - 1) within the stated discretionary authority limit;
    - 2) with specific approval of the CITY, if outside the stated authority limit.
  - e. On receipt of required information from CITY, perform necessary and customary administrative and clerical work in connection with each QUALIFIED CLAIM OR LOSS, including the preparation of checks or vouchers, releases, agreements, state required reports and other documents needed to finalize a claim.
  - f. Establish and update claim reserves in consultation with the CITY and its carriers, as required.
  - g. Assist the CITY in establishing a banking arrangement for loss and expense payments as set forth in Schedule II.



- h. Notify CITY and carriers of all claims or losses which may exceed the CITY's retention, including specific reporting requirements of excess insurance carriers and, if requested, provide information on the status of those claims or losses.
- i. Assist CITY in obtaining reimbursements and recovery of losses from its carriers.
- j. Coordinate investigations on litigated claims with attorneys representing the CITY and with representatives of the excess carrier, as required. It is expressly understood that all legal costs and loss payments will be paid as allocated claim expense.
- k. Maintain an electronic database and provide the CITY with reports or access to electronic reports, at CONTRACTOR's discretion.
- l. Provide forms, as determined by CONTRACTOR, needed to administer the CITY's program.
- m. Provide additional ad hoc information, analysis, reports and services on a time and expense basis.
- n. Assist the CITY in selecting experts or specialists as the claims may require.
- o. Provide personnel needed to perform the services agreed to herein.
- p. CONTRACTOR shall assist CITY, as account manager, in meeting its responsibilities as a Responsible Reporting Entity (RRE) pursuant to the Medicare Secondary Payer (MSP) liability insurance (including self-insurance), no-fault insurance and workers' compensation reporting requirements mandated by Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA) (P.L. 110-173) (MMSEA Section 111 Reporting), by acting as account manager for CITY. As part of its claim handling process for claims handled by CONTRACTOR on its systems, CONTRACTOR will use its best efforts to obtain either from CITY, claimant or through investigation, the necessary data required for MMSEA Section 111 Reporting (MMSEA Section 111 Data). Using the Query process provided by Centers for Medicare and Medicaid Services (CMS) and the information obtained as part of its claim handling process, CONTRACTOR will determine which of the CITY's claims are required to be reported as part of the MMSEA Section 111 Reporting process (Section 111 Claims). CONTRACTOR will report all Section 111 Claims to CMS in the CMS required format as required by CMS. CITY agrees that in exchange for providing this reporting service that any MSAs will be placed with Contractor for the fees as identified in Exhibit B.

- q. CONTRACTOR will comply with all statutory, contractual and regulatory requirements related to the services set forth herein.
2. CONTRACTOR shall provide CITY with information necessary for it to file periodic reports and renewal applications required by state administrative agencies for CITY to maintain its self-insured status. All fees and assessments in connection with such are the obligation of the CITY. CITY is responsible for identifying all information that it wishes CONTRACTOR to capture for CITY's reporting.
3. CONTRACTOR will pursue recovery on behalf of the CITY as follows:
- a. Subrogation, Salvage and Contribution - CONTRACTOR will investigate and pursue subrogation, salvage, and contribution possibilities on behalf of the CITY in all states permitting such recoveries. CONTRACTOR will be paid a fee as an Allocated Expense for these services as follows:
- i. 25% of Net Recovery in cases where CONTRACTOR makes a recovery without engaging legal counsel to assist in the recovery effort.
- ii. If CONTRACTOR engages legal counsel to assist in the recovery effort by filing suit or otherwise, CONTRACTOR's fee will be the lesser of the following amounts:
- (a) 40% of Net Recovery less legal counsel fees for legal counsel engaged by CONTRACTOR to assist in the recovery effort, or
- (b) 25% of Net Recovery
- For recoverable amounts greater than \$5,000.00, CONTRACTOR will obtain CITY's approval prior to final disposition for any recovery less than 66% of the recoverable amount.
- b. Second Injury Fund Recovery - For those states where Second Injury Fund recovery is available, CONTRACTOR will pursue Second Injury Fund recovery on a case by case basis for an additional service fee as set forth in Exhibit A.
- If CONTRACTOR provides Second Injury Fund recovery services for the CITY, either directly or indirectly through an independent contractor, CITY agrees to pay an additional fee for these services (all or part of which may be paid to the independent contractor).
- c. It is agreed that CONTRACTOR is authorized to retain vendors and to pay expenses up to \$25,000.00 per claim pertaining to the processing, investigation and administration of recovery files, including but not limited to vendor fees and Allocated Expenses set forth in Schedule IV.



