



**CONTRACT BETWEEN THE CITY  
OF AUSTIN ("City")  
And  
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.  
("Contractor")  
For  
Worker's Compensation Third Party Administration Services**

**Contract Number: MA 5800 NA200000203**

The City accepts the Contractor's Offer for the above requirement and enters into the following Contract. This Contract is between Sedgewick Claims Management Services, Inc. having offices at 8125 Sedgewick Way, Memphis, Tennessee 38125 and the City, a home-rule municipality incorporated by the State of Texas. Capitalized terms used but not defined herein have the meanings given in the Solicitation.

**1.1 This Contract is composed of the following documents in order of precedence:**

- 1.1.1 This Document
- 1.1.2 Negotiated Terms and Conditions dated 12/2/20
- 1.1.3 Negotiated Documents Scope of Work dated 12/2/20, attached as Exhibit A.
- 1.1.4 Contractor's payment/fee schedule, attached as Exhibit B.
- 1.1.5 Revised Performance Guarantees, attached as Exhibit C.
- 1.1.6 The City's Solicitation RFP 5800 BCR3023 including all documents incorporated by this reference.
- 1.1.7 Contractor's Offer, dated July 23, 2020, incorporated herein by this reference.

**1.2 Term of Contract.**

This Contract shall remain in effect for an initial term of 36 months or the City terminates the Contract.. This Contract may be extended beyond the initial term for up to two (2) additional 12-month periods at the City's sole option. The effective date of this contract will be March 1, 2021.

- 1.3 Designation of Key Personnel.** The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor shall

promptly notify the City and obtain approval for the replacement. Such approval shall not be unreasonably withheld. The Contractor's and City's key personnel are identified as follows:

	<u>Name</u>	<u>Phone Number</u>	<u>Email Address</u>
Contractor Contract Manager	Bob Peterson	901-415-7400	Bob.peterson@sedgwick.com
City Contract Manager	Leslie Milvo	512-974-3245	Leslie.milvo@austintexas.gov
City Project Manager	Kayla Wilson	512-974-3309	Kayla.wilson@austintexas.gov
City Contract Administrator, Procurement Specialist	Jim Howard	512-974-2031	Jim.Howar@austintexas.gov

- 1.4 **Invoices.** The City's preference is to have invoices emailed to Kayla.wilson@austintexas.gov or mailed to the below address:

	City of Austin
Department	Human Resources Department
Attn:	Risk Management 5202
Address	P.O. Box 1088
City, State, Zip Code	Austin, Texas 78767

For questions regarding your invoice/payment please contact the City Contract Manager.

This Contract (including any Exhibits and referenced Documents) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the parties have caused a duly authorized representative to execute this Contract on the date set forth below.

**SEDGWICK CLAIMS MANAGEMENT SERVICES,  
INC.**

**J. Edward Peel**

Printed Name of Authorized Person

*J. Edward Peel*  
Signature

**Vice President**

Title:

**December 10, 2020**

Date:

**CITY OF AUSTIN**

**JAMES T  
HOWARD**

Printed Name of Authorized Person

Signature

Digitally signed by JAMES T HOWARD  
DN: cn=JAMES T HOWARD, o=CITY OF  
AUSTIN, ou=FINANCE,  
email=JIM.HOWARD@AUSTINTEXAS.G  
OV, c=US  
Date: 2020.12.11 10:34:33 -06'00'

**PROCUREMENT SPECIALIST IV**

Title:

**December 11, 2020**

Date:

Printed Name of Authorized Person

**Cyrenthia Ellis**

Signature

Digitally signed by Cyrenthia Ellis  
DN: cn=Cyrenthia Ellis, o=City of Austin,  
ou=Procurement Office,  
email=Cyrenthia.Ellis@austintexas.gov, o=US  
Date: 2020.12.23 09:06:02 -06'00'

Title:

**12-26-2020**

Date:

**CITY OF AUSTIN V3 jth 12 2 21**  
**TERMS AND CONDITIONS**  
**RFP 5800 BCR3023**

The Contractor agrees that the Contract shall be governed by the following terms and conditions.

**1. GENERAL**

**1.1 TERM OF CONTRACT:**

- A. The Contract shall commence upon execution unless otherwise specified and shall continue in effect until all obligations are performed in accordance with the Contract. Upon written notice to the Contractor from the City's Purchasing Officer or designee, the Contract may be extended beyond the initial term at the City's sole option unless the Contractor is notified 30 days prior to the expiration. If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.
- B. Upon expiration of the initial term or any period of extension, the Contractor agrees to holdover under the terms and conditions of this Contract for such a period as is reasonably necessary for the City to re-solicit and/or complete the Deliverables due under this Contract. Any holdover period will not exceed 180 calendar days unless mutually agreed on by both parties in writing.

**1.2 INDEFINITE QUANTITY:**

The quantities and/or services listed herein are estimates of the goods and services needed by the City for the period of the Contract. The City reserves the right to purchase more or less of these quantities and/or services as may be required during the Contract term. Quantities and/or services will be as needed and specified by the City for each order. Unless specified in the Contract, there are no minimum order quantities.

**1.3 INVOICES:**

- A. The Contractor shall submit separate Invoices for each Order after each delivery or on the schedule provided in the Contract. If partial shipments or deliveries are authorized by the City, a separate Invoice must be sent for each shipment or delivery made.
- B. Invoices shall be sent to the address on the Purchase Order or Delivery Order in the section entitled, "BILL TO". Proper Invoices must include a unique Invoice number, the purchase Order or delivery Order number, the master agreement number (if applicable), the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized according to pricing structure in the Contract. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the Invoice. The Contractor's name and, if applicable, the tax identification number on the Invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's Invoice. Invoices received without all required information cannot be processed and will be returned to the vendor.
- C. Invoices for labor shall include a tabulation of work-hours at the appropriate rates and grouped by work Order number. Time billed for labor shall be limited to hours actually worked.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontracting and other authorized expenses at actual cost without markup.
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the Invoiced amount. The City will furnish a tax exemption certificate upon request.