4. Provide other services as set forth in Schedule IV.

B. Obligations of CITY

1. CITY shall pay CONTRACTOR for services as set forth on Exhibit B, under the "Billing and Payment Terms" section. At the end of each contract period, the annual compensation shall be subject to adjustment, and the applicable minimum fee. CITY shall, as required by law, pay all applicable United States state and local sales and use tax or other similar United States transfer tax in the nature of sales or use tax.
2. CITY shall provide funds for the payment of QUALIFIED CLAIMS OR LOSSES, allocated loss expenses, and any Managed Care fees, if applicable. CONTRACTOR shall not be required to advance funds to pay losses, allocated expenses, bank charges, or Managed Care fees.
3. Fees are payable upon receipt of invoice. CONTRACTOR reserves the right to charge 1% per month on balances unpaid after thirty (30) days from the date of the receipt of the invoice.

C. BANKING - CONTRACTOR ACCOUNT

CONTRACTOR will provide an on-line check issuance system, in the existing CONTRACTOR escrow system, which provides for automated payments and control. The account will be funded by the CITY. CONTRACTOR will assist the CITY in establishing the initial imprest/opening balance of the fund or on demand deposit alternatives. CONTRACTOR will analyze the account from time to time and will submit advisory reports including excess or deficiencies to the imprest/opening balance. As a result of the advisories, the CITY agrees to fund any imprest within thirty (30) days of notification.

It is expressly understood that CONTRACTOR shall not be required to advance its own funds to pay any of the CITY's obligations.

CONTRACTOR shall have the right to convert the CITY's program to a voucher account on 48 hours notice to the CITY. CONTRACTOR shall also have the right to terminate the Agreement, and to return all claim files, by giving the CITY and the administrative authorities of the involved states supervising self-insurance ten (10) days notice in writing in the event the CITY fails to fund the imprest account as required above.

D. TERMS AND CONDITIONS

1. Discretionary Authority - The limit on any payment by CONTRACTOR shall be set forth in the Client Service Instructions, and may be modified from time to time as agreed by the parties. It is agreed that CONTRACTOR shall have full authority in all matters pertaining to the payment, processing, investigation and administration of QUALIFIED CLAIMS OR LOSSES within this limit. Failure of CONTRACTOR to settle a

QUALIFIED CLAIM OR LOSS within such limit shall not subject CONTRACTOR to liability to any party in the event of a judgment in excess of the Discretionary Authority entered by any court or the settlement of such claim or loss for an amount in excess of such Discretionary Authority.

2. Terms of Cancellation or Non-renewal -

In the event of cancellation or non-renewal of this Agreement, CONTRACTOR may continue to manage all pending claims and claims incurred during a service term but not reported prior to termination to conclusion, for a fee mutually agreed to by the parties, unless relieved of that responsibility by jurisdictional rule. If such after termination services are provided by CONTRACTOR, the services will be provided at a claims office selected by CONTRACTOR.

Should the CITY renew only a portion of the existing program under this Agreement (fewer states, locations, coverages, etc.) all open claims not part of the renewed portions of the program shall be considered in run-off and subject to per claim or other pricing to be agreed upon by the parties. Should no agreement be reached regarding these open claims, they will be returned to the CITY or forwarded to another party as designated by the CITY.

Should the CITY elect to have the files returned to them, CONTRACTOR will provide, at CONTRACTOR's discretion, a tape, diskettes, electronic (.pdf) or paper copy of the claim information, including medical bills and reports. Upon delivery of this information to CITY, claim information will be deleted from the CONTRACTOR electronic database. CITY shall pay all costs and expenses for the return of the files.

With regard to recovery services, in the event of cancellation or non-renewal, CITY may elect to have CONTRACTOR continue handling files referred for recovery to their final disposition. Otherwise, at the CITY's request, CONTRACTOR will return all recovery files to CITY or its designee at CITY's sole expense. Further, for any file where CONTRACTOR is pursuing recovery, CITY agrees to pay CONTRACTOR an additional fee equal to the greater of \$500 per file or 25% of the last offer of settlement, for any such file that is returned to CITY before the recovery has been completed on such file.

If the CITY fails to pay any amounts billed, including but not limited to CONTRACTOR's service fee within thirty (30) days of the CITY's receipt of an invoice for such amounts, CONTRACTOR shall have the right to terminate the Agreement by giving the CITY and the administrative authorities of the involved states supervising self-insurance ten (10) days notice in writing.

3. Sole Claims Administrator - During the terms of this Agreement and except as otherwise agreed to by the parties hereto, CITY agrees that CONTRACTOR shall be the sole claims administrator with respect to CITY's program in the jurisdictions which the CITY has contracted for, and that all new claims under CITY's program shall be forwarded to CONTRACTOR. CITY further agrees not to self-administer or adjust any such claims or



to forward any such claims to any other service organization or individual without CONTRACTOR's prior written consent.

4. Practice of Law - Nothing herein is intended nor shall it be construed to require CONTRACTOR to perform any services which may constitute the unauthorized practice of law.
5. Reporting - CONTRACTOR shall not be responsible for reporting to carriers on a type of claim or loss not managed by CONTRACTOR or approved as part of the program. CONTRACTOR will comply with the reporting requirements set forth by the re-insurers.
6. Fines and Penalties - CONTRACTOR shall not be responsible for any fines or penalties assessed by any governmental agency because of the acts or omissions of the CITY, by any parties retained by CITY or at the CITY's request to assist in the handling of the claims, or by previous or successor claim administrators. These fines or penalties include, but are not limited to, any delay due to untimely or inaccurate information reported by CITY.
7. Solicitation of Employees - CITY agrees that, during the term of the Agreement and for a one-year period thereafter, CITY shall not, without written consent of the President of CONTRACTOR, solicit to hire, or hire any employee of CONTRACTOR who, during the term of this Agreement, has performed, or contributed to the performance of, services hereunder. CITY further acknowledges that the damages suffered by CONTRACTOR as a result of breach of this obligation would be significant but not susceptible of easy calculation.

Accordingly, in the event of a breach of the aforesaid obligation, CITY agrees to pay CONTRACTOR an amount equal to fifty percent (50%) of such employee's annualized salary amount at CONTRACTOR as of the date of breach.

8. Structured Settlements & Medicare Set Asides - Any structured settlement or Medicare Set Asides shall be placed through Galaher Settlements and Insurance Services, Inc.
9. Overpayment of Claims - CONTRACTOR will not be responsible for any overpayments to claimants, medical providers, or service providers, unless the payment was by an erroneous or negligent act on the part of CONTRACTOR.
10. Escheat - The parties acknowledge that any and all escheat and unclaimed property obligations of any type or variety lie with the CITY and not with CONTRACTOR. Pursuant to the other terms and conditions of this Agreement, CONTRACTOR shall provide CITY with such information and reports as reasonably required by CITY to perform this function.

#### E. DEFINITIONS

Incident Only/Record Only - Billing & Contractual Definition:

Incident/Record Only is an event reported to CONTRACTOR by the CITY that the CITY identifies when reported as for "record purposes only."

CONTRACTOR will provide data entry only. If the incident/record only is subsequently activated the CITY will be billed the difference between the previously invoiced incident/record only fee and the activated claim level fee.

The scheduled fee for this claim type **does not include** CONTRACTOR's centralized claim intake.

Medical Only claim - Billing and Contractual Definition:

A Medical Only claim (MO) is any worker's compensation claim where the only issue is the payment of medical bills for reasonable and necessary care or treatment. The amount paid for medical treatment is \$5,000 or less; the time off work does not meet the jurisdictional waiting period and there is no exposure for permanent partial or permanent total disability benefits, transitional duty or wage loss.

There may be one point contact with the CITY to confirm the facts. There is no investigation undertaken in a medical only claim. If the cost of medical care or treatment exceeds \$5,000, an investigation or other adjuster activity is warranted or requested (including but not limited to additional initial contacts); a medical only claim will be converted to an indemnity claim.

If conversion takes place after initial billing, the CITY will be billed for the difference between the medical only fee and the appropriate indemnity fee.

The scheduled fee for this claim type **does not include** CONTRACTOR's centralized claim intake.

Indemnity claim - Billing and Contractual Definition:

An indemnity claim meets **any** of the following conditions:

- The injured employee's time off work (due to a compensable or potentially compensable injury) meets the applicable jurisdictional waiting period
- There are issues regarding compensability or coverage
- Medical payments exceed \$5,000
- An investigation is conducted (including statements and or multiple contacts)
- Permanent partial or permanent total award
- A claim for benefits is presented before the applicable state agency even if no benefits are awarded.

The scheduled fee for this claim type **does not include** CONTRACTOR's centralized claim intake.

Employer's Liability claim - a claim against the CITY for damages resulting from bodily injury by accident or disease arising out of the injured employee's employment. Fees for handling Employers Liability claims are in addition to fees for the underlying claim.