**1.4 PAYMENT:**

- A. All proper Invoices received by the City will be paid within 30 calendar days of the City's receipt of the Deliverables or of the Invoice, whichever is later.

**CITY OF AUSTIN V3 jth 12 2 21**  
**TERMS AND CONDITIONS**  
**RFP 5800 BCR3023**

- B. If payment is not timely made, (per Paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code §2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until 10 calendar days after the grounds for withholding payment have been resolved.
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the Invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
  - i. Delivery of defective or non-conforming Deliverables by the Contractor;
  - ii. Third party claims, which are not covered by the insurance which the Contractor is required to provide under the terms of this Contract, are filed or there is reasonable evidence indicating probable filing of such claims;
  - iii. Failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
  - iv. Damage to the property of the City or the City's agents, employees or Contractors, which is not covered by insurance required to be provided by the Contractor;
  - v. Reasonable evidence demonstrates that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
  - vi. Failure of the Contractor to submit proper Invoices with all required attachments and supporting documentation; or
  - vii. Failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, §1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.
- G. The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds appropriated and available for this Contract. The absence of appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not appropriated or available and any Deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed, and obligations incurred prior to the date of notice of non-appropriation.

**1.5 FINAL PAYMENT AND CLOSE OUT:**

- A. If a Minority-Owned Business Enterprise/Women-Owned Business Enterprise (MBE/WBE) Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project Manager or Contract Manager no later than the 15th calendar day after completion of all work under the Contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.

**CITY OF AUSTIN V3 jth 12 2 21**  
**TERMS AND CONDITIONS**  
**RFP 5800 BCR3023**

- B. The making and acceptance of final payment will constitute:
- i. A waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
  - ii. A waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

**1.6 SPECIAL TOOLS & TEST EQUIPMENT:**

If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this Order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

**1.7 AUDITS AND RECORDS:**

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract, at the City's expense. The Contractor agrees to refund to the City any overpayments disclosed by any such audit. The City agrees to protect from disclosure Contractor's confidential and proprietary information disclosed during an audit to the same extent it protects its own confidential and proprietary information, subject to the requirements of the Texas Public Information Act, Chapter 2251, Texas Government Code.
- B. Records Retention:
- i. Contractor is subject to City Code Chapter 2-11 (Records Management), and as it may subsequently be amended.
  - ii. The Contractor shall retain all records for a period of three years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.

**1.8 FINANCIAL DISCLOSURES AND ASSURANCE:**

The City may request and review financial information as the City requires to determine the credit worthiness of the Contractor, including but not limited to, annual reports, audited financial Statements and reports, bank letters of credit or other credit instruments. Failure of the Contractor to comply with this requirement shall be grounds for terminating the Contract.

**1.9 RIGHT TO ASSURANCE:**

Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. If no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

**1.10 STOP WORK NOTICE:**

The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified

**CITY OF AUSTIN V3 jth 12 2 21**  
**TERMS AND CONDITIONS**  
**RFP 5800 BCR3023**

by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

**1.11 DEFAULT:**

The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or Deliverable required to be submitted by the Contractor to the City. The City shall be in default if it fails to make payment in accordance with the Payment terms of this Contract.

**1.12 TERMINATION FOR CAUSE:**

In the event of a default by either party, the non-defaulting party shall have the right to terminate the Contract for cause, by written notice effective ten 10 calendar days, unless otherwise specified, after the date of such notice, unless the defaulting party, within such 10 day period, cures such default, or provides evidence sufficient to prove to the non-defaulting party's reasonable satisfaction that such default does not, in fact, exist. Additionally, the City shall have the right to act in accordance with the terms defined by "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors." In addition to any other remedy available under law or in equity, either party shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the party as a result of the Contractor's default, including, without limitation, cost of cover, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and not exclusive of any other right or remedy provided by law.

**1.13 ATTORNEY'S FEES:**

In consideration of the award and execution of this Contract and in consideration of the City's waiver of its right to attorney's fees, the Contractor knowingly and intentionally waives its right to attorney's fees under §271.153, Texas Local Government Code, in any administrative proceeding, alternative dispute resolution proceeding, or litigation arising out of or connected to this Contract.

**1.14 TERMINATION WITHOUT CAUSE:**

The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon 30 calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed, and obligations incurred prior to the date of termination in accordance with the terms hereof. The Contractor shall have the right to terminate the Contract, in whole or in part, without cause any time upon 180 calendar days' prior written notice. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed, and obligations incurred prior to the date of termination in accordance with the terms hereof

**1.15 FRAUD:**

Fraudulent Statements by the Contractor on any Offer or in any report or Deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

**CITY OF AUSTIN V3 jth 12 2 21**  
**TERMS AND CONDITIONS**  
**RFP 5800 BCR3023**

**1.16 DELAYS:**

The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within 30 calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution Clause. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

**1.17 FORCE MAJEURE:**

Contractor may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, pandemic, sovereign conduct, or court order provided that the Contractor experiences the event of force majeure and prudently and promptly acts to take any and all steps that are within the Contractor's control to ensure performance and to shorten the duration of the event of force majeure. Contractor shall provide notice of the force majeure event to the City within three (3) business days of the event or delay, whichever occurs later, to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, the City may terminate an order under the Contract if it is determined by the City that the Contractor will not be able to deliver goods or services in a timely manner to meet the business needs of the City.