**Case Management** - Case management is a collaborative process that assesses, plans, implements, coordinates, monitors and evaluates options and services to meet injured worker's health care needs. These needs are met through the use of thorough communication and expert resources to promote quality, cost effective outcomes. The process includes aggressive return to work planning by determining the physical demands of the job and identifying the availability of modified or transitional work assignments. In the CONTRACTOR model, case management is telephonic. However, in certain situations, field case management by an approved CONTRACTOR vendor may be beneficial. Should a Field Case manager be assigned to the claim, the CONTRACTOR Telephonic Case manager will remain assigned to the claim to manage the Field Case manager, subject to CITY specified claim handling instructions. Referral criteria are outlined in the CONTRACTOR Best Practices for UR and TCM.

**Triage** - Defined as the initial contact of the medical provider and/or the injured worker by the Telephonic Case manager. **Triage is an optional service** and rates are provided based on CITY criteria.

**Utilization Review** - Evaluation of medical necessity, appropriateness and efficiency of the use of health care services, procedures and facilities under the provisions of nationally recognized standards (URAC) or state regulations where applicable. CONTRACTOR standard Utilization Review is pre-authorization of listed procedures in jurisdictions where this service is legislated as mandatory: Alabama, California; Kentucky; Louisiana; Massachusetts, Tennessee and Texas. Utilization Review is a service provided per assignment and per body part.

**As an optional "price on request" service**, Utilization Review may be applied prospectively, concurrently or retrospectively depending on CITY requirements or state mandate. Initial review is performed by CONTRACTOR Managed Care Personnel by comparing requested treatment plans, services or procedures to medically recognized criteria and/or state mandated criteria. If a treatment plan, service or procedure does not meet designated criteria, the request is escalated to a Peer Reviewer for determination.

**Peer Review - Optional service** outside the scope of state mandated Utilization Review requirements. The service offers a licensed health care professional that is usually in the same licensing category as the health care provider requesting the treatment (MD, DO, DC.) Additionally, there is a specialty match - i.e. requests from an orthopedic surgeon are referred to an orthopedic surgeon for review. Some states also require a state license match. If the peer reviewer renders an adverse determination, an internal appeal process is available to the requesting health care provider and injured worker.

**INVESTIGATIONS** - For those claim types where an investigation is warranted or allowed by definition, investigations are telephonic per CONTRACTOR's best practices. **Site or Field investigations** would be billed (additionally) at the appropriate hourly rate, plus expenses.

**RESERVES** - It is assumed that CONTRACTOR has minimum reserve authority to \$25,000 for all lines without pre-authorization. If a lower reserve limit is requested additional fees will be charged.

**CLAIM SPECIFIC REPORTING** - CONTRACTOR will issue status reports at 50% of the CITY's retention or at the carrier-defined threshold. If the CITY requests status reporting at lower levels, additional fees will be charged.

**CLAIM REVIEWS-MEETINGS** - For service fee accounts less than \$250,000 one claim review annually. For service accounts between \$250,000 and \$1,000,000 two reviews annually. For service accounts over \$1,000,000 four reviews annually. Claim reviews will be attended by the CONTRACTOR CITY executive and technicians from the lead office. Others will participate telephonically.

For accounts which CONTRACTOR considers to be in run-off status, one telephonic claim review will be provided on an annual basis.

Discretionary Authority - CONTRACTOR is authorized to make payment, for loss or expense, up to this amount as set forth in the Client Service Instructions, as CONTRACTOR deems necessary.

Qualified Claim or Loss - CONTRACTOR will investigate and adjust any loss or claim occurring within the service term, provided the loss or claim type is identified in Schedule V.

Net Recovery - The net recovery will be calculated by subtracting from the Gross Recovery all Recovery Expenses

Gross Recovery - Gross Recovery is the full amount of any recovery obtained for the CITY.

Recovery Expense - Those expenses incurred in the pursuit of recovery, including but not limited to Allocated Expenses incurred as part of the recovery effort. Recovery Expense does not include those Allocated Expenses incurred as part of the investigation of the underlying claim and does not include legal counsel fees for counsel engaged by CONTRACTOR to assist in the recovery effort.

Recovery - Recovery is the amount which CONTRACTOR or its independent contractors have obtained from the pursuit of funds due to CITY as a result of subrogation, salvage, contribution, second injury funds, and the like.

Allocated Expenses - Shall be the responsibility of the CITY and shall include, but not be limited to:

- Legal fees
- professional photographs and other exhibits
- medical records
- CIB Index
- experts' fees and costs
- rehabilitation costs
- accident reconstruction



- architects, contractors and engineers
- police, fire, coroner, OSHA, weather, or other such reports
- property damage appraisals
- transcription of recorded statements
- extraordinary costs for witness statements
- official documents and transcripts
- sub-rosa investigations
- medical examinations
- expenses related to travel made at CITY's request
- court reporters
- fees for service of process
- pre and post judgment interest paid
- chemists
- collection costs payable to third parties on subrogation
- mediation, arbitration or any other resolution forum costs associated with the case
- fees and travel expenses related to field claim investigation
- any other similar costs, fee or expense reasonably chargeable to the investigation, negotiation, settlement or defense of a claim or loss which must have the explicit prior approval of the CITY
- Managed Care

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**EXHIBIT B**

**SCHEDULE OF FEES**

Contractor's schedule of fees and rates, which includes all billing amounts and costs, is set forth as follows:

**A. Per Claim Fees:**

i. July 1, 2014 and ending June 30, 2015:

Indemnity Claim:	\$1,264
Medical Only Claim:	\$168
Incident Only:	\$61
Indemnity Claim Open Over 12 Months:	\$903
Indemnity Claim Open Over 24 Months:	\$366

ii. July 1, 2015 and ending June 30, 2016:

Indemnity Claim:	\$1,327
Medical Only Claim:	\$176
Incident Only:	\$64
Indemnity Claim Open Over 12 Months:	\$948
Indemnity Claim Open Over 24 Months:	\$384

iii. July 1, 2016 and ending June 30, 2017:

Indemnity Claim:	\$1,550
Medical Only Claim:	\$176
Incident Only:	\$64
Indemnity Claim Open Over 12 Months:	\$975
Indemnity Claim Open Over 24 Months:	\$775

iv. July 1, 2017 and ending June 30, 2018:

Indemnity Claim:	\$1,612
Medical Only Claim:	\$176
Incident Only:	\$64
Indemnity Claim Open Over 12 Months:	\$975
Indemnity Claim Open Over 24 Months:	\$775



v. July 1, 2018 and ending June 30, 2019:

Indemnity Claim:	\$1,676
Medical Only Claim:	\$176
Incident Only:	\$64
Indemnity Claim Open Over 12 Months:	\$975
Indemnity Claim Open Over 24 Months:	\$775

**B. Miscellaneous Charges:**

i. July 1, 2014 and ending June 30, 2015:

- a. CMS Reporting and Account Management Fee: \$4,110.
- b. One (1) user account for the Ovation Claim System: \$1,568.
- c. Intake Fee Per Report: \$24.

ii. July 1, 2015 and ending June 30, 2016:

- a. CMS Reporting and Account Management Fee: \$4,110.
- b. One (1) user account for the Ovation Claim System: \$1,852.
- c. Intake Fee Per Report: \$25.

iii. July 1, 2016 and ending June 30, 2017:

- a. CMS Reporting and Account Management Fee: \$4,110.
- b. One (1) user account for the Ovation Claim System: \$1,852.
- c. Intake Fee Per Report: \$25.

iv. July 1, 2017 and ending June 30, 2018:

- a. CMS Reporting and Account Management fee: \$4,110.
- b. One (1) user account for the Ovation Claim System: \$1,852.
- c. Intake Fee Per Report: \$25.

v. July 1, 2018 and ending June 30, 2019:

- a. CMS Reporting and Account Management fee: \$4,110.
- b. One (1) user account for the Ovation Claim System: \$1,852.
- c. Intake Fee Per Report: \$25.

**C. Invoicing:**

Contractor shall invoice City for fees monthly as incurred.

**D. Care Management Fee Schedule:**

All claim administration fees and services contemplate the deployment of Contractor's managed care services for all bill review and case management services. Managed care fees are detailed below. Fees may change from time to time upon 60 days written notice.