**1.18 INDEMNITY:**

A. IN THIS SECTION, THE FOLLOWING TERMS HAVE THE MEANINGS ASSIGNED BELOW:

- i. "INDEMNIFIED PARTY" IS THE CITY AND THE CITY'S OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS.
  - (1) "INDEMNIFYING PARTY" IS THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.
  - (2) THE INDEMNIFYING PARTY SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE INDEMNIFIED PARTY AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, DEFICIENCIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, SETTLEMENTS, INTEREST, AWARDS, PENALTIES, FINES, COSTS OR EXPENSES, INCLUDING PROFESSIONAL FEES AND REASONABLE ATTORNEYS' FEES, THAT ARE INCURRED BY THE INDEMNIFIED PARTY ARISING OUT OF ANY DIRECT OR THIRD PARTY CLAIM OF:
- ii. BREACH OR NON-FULFILLMENT OF ANY PROVISION OF THIS CONTRACT BY THE INDEMNIFYING PARTY;
- iii. ANY FALSE REPRESENTATION OR WARRANTY MADE BY THE INDEMNIFYING PARTY IN THIS CONTRACT OR IN THE INDEMNIFYING PARTY'S PROPOSAL/RESPONSE LEADING TO THIS CONTRACT;
- iv. ANY NEGLIGENT OR MORE CULPABLE ACT OR OMISSION OF THE INDEMNIFYING PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT, RELATED TO THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS CONTRACT;
- v. BODILY INJURY; DEATH OF ANY PERSON; OCCUPATIONAL ILLNESS OR DISEASE; LOSS OF SERVICES, WAGES, OR INCOME; OR DAMAGE TO REAL OR PERSONAL PROPERTY CAUSED BY THE NEGLIGENT OR MORE CULPABLE ACTS OR OMISSIONS OF INDEMNIFYING PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT; OR



**CITY OF AUSTIN V3 jth 12 2 21**  
**TERMS AND CONDITIONS**  
**RFP 5800 BCR3023**

- vi. ANY FAILURE OF THE INDEMNIFYING PARTY TO COMPLY WITH ANY APPLICABLE FEDERAL, STATE, OR LOCAL LAWS, REGULATIONS, OR CODES RELATED TO THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS CONTRACT.
  - vii. IN NO EVENT SHALL INDEMNIFYING PARTY'S OBLIGATION TO INDEMNIFY THE INDEMNIFIED PARTY EXTEND TO THE ACTS OR OMISSIONS OF THE INDEMNIFIED PARTY.
- B. THE INDEMNIFIED PARTY SHALL GIVE THE INDEMNIFYING PARTY WRITTEN NOTICE (A "CLAIM NOTICE") OF ANY CLAIM RECEIVED RELATED TO THIS CONTRACT. THE INDEMNIFYING PARTY'S DUTY TO DEFEND APPLIES IMMEDIATELY. THE INDEMNIFIED PARTY'S FAILURE TO PROVIDE A CLAIM NOTICE TO THE INDEMNIFYING PARTY DOES NOT RELIEVE THE INDEMNIFYING PARTY OF ITS DUTY TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNIFIED PARTY.
- C. THE INDEMNIFIED PARTY MAY SELECT ITS OWN LEGAL COUNSEL TO REPRESENT ITS INTERESTS. THE INDEMNIFYING PARTY SHALL:
- i. REIMBURSE THE INDEMNIFIED PARTY FOR ITS COSTS AND ATTORNEY'S FEES IMMEDIATELY UPON REQUEST, AS THEY ARE INCURRED, AND
  - ii. REMAIN RESPONSIBLE TO THE INDEMNIFIED PARTY FOR ANY LOSSES INDEMNIFIED UNDER THIS SECTION.
- D. THE INDEMNIFYING PARTY SHALL GIVE PROMPT, WRITTEN NOTICE TO THE INDEMNIFIED PARTY OF ANY PROPOSED SETTLEMENT OF A CLAIM THAT IS INDEMNIFIABLE UNDER THIS SECTION. THE INDEMNIFYING PARTY MAY NOT, WITHOUT THE INDEMNIFIED PARTY'S PRIOR, WRITTEN CONSENT, SETTLE OR COMPROMISE ANY CLAIM OR CONSENT TO THE ENTRY OF ANY JUDGMENT REGARDING WHICH INDEMNIFICATION IS BEING SOUGHT UNDER THIS SECTION.
- E. MAINTENANCE OF THE INSURANCE REQUIRED BY THIS CONTRACT SHALL NOT LIMIT THE INDEMNIFYING PARTY'S OBLIGATIONS UNDER THIS SECTION. THE INDEMNIFYING PARTY SHALL REQUIRE ALL SUBCONTRACTORS TO INDEMNIFY THE CITY IN THE SAME MANNER AS PROVIDED IN THIS SECTION.

**1.19 NOTICES:**

Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Notices to the Contractor shall be sent to the address registered with the City. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the assigned Procurement Specialist.

**1.20 CONFIDENTIALITY:**

The Contractor may be granted access to certain of the City's or licensor's confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which City or its licensors consider confidential) (Confidential Information) to provide the Deliverables to the City. The Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and its licensors. The Contractor (including its employees, Subcontractors, agents, or representatives) agrees it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without prior written consent of City, or in a manner not expressly permitted under this Contract, unless the Confidential Information is required

**CITY OF AUSTIN V3 jth 12 2 21**  
**TERMS AND CONDITIONS**  
**RFP 5800 BCR3023**

to be disclosed by law or an Order of a court or other governmental authority (including a Texas Attorney General opinion) with proper jurisdiction. In all cases, the Contractor agrees to promptly notify the City before disclosing Confidential Information to permit the City reasonable time to seek an appropriate protective Order. The Contractor agrees to use protective measures no less stringent than the Contractor uses in its business to protect its own most valuable information. In all circumstances, the Contractor's protective measures must be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