Service	Rate
<b>MEDICAL BILL REVIEW</b>	
State fee scheduling/usual, customary, and reasonable; state reporting of all medical bills	\$7.50 per bill all medical bills
<b>PROVIDER NETWORKS</b>	
All rates are in addition to Medical Bill Review fees above	
Preferred provider organization (PPO) networks	27% savings (excluding PBM Rx bills); below Fee Schedule + Med Bill Review Fee
California Outcomes Based Statewide Medical Provider Network (MPN) (All California Bills)	\$8.00 per medical bill + Med Bill Review Fee (separate PPO fees do not apply) (CA MPN rates do not apply to in network pharmacy)
Texas Healthcare Network (HCN)	\$15.75 per bill + Med Bill Review Fee (separate PPO fees do not apply) One-time Implementation fee \$2,500
Out of network negotiated savings:	Customary Bill Review: 20% of savings with a \$5,000 maximum fee for medical bills less than \$100,000, a \$12,000 maximum fee for medical bills between \$100,000-\$300,000 and a \$17,000 maximum fee for medical bills greater than \$300,000
<ul style="list-style-type: none"> <li>• Nurse review,</li> <li>• quick-pay negotiations,</li> <li>• usual and customary review.</li> </ul>	
<b>CLINICAL SERVICES</b>	
Clinical consultation included in program	\$70 per consultation event <sup>1</sup> \$95 per consultation event includes claim intake <sup>1</sup> \$22 misdirected calls Implementation fee (one-time) \$1,550 For clients with anticipated call volumes of less than 25 calls per month, there is a monthly minimum fee of \$1,800.
	<sup>1</sup> \$15 surcharge for nurse follow-up call



Service	Rate
Telephonic case management and return to work specialists	<ul style="list-style-type: none"> <li>Evaluation &amp; Recommendation \$150 one time; If claim is subsequently referred to Telephonic Case Management, fee applied to the first month of TCM.</li> <li>1-30 days: \$380</li> <li>31-60 days: \$290</li> <li>&gt;61 days: \$190*</li> <li>* \$190 fee applies every 30 days thereafter.</li> <li>Hourly Rate \$92/hr</li> </ul>
Utilization review	\$109 per review
Physician advisor/peer review	\$250 per review
Complex pharmacy management	\$115 per hour: registered nurse management Physician Mgmt <ul style="list-style-type: none"> <li>1<sup>st</sup> Medication \$375</li> <li>2-4 Meds \$650</li> <li>5-7 Meds \$975</li> <li>8-12 Meds \$1,400</li> <li>&gt;12 Meds \$1,400 + \$100 per each additional med (script) with cap of \$2,200</li> </ul> \$95 per hour, plus direct expenses <u>Exceptions to standard rate</u> <ul style="list-style-type: none"> <li>Alaska: \$124 per hour</li> <li>California: \$118 per hour</li> <li>Hawaii: \$124 per hour</li> <li>New York City Boroughs: \$113 per hour</li> <li>Catastrophic Case Management: \$140 per hour</li> </ul> Jurisdictional fee schedules may apply
Field case management: Full field	
Field case management: Clinical assessment	\$660: One visit \$795: Two visits
Field case management: RTW field assessment	\$695
Field case management: Job analysis	\$640
Field case management: Ergonomic evaluation	\$710
Field case management: Labor market survey	\$580
Field case management: Automated transferable skill analysis	\$325

Service	Rate
Field case management: Employability field testing	\$870
Catastrophic oversight	\$260 per claim
<b>CONTRACTOR MANAGED CARE ADMINISTRATIVE SERVICES</b>	
Contractor Medical Card	No Charge
Optional CA MPN EMS	Upon Request - \$2.14 per employee notice and tracking
Optional TX SWMPN Notification Service	Upon Request - \$3.20 per employee notice and tracking
Standard Provider Panel Postings	No Charge

**E. SIU Service Fees:**

The charges set forth below are the current fees for the services listed, and these fees may change from time to time upon sixty days prior written notice to City:

Service	Rate
<b>Research services</b>	
Comprehensive background	\$450
Internet investigation	\$250
Social media monitoring (30 days)	\$100
Canvassing services	\$250
Skip tracing/individual locate	\$175
Asset check	\$225
Criminal & civil check	\$135 plus cost of records Additional counties: \$35 (per county)
Records request	\$100 plus cost of records
Other research services	Quote upon request
<b>Field services</b>	
Surveillance	\$80 per hour: All other states \$90 per hour: California, Hawaii, and New York City (Five boroughs and Long Island) <u>Additional expenses to hourly rate:</u> <ul style="list-style-type: none"> <li>• Pre-surveillance Investigation: \$75</li> <li>• Travel: \$45 per hour (includes fuel and mileage).</li> <li>• License plate searches : \$10 (post prelim)</li> </ul>