- A. Confidential information includes, but is not limited to, all information regarding commercial data, customer information, financial data and projections, pricing proposals, and cost analyses, whether in tangible form or orally or visually conveyed to, or acquired by, the Contractor in the course of its work under the Contract. Confidential Information may be in any medium and may be written or oral.
- B. The Contractor agrees: (i) not to use Confidential Information for any reason other than for the purpose of providing or receiving the Deliverables, (ii) not to disclose Confidential Information to any third party other than to its employees who have a need to know the Confidential Information for furtherance of providing the Deliverables, (iii) to promptly notify City of any request for Confidential Information to be disclosed under any law or Order of any court or other governmental authority with proper jurisdiction, so as to permit City reasonable time to seek an appropriate protective Order, and (iv) to use measures to protect the Confidential Information that are no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
- C. All Confidential Information and derivations thereof shall remain the sole and exclusive property of City, and no license or other right to the Confidential Information or intellectual property is granted or implied hereby. Upon the written request of City, the Contractor shall promptly return to City all tangible items of Confidential Information furnished by City and all copies thereof or certify in writing that all Confidential Information, including all copies, has been destroyed.
- D. No expiration or termination of the Contract shall affect either party's rights or obligations with respect to Confidential Information.
- E. The parties acknowledge and agree that any breach or threatened breach of the Contract could cause harm for which money damages may not provide an adequate remedy.  
The parties agree that in the event of such a breach or threatened breach of the Contract, in addition to any other available remedies, City may seek temporary and permanent injunctive relief restraining the Contractor from disclosing or using, in whole or in part, any Confidential Information.

**1.21 TEXAS PUBLIC INFORMATION ACT:**

- A. All material submitted by the Contractor to the City related to the Contract shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
- B. In accordance with Texas Government Code §552.372, if this Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a fiscal year, Contractor agrees to:
  - i. Preserve all Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract;

**CITY OF AUSTIN V3 jth 12 2 21**  
**TERMS AND CONDITIONS**  
**RFP 5800 BCR3023**

- ii. Promptly provide to the City any Contracting information related to the Contract that is in the custody or possession of Contractor on request of the City; and
- iii. On completion of the Contract, either:
  - (1) Provide at no cost to the City all Contracting information related to the Contract that is in the custody or possession of Contractor; or
  - (2) Preserve the Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract.
- C. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Contract, and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that Subchapter.

**1.22 PUBLICATIONS:**

All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

**1.23 ADVERTISING:**

The Contractor shall not advertise or publish, without the City's prior written consent, the fact that the City has entered into the Contract, except to the extent required by law.

**1.24 NO CONTINGENT FEES:**

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

**1.25 GRATUITIES:**

The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were Offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such Contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

**1.26 PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:**

No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any Solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that Solicitation. Any willful violation of this Section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

**CITY OF AUSTIN V3 jth 12 2 21**  
**TERMS AND CONDITIONS**  
**RFP 5800 BCR3023**

**1.27 INDEPENDENT CONTRACTOR:**

The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent Contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

**1.28 ASSIGNMENT DELEGATION:**

The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this Paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third-party beneficiaries to the Contract.

**1.29 WAIVER:**

The claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

**1.30 MODIFICATIONS:**

The Contract can be modified or amended only in writing and signed by both parties. No pre-printed or similar terms on any Contractor Invoice, Order, clickwrap agreement or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

**1.31 INTERPRETATION:**

The Contract is intended by the parties as a final, complete and exclusive Statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

**1.32 DISPUTE RESOLUTION:**

A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this Section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within 14 calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within 30 calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a

**CITY OF AUSTIN V3 jth 12 2 21**  
**TERMS AND CONDITIONS**  
**RFP 5800 BCR3023**

written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within 30 calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to consider qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a Contract interpretation expert. If the parties fail to agree on a mediator within 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center. The parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

**1.33 JURISDICTION AND VENUE:**

The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another State or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

**1.34 INVALIDITY:**

The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

**1.35 HOLIDAYS:**

The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4

**CITY OF AUSTIN V3 jth 12 2 21**  
**TERMS AND CONDITIONS**  
**RFP 5800 BCR3023**

Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

**1.36 SURVIVABILITY OF OBLIGATIONS:**

All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

**1.37 COOPERATIVE CONTRACT:**

- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, for the purpose of accessing their cooperative contracts and making available our cooperative contracts, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions of this cooperative contract to other eligible governmental agencies that have entered into an interlocal agreement with the City for the purpose of accessing the City's cooperative contracts.
- B. The City does not accept any responsibility or liability for the purchases by other governmental entities made under a separate contract based on this cooperative contract.

**1.38 NON-DEBARMENT CERTIFICATION:**

When using Federal funds, the City of Austin does not Contract with or make prime or sub-awards to parties that are debarred or whose principals are debarred from Federal Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs. The Contractor shall notify the Procurement Specialist within five business days if they become debarred from doing business with the Federal Government during the term of the Contract.

**1.39 EQUAL OPPORTUNITY:**

- A. **Equal Employment Opportunity:** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the Contract and the Contractor's suspension or debarment from participation on future City Contracts until deemed compliant with Chapter 5-4.

**CITY OF AUSTIN V3 jth 12 2 21**  
**TERMS AND CONDITIONS**  
**RFP 5800 BCR3023**

- B. **Non-Retaliation:** The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.
- C. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

**1.40 MANDATORY ANTI-ISRAEL BOYCOTT PROVISION:**

Pursuant to *Amawi v. Pflugerville Independent School District*, 373 F.Supp.3d 717 (W.D. Texas 2019), the State of Texas is preliminarily enjoined from enforcing this provision. However, if that injunction is lifted, this provision may apply to the Contract:

Pursuant to Texas Government Code §2271.002, the City is prohibited from contracting with any "company" for goods or services unless the following verification is included in this Contract.

- A. For the purposes of this Section only, the terms "company" and "boycott Israel" have the meaning assigned by Texas Government Code §2271.001.
- B. If the Contractor qualifies as a "company", then the Contractor verifies that he:
  - i. does not "boycott Israel"; and
  - ii. will not "boycott Israel" during the term of this Contract.
- C. The Contractor's obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2271 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Contract.

**1.41 PROHIBITION ON LGBTQ+ CONVERSION THERAPY:**

The Contractor certifies that it is aware of City Council Resolution No. 20191114-056, which prohibits the City from Contracting with entities that engage in certain practices related to conversion therapy. By accepting this Contract, the Contractor agrees that: (1) its firm and its principals are not currently and will not during the term of the Contract engage in practicing LGBTQ+ conversion therapy; referring persons to a healthcare provider or other person or organization for LGBTQ+ conversion therapy; or Contracting with another entity to conduct LGBTQ+ conversion therapy; and (2) if the City determines in its sole discretion that Contractor has during the term of this Contract engaged in any such practices, the City may terminate this Contract without penalty to the City.

**1.42 SUBCONTRACTORS:**

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or Subcontractor Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Subcontractor Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally

**CITY OF AUSTIN V3 jth 12 2 21**  
**TERMS AND CONDITIONS**  
**RFP 5800 BCR3023**

required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager no later than the 10<sup>th</sup> calendar day of each month.

- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written Contract between the Contractor and Subcontractor. The terms of the Subcontract may not conflict with the terms of the Contract and shall contain provisions that:
- i. Require that all Deliverables and services to be provided by the Subcontractor be provided in strict accordance with the provisions, Specifications and terms of the Contract;
  - ii. Prohibit the Subcontractor from further Subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further Subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
  - iii. Require Subcontractors to submit all Invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its Invoice or application for payment to the City in accordance with the terms of the Contract;
  - iv. Require that all Subcontractors obtain and maintain, throughout the term of their Contract, insurance in the type and amounts specified for the Contractor;; and
  - v. Require that the Subcontractor follow terms as defined in section, AUDITS AND RECORDS and City Code Chapter 2-11
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any Contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than 10 calendar days after receipt of payment from the City.

**1.43 INSURANCE:**

**A GENERAL INSURANCE REQUIREMENTS:**

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages and policy language required in Section B., Specific Insurance Requirements, to the City prior to Contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- ii. All policy language naming the City as additional insured, waivers, and notices of cancellation shall indicate, and the Certificate of Insurance shall be mailed to the following address:  
City of Austin Purchasing Office  
P.O. Box 1088  
Austin, Texas 78767  
OR  
[PURInsuranceCompliance@austinTexas.gov](mailto:PURInsuranceCompliance@austinTexas.gov)
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or



**CITY OF AUSTIN V3 jth 12 2 21**  
**TERMS AND CONDITIONS**  
**RFP 5800 BCR3023**

decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

- iv. The City may request that the Contractor submit certificates of insurance to the City for all Subcontractors prior to the Subcontractors commencing work on the project.
  - v. The Contractor's and all Subcontractors' insurance coverage shall be written by companies authorized to do business in the State of Texas and have an A.M. Best rating of B+VII or better.
  - vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
  - vii. If insurance policies are not written for amounts specified in Section B., Specific Insurance Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
  - viii. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in exposure, statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor. Such adjustments are subject to agreement by the Contractor
  - ix. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
  - x. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies
  - xi. If any required insurance is written on a claims-made basis, the Certificate of Insurance shall state that the coverage is claims-made and the retroactive date shall be prior to or coincident with the date of the Contract and the coverage continuous and shall be provided for 24 months following the completion of the Contract. (or tail/extended reporting period to be purchased).
  - xii. The insurance coverages specified in Section B., Specific Insurance Requirements, are required minimums and are not intended to limit the responsibility or liability of the Contractor.
- B. Specific Insurance Coverage Requirements:** The Contractor, consistent with its status as an independent Contractor shall carry and will cause its Subcontractors to carry, at a minimum insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
    - (1) The Contractor's policy shall apply to the State of Texas and include this policy language in favor of the City of Austin:
      - a. Waiver of Subrogation, Form WC420304, or equivalent coverage;
      - b. 30 Days' Notice of Cancellation, Form WC420601, or equivalent coverage.
  - ii. **Commercial General Liability Insurance:** Coverage with minimum bodily injury and property damage per occurrence limits of \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
    - (1) The policy shall contain the following provisions:

**CITY OF AUSTIN V3 jth 12 2 21**  
**TERMS AND CONDITIONS**  
**RFP 5800 BCR3023**

- a. Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project;
  - b. Independent Contractors coverage (Contractor/Subcontracted work);
  - c. Products/Completed Operations Liability for the duration of the warranty period;
  - d. If the project involves digging or drilling, provide Explosion, Collapse, and Underground (X, C, & U) Coverage.
- (2) The policy shall also include these endorsements or policy language in favor of the City of Austin:
- a. Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage;
  - b. 30 Day's Notice of Cancellation, Endorsement CG 0205, or equivalent coverage;
  - c. The City of Austin included as an additional insured, Endorsement CG 2010, or equivalent coverage.
- iii. **Business Automobile Liability Insurance:** Coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
- (1) The policy shall include these endorsements in favor of the City of Austin:
- a. Waiver of Subrogation, Endorsement CA0444, or equivalent coverage;
  - b. 30 Days' Notice of Cancellation, Endorsement CA0244, or equivalent coverage;
  - c. The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
- iv. **Professional Liability/Technology Errors and Omissions Insurance:** The Contractor shall provide coverage, at a minimum limit of \$5,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, omission, arising out of the performance of professional services under this Agreement. The required coverage shall extend to technology licensed and/or purchased, including any Software licensed or Hardware purchased under this Contract.
- If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the contract.
- v. **Cyber Liability Insurance:** Coverage of not less \$2,000,000 each claim and \$4,000,000 annual aggregate providing coverage for damages and claims expenses, including notification expenses, arising from (1)breach of security(including but not limited to any confidential or private information, (2) alteration, corruption, destruction or deletion of information stored or processed on a computer system, (3)invasion of privacy, including identity theft and unauthorized transmission or publication of personal information, (4) unauthorized access and use of computer systems, including hackers (5) the transmission of malicious code, and (6) website content, including claims of libel, slander, trade libel, defamation, infringement of copyright, trademark and trade dress and invasion of privacy.