Service	Rate
<b>Unmanned surveillance</b>	\$700 per day (3 day minimum) On site analysis, deployment and extraction of stationary device: \$80 per hour: All other states \$90 per hour: California and New York City (Five boroughs and Long Island)
<b>Alive and well</b>	\$250 flat rate: All other states \$275 flat rate: California, Hawaii, and New York City (Five boroughs and Long Island)
<b>Activity check</b>	\$325 flat rate: All other states \$350 flat rate: California, Hawaii, and New York City (Five boroughs and Long Island) License plate searches : \$10 each
<b>On-site field investigations</b>	\$85 per hour (portal to portal): All other states \$95 per hour (portal to portal): California, Hawaii, and New York City (Five boroughs and Long Island)
<b>Testimony</b>	\$85 per hour (portal to portal): All other states \$95 per hour (portal to portal): California, Hawaii, and New York City (Five boroughs and Long Island)
<b>Video processing:</b>	\$30 processing fee \$30 per hour: Duplicate copies of additional video \$50 per hour: Highlight video of activity
<b>Fuel surcharge/credit</b>	2% if fuel cost is > \$3.75 for 30 consecutive days
<b>International investigations</b>	Quote upon request
<b>Other field services</b>	Quote upon request
<b>Assessment services</b>	
<b>Suspect File Review (includes state reporting when warranted)</b>	\$95/hour
<b>Fraud investigation (includes state reporting when warranted)</b>	\$95/hour
<b>SIU program case management (client specific program)</b>	\$695
<b>Other assessment services</b>	Quote upon request

## F. MEDICARE WORKERS COMPENSATION COMPLIANCE SERVICES SCHEDULE

Upon request of City and for additional fees, Contractor is able to perform the following Medicare Compliance Services for workers' compensation claims. The current fees for the services listed below may vary from the fees set forth at the time of contract execution, accordingly, the current fees will be provided to City prior to such services being performed. The fees may change from time to time upon sixty days prior written notice to City.

No.	Service name and description	Price
1	<b>Medicare Set-Aside (MSA):</b> This comprehensive report is primarily used to assist the examiner in determining an appropriate amount of money to set aside for the benefit of Medicare at the time of settlement.	\$2,050
2	<b>MSA without submission:</b> This is a compact MSA report that will not be submitted to CMS for review.	\$1,750
3	<b>Complex Medicare Set-Aside (MSA):</b> Any MSA that includes more than 2 open claims to be included in the same report; or more than 200 pages of medical records.	\$650
4	<b>MSA submission:</b> Compiling, reviewing, analyzing and submitting necessary documentation to CMS for approval of an MSA.	\$720
5	<b>Medicare Lien Resolution:</b> Contractor's CMS Lien Resolution program will assist the examiner in all facets of lien resolution.	\$515
6	<b>Medical Cost Projection (MCP):</b> A Medical Cost Projection (MCP) is similar to an MSA in that it projects the anticipated future medical care for a claimant.	\$2,250
7	<b>MSA/MCP Combination Report:</b> This product is a combination of the MSA and MCP. It includes one report that summarizes medical records and two spreadsheets.	\$3,300
8	<b>MSA Update:</b> All updates will be charged at a flat rate.	\$615 per update
9	<b>Social Security Disability Check:</b> We will check to determine if the claimant has applied for or been accepted for Social Security disability benefits.	\$250
10	<b>Rated Age Request:</b> In certain circumstances, it may be necessary to secure a rated-age in order to minimize the MSA.	\$20

Unless otherwise authorized by City, in no event shall the service fees billed to City by Contractor for Services under this Agreement exceed four hundred fifty thousand dollars (\$450,000) per year, subject to the City's budget appropriations.



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**EXHIBIT C**

**INSURANCE REQUIREMENTS**

**INSURANCE COVERAGE 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 purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

**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, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

## 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. 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, except Workers' Compensation, 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 Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities 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 of the coverage provided due to non-payment of premiums shall be effective until written notice has been given at least ten (10) days prior to the effective date of such cancellation. Contractor will provide such notice to City upon receipt of notice from insurer.

b. Should any of the described policies be cancelled prior to the expiration date thereof, notice will be delivered in accordance with policy provisions.

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 D of this Exhibit C, above.

E. 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, purchase 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 purchased in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, insurance compliance documents purchased 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.

**F. 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, purchase 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.

**G. 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 mailed to:

EBIX Inc.