Policy shall include City of Austin, its Affiliates, and their respective directors, officers, employees, and agents, as additional insureds.

- C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. If endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent policy language must be provided for the City's review and approval.

**CITY OF AUSTIN V3 jth 12 2 21**  
**TERMS AND CONDITIONS**  
**RFP 5800 BCR3023**

**1.44 BONDS:**

**1. PERFORMANCE BOND:**

- i. The Contractor shall provide a Performance Bond in an amount equal to 20% of the Contract amount within 30 calendar days after notification of award. The Performance Bond serves as security for the faithful performance of all the Contractor's obligations under the Contract. The Performance Bond shall be issued by a solvent company authorized to do business in the State of Texas and shall meet any other requirements established by law or by the City pursuant to applicable law. The Surety must obtain reinsurance for any portion of the risk that exceeds 10% of the Surety's capital and surplus. For bonds exceeding \$100,000, the Surety must also hold a certificate of authority from the U.S. Secretary of the Treasury or have obtained reinsurance from a reinsurer that is authorized as a reinsurer in Texas and holds a certificate of authority from the U.S. Secretary of the Treasury.
- ii. The Performance Bond shall remain in effect throughout the term of the contract and shall be renewed for each respective extension.

**2. SERVICES**

**2.1 ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES AND/OR SERVICES:**

If applicable, if, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables or Services, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables or Services. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables or Services. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor within 30 calendar days of notification provided by the City.

**2.2 WORKFORCE:**

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, Subcontractors, and Subcontractor's employees may not while engaged in participating or responding to a Solicitation or while in the course and scope of delivering goods or services under a City of Austin Contract or on the City's property:
  - i. Illegally use or possess a firearm, except as required by the terms of the Contract; or
  - ii. Use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has illegally possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

**2.3 GUARANTEE – SERVICES:**

The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted

**CITY OF AUSTIN V3 jth 12 2 21**  
**TERMS AND CONDITIONS**  
**RFP 5800 BCR3023**

industry standards and practices following the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
- B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with the services warranty standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within 30 calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this Section.
- C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

**2.4 DATA SECURITY:**

In the course of providing services to the City, the Contractor may gain access to City-owned and City-maintained information. If so, the City and the Contractor desire to keep such information appropriately protected. The Contractor will handle information it receives from the City in compliance with this provision.

- A. Definitions. Capitalized terms used in this Section shall have the meanings set forth, below:

"Authorized Persons" means (i) the Contractor's employees; and (ii) the Contractor's Subcontractors and agents who have a need to know or otherwise access Personal Information to enable the Contractor to perform its obligations under this Contract, and who are bound in writing by confidentiality and other obligations sufficient to protect Personal Information in accordance with the terms and conditions of this Contract.

"Highly Sensitive Personal Information" means an (i) individual's government-issued identification number (including Social Security number, driver's license number, or state-issued identification number); (ii) financial account number, credit card number, debit card number, or credit report information, with or without any required security code, access code, personal identification number, or password that would permit access to an individual's financial account; or (iii) biometric, genetic, health, medical, or medical insurance data.

"Personal Information" means information provided to the Contractor by or at the direction of the City, information which is created or obtained by the Contractor on behalf of the City, or information to which access was provided to the Contractor by or at the direction of the City, in the course of the Contractor's performance under this Contract that: (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, email addresses, and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, user identification and account access credentials or passwords, financial account numbers, credit report information, student information, biometric, health, genetic, medical, or medical insurance data,

**CITY OF AUSTIN V3 jth 12 2 21**  
**TERMS AND CONDITIONS**  
**RFP 5800 BCR3023**

answers to security questions, and other personal identifiers), in case of both subclauses (i) and (ii), including, without limitation, all Highly Sensitive Personal Information.

“Security Breach” means (i) any act or omission that compromises either the security, confidentiality, or integrity of Personal Information or the physical, technical, administrative, or organizational safeguards put in place by the Contractor or any Authorized Persons, or by the City should the Contractor have access to the City’s systems, that relate to the protection of the security, confidentiality, or integrity of Personal Information, or (ii) receipt of a complaint in relation to the privacy and data security practices of the Contractor or any Authorized Persons or a breach or alleged breach of this Contract relating to such privacy and data security practices.

Without limiting the foregoing, a compromise shall include any unauthorized access to or disclosure or acquisition of Personal Information.

**B. Standard of Care**

- i. The Contractor acknowledges and agrees that, during the term of this Contract, the Contractor may create, receive, or have access to Personal Information. For any Personal Information, the Contractor shall comply with this Section in its creation, collection, receipt, transmission, storage, disposal, use, and disclosure of such Personal Information and be responsible for any unauthorized creation, collection, receipt, transmission, access, storage, disposal, use, or disclosure of Personal Information under its control or in its possession by all Authorized Persons. The Contractor shall be responsible for, and remain liable to, the City for the actions and omissions of all Authorized Persons concerning the treatment of Personal Information.
- ii. Personal Information is deemed to be Confidential Information of the City and is not Confidential Information of the Contractor. In the event of a conflict or inconsistency between this Section and any other Section of this Contract, the terms and conditions of this Section shall govern and control.
- iii. The Contractor agrees and covenants that it shall:
- iv. Keep and maintain all Personal Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized access, use, or disclosure;
  - a. Not create, collect, receive, access, or use Personal Information in violation of law;
  - b. Use and disclose Personal Information solely and exclusively for the purposes for which the Personal Information, or access to it, is provided pursuant to the terms and conditions of this Contract, and not use, sell, rent, transfer, distribute, or otherwise disclose or make available Personal Information for the Contractor’s own purposes or for the benefit of anyone other than the City, in each case, without the City’s prior written consent; and
  - c. Not directly or indirectly, disclose Personal Information to any person other than Authorized Persons, without the City’s prior written consent.
- v. The Contractor represents and warrants that its creation, collection, receipt, access, use, storage, disposal, and disclosure of Personal Information does and shall comply with all applicable federal and state privacy and data protection laws, as well as all other applicable regulations and directives.
- vi. The Contractor shall implement and maintain a written information security program, including appropriate policies, procedures, and risk assessments that are reviewed and updated at least annually.
- vii. Without limiting the Contractor’s obligations under this Section, the Contractor shall implement administrative, physical, and technical safeguards to protect Personal Information from unauthorized access, acquisition, or disclosure, destruction, alteration, accidental loss, misuse, or