City of Santa Clara [Human Resources Department]

P.O. Box 100085 - S2

or

1 Ebix Way

Duluth, GA 30096

John's Creek, GA 30097

Telephone number: 951-766-2280

Fax number: 770-325-0409

Email address: ctsantaclara@ebix.com

**H. 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.



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**EXHIBIT D**

**ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO  
AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA**

**Termination of Agreement for Certain Acts.**

- A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
1. If a Contractor<sup>1</sup> does any of the following:
    - a. Is convicted<sup>2</sup> of operating a business in violation of any Federal, State or local law or regulation;
    - b. Is convicted of a crime punishable as a felony involving dishonesty<sup>3</sup>;
    - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
    - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,
    - e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

<sup>1</sup> For purposes of this Agreement, the word "Consultant" (whether a person or a legal entity) also refers to "Contractor" and means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

<sup>2</sup> For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

<sup>3</sup> As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.
- B. The City may also terminate this Agreement in the event any one or more of the following occurs:
1. The City determines that Contractor no longer has the financial capability<sup>4</sup> or business experience<sup>5</sup> to perform the terms of, or operate under, this Agreement; or,
  2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to provide and maintain bonds and/or insurance policies required under this Agreement.
- C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Contractor may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

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<sup>4</sup> Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

<sup>5</sup> Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.



**AGREEMENT FOR THE PERFORMANCE OF SERVICES  
BY AND BETWEEN THE  
CITY OF SANTA CLARA, CALIFORNIA  
AND  
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.**

**EXHIBIT E**

**AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS**

I hereby state that I have read and understand the language, entitled "Ethical Standards" set forth in Exhibit D. I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made appropriate inquiry of those individuals potentially included within the definition of "Contractor" contained in Ethical Standards at footnote 1.

Based on my review of the appropriate documents and my good-faith review of the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to said "Contractor" category [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in the Ethical Standards within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

**SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.**

a California corporation

By:   
Signature of Authorized Person or Representative

Name: Stephen R. Hurler

Title: Senior Vice President

**NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED**

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

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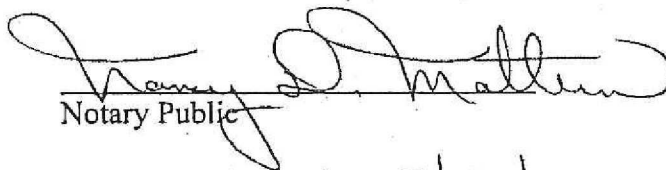


State of Tennessee  
County of Shelby

Subscribed and sworn to before me this 25<sup>th</sup> day of October, 2016 on behalf of Sedgwick Claims Management Services, Inc. by Stephen R. Hurley, it's Senior Vice President.



My Comm. Expires  
August 22, 2020

  
Notary Public

My commission expires 8/22/2020

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**CITY OF SANTA CLARA**  
**AGENDA MATERIAL ROUTE SHEET**

Council Date: 12/6/16

**SUBJECT:** Request For Approval And Authorization For Acting City Manager To Execute The Agreement For The Performance Of Services With Sedgwick Claims Management Services, Inc. For Worker's Compensation Claims Administration

**PUBLICATION REQUIRED:**

The attached Notice/Resolution/Ordinance is to be published \_\_\_\_\_ time(s) at least \_\_\_\_\_ days before the scheduled meeting/public hearing/bid opening/etc., which is scheduled for \_\_\_\_\_.

**AUTHORITY SOURCE FOR PUBLICATION REQUIREMENT:**

Federal Codes:

Title \_\_\_\_\_ U.S.C. § \_\_\_\_\_  
(Titles run 1 through 50)

California Codes:

Code \_\_\_\_\_ § \_\_\_\_\_  
(i.e., Government, Street and Highway, Public Resources)

Federal Regulations:

Title \_\_\_\_\_ C.F.R. § \_\_\_\_\_  
(Titles run 1 through 50)

California Regulations:

Title \_\_\_\_\_ California Code of Regulations § \_\_\_\_\_  
(Titles run 1 through 28)

City Regulations:

City Charter § \_\_\_\_\_

City Code § \_\_\_\_\_

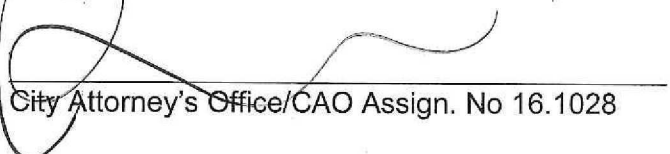
(i.e., 1310. Public Works Contracts. Notice published at least once at least ten days before bid opening)

**Reviewed and approved:**

1. As to City Functions, by

  
\_\_\_\_\_  
Department Head

2. As to Legality, by

  
\_\_\_\_\_  
City Attorney's Office/CAO Assign. No 16.1028

3. As to Environmental Impact Requirements, by

N/A  
\_\_\_\_\_  
Director of Planning and Inspection

4. As to Substance, by

  
\_\_\_\_\_  
Interim City Manager

\* Agenda Material Route Sheet required for all agreements, contracts, resolutions, ordinances, notices requiring publication, master plan reports and grant applications