**CITY OF AUSTIN V3 jth 12 2 21**  
**TERMS AND CONDITIONS**  
**RFP 5800 BCR3023**

damage that are no less rigorous than the National Institute of Standards and Technology ("NIST") Cybersecurity Framework or ISO27001 and shall ensure that all such safeguards, including the manner in which Personal Information is created, collected, accessed, received, used, stored, processed, disposed of, and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Contract.

- viii. If the Contractor has access to or will collect, access, use, store, process, dispose of, or disclose credit, debit, or other payment cardholder information, the Contractor shall, at all times, remain in compliance with the Payment Card Industry Data Security Standard ("PCI DSS") requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at the Contractor's sole cost and expense.
- ix. At a minimum, the Contractor's safeguards for the protection of Personal Information shall include:
  - (i) limiting access of Personal Information to Authorized Persons; (ii) securing business facilities, data centers, paper files, servers, backup systems, and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (iii) implementing network, application, database, and platform security; (iv) securing information transmission, storage, and disposal; (v) implementing authentication and access controls within media, applications, operating systems, and equipment; (vi) encrypting Highly Sensitive Personal Information stored on any media; (vii) encrypting Highly Sensitive Personal Information transmitted over public or wireless networks; (viii) strictly segregating Personal Information from information of the Contractor or its other customers so that Personal Information is not commingled with any other types of information; (ix) conducting risk assessments, penetration testing, and vulnerability scans and promptly implementing, at the Contractor's sole cost and expense, a corrective action plan to correct any issues that are reported as a result of the testing; (x) implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law; and (xi) providing appropriate privacy and information security training to Authorized Persons.
- x. The Contractor shall, at all times, cause Authorized Persons to abide strictly by the Contractor's obligations under this Contract. The Contractor further agrees that it shall maintain a disciplinary/sanctions process to address any unauthorized access, use, or disclosure of Personal Information by any Authorized Person. Upon the City's written request, the Contractor shall promptly identify for the City, in writing, all Authorized Employees as of the date of such request. Upon the City's written request, the Contractor shall provide the City with a network diagram that outlines the Contractor's information technology network infrastructure and all equipment used in relation to fulfilling its obligations under this Contract, including, without limitation: (i) connectivity to the City and all third parties who may access the Contractor's network to the extent the network contains Personal Information; (ii) all network connections, including remote access services and wireless connectivity; (iii) all access control measures (for example, firewalls, packet filters, intrusion detection and prevention services, and access-list-controlled routers); (iv) all backup or redundant servers; and (v) permitted access through each network connection.

**C. Security Breach Procedures:**

- i. The Contractor shall:
  - a. Provide the City with the name and contact information for an employee of the Contractor who shall serve as the City's primary security contact and shall be available to assist the City

**CITY OF AUSTIN V3 jth 12 2 21**  
**TERMS AND CONDITIONS**  
**RFP 5800 BCR3023**

24 hours per day, seven days per week as a contact in resolving obligations associated with a Security Breach;

- b. Notify the City of a Security Breach as soon as practicable, but no later than 24 hours after the Contractor becomes aware of it; and
  - c. Notify the City of any Security Breaches by telephone at 512-974-3245 and email [atleslie.milvo@austintexas.gov](mailto:atleslie.milvo@austintexas.gov).
- ii. Immediately following the Contractor's notification to the City of a Security Breach, the parties shall coordinate with each other to investigate the Security Breach. The Contractor agrees to fully cooperate with the City in the City's handling of the matter, including, without limitation: (i) assisting with any investigation; (ii) providing the City with physical access to the facilities and operations affected; (iii) facilitating interviews with the Contractor's employees, Authorized Persons, and others involved in the matter; and (iv) making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law, regulation, industry standards, or as otherwise required by the City.
- iii. The Contractor shall, at its own expense, use best efforts to immediately contain and remedy any Security Breach and prevent any further Security Breach, including, but not limited to taking any and all action necessary to comply with applicable privacy rights, laws, regulations, and standards. The Contractor shall reimburse the City for all actual costs incurred by the City in responding to, and mitigating damages caused by, any Security Breach, including all costs of notice and/or remediation.
- iv. The Contractor agrees that it shall not inform any third party of any Security Breach without first obtaining the City's prior written consent, other than to inform a complainant that the matter has been forwarded to the City's Attorney. Further, the Contractor agrees that the City shall have the sole right to determine: (i) whether notice of the Security Breach is to be provided to any individuals, regulators, law enforcement agencies, consumer reporting agencies, or others as required by law or regulation, or otherwise in the City's discretion; and (ii) the contents of such notice, whether any type of remediation may be Offered to affected persons, and the nature and extent of any such remediation.
- v. The Contractor agrees to maintain and preserve all documents, records, and other data related to any Security Breach.
- vi. The Contractor agrees to fully cooperate, at its own expense, with the City in any litigation, investigation, or other action deemed necessary by the City to protect its rights relating to the use, disclosure, protection, and maintenance of Personal Information.
- vii. In the event of any Security Breach, the Contractor shall promptly use its best efforts to prevent a recurrence of any such Security Breach.

**D. Oversight of Security Compliance**

Upon the City's written request to confirm the Contractor's compliance with this Contract, as well as any applicable laws, regulations, and industry standards, the Contractor grants the City or, upon the City's election, a third party under a signed nondisclosure agreement on the City's behalf, permission to perform an assessment, audit, examination, or review of all controls in the Contractor's physical and/or technical environment in relation to all Personal Information being handled and/or services being provided to the City under this Contract. The Contractor shall fully cooperate with such assessment by providing access to knowledgeable personnel, physical premises, documentation,

**CITY OF AUSTIN V3 jth 12 2 21**  
**TERMS AND CONDITIONS**  
**RFP 5800 BCR3023**

infrastructure, and application software that processes, stores, or transports Personal Information for the City pursuant to this Contract.

In addition, upon the City's written request, the Contractor shall provide the City with the summary results of any audit performed by or on behalf of the Contractor that assesses the effectiveness of the Contractor's information security program as relevant to the security and confidentiality of Personal Information shared during the course of this Contract.

- i. **Return or Destruction of Personal Information.** At any time during the term of this Contract, at the City's written request or upon the termination or expiration of this Contract for any reason, the Contractor shall, and shall instruct all Authorized Persons to, unless otherwise required by law to promptly return to the City all copies, whether in written, electronic, or other form or media, of Personal Information in its possession or the possession of such Authorized Persons, or securely dispose of all such copies, and certify in writing to the City that such Personal Information has been returned to the City or disposed of securely. The Contractor shall comply with all directions provided by the City with respect to the return or disposal of Personal Information.
- ii. **Equitable Relief.** The Contractor acknowledges that any breach of its covenants or obligations set forth in this Section may cause the City irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the City is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance, and any other relief that may be available from any court, in addition to any other remedy to which the City may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, notwithstanding to any exclusions or limitations in this Contract to the contrary.
- iii. **Material Breach.** The Contractor's failure to comply with any of the provisions of this Section is a material breach of this Contract. In such event, the City may terminate the Contract effective immediately upon written notice to the Contractor without further liability or obligation to the Contractor.
- iv. **INDEMNIFICATION.** THE CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY AND ITS ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, SUCCESSORS, AND ASSIGNS (EACH, A "CITY INDEMNITEE") FROM AND AGAINST ALL LOSSES, DAMAGES, LIABILITIES, DEFICIENCIES, ACTIONS, JUDGMENTS, INTEREST, AWARDS, PENALTIES, FINES, COSTS, OR EXPENSES OF WHATEVER KIND, INCLUDING REASONABLE ATTORNEYS' FEES, THE COST OF ENFORCING ANY RIGHT TO INDEMNIFICATION HEREUNDER, AND THE COST OF PURSUING ANY INSURANCE PROVIDERS, ARISING OUT OF OR RESULTING FROM ANY THIRD-PARTY CLAIM AGAINST ANY CUSTOMER INDEMNITEE ARISING OUT OF OR RESULTING FROM SERVICE PROVIDER'S OR AUTHORIZED PERSON'S FAILURE TO COMPLY WITH ANY OF THE OBLIGATIONS OF THIS SECTION.

**2.5 TRAVEL EXPENSES:**

All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:



**CITY OF AUSTIN V3 jth 12 2 21**  
**TERMS AND CONDITIONS**  
**RFP 5800 BCR3023**

<http://www.gsa.gov/portal/category/21287>

No amounts in excess of the Travel Policy or Rates shall be paid. All Invoices must be accompanied by copies of detailed itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

**2.6 PLACE AND CONDITION OF WORK:**

The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and Specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

**2.7 COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:**

The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable Federal, State, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this Paragraph.

**2.8 NON-SOLICITATION:**

- A. During the term of the Contract, and for a period of 6 months following termination of the Contract, the Contractor, its affiliate, or its agent shall not hire, employ, or solicit for employment or consulting services, a City employee employed in a technical job classification in a City Department that engages or uses the services of a Contractor employee.
- B. If a breach of Paragraph A occurs the Contractor shall pay liquidated damages to the City in an amount equal to the greater of: (i) one year of the employee's annual compensation; or (ii) 100 percent of the employee's annual compensation while employed by the City. The Contractor shall reimburse the City for any fees and expenses incurred in the enforcement of this provision.
- C. During the term of the Contract, and for a period of six months following termination of the Contract, a Department that engages the services of the Contractor or uses the services of a Contractor employee will not hire a Contractor employee while the employee is performing work under a Contract with the City unless the City first obtains the Contractor's approval.

**CITY OF AUSTIN V3 jth 12 2 21**  
**TERMS AND CONDITIONS**  
**RFP 5800 BCR3023**

- D. Notwithstanding the foregoing, this provision shall be waived in the event an employee initiates an unsolicited action based on public advertisements in newspapers, trade publications, or electronic job boards.

**2.9 WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID):**

- A. Access to the Human Resources Department building by the Contractor, all Subcontractors and their employees will be strictly controlled, at all times, by the City. Security badges will be issued by the Department for this purpose. The Contractor shall submit a complete list of all persons requiring access to the Human Resources Department building at least 30 days in advance of their need for access. The City reserves the right to deny a security badge to any Contractor personnel for reasonable cause. The City will notify the Contractor of any such denial no more than 20 days after receipt of the Contractor's submittal.
- B. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the Contract, the Contractor shall so notify the City's Contract Manager, in writing, within 10 days of the receipt of notification of denial.
- C. Contractor personnel will be required to check in at the security desk when entering or leaving the Human Resources Department building and security badges must be on display, at all times, when in the building. Failure to do so may be cause for removal of Contractor Personnel from the worksite, without regard to Contractor's schedule. Security badges may not be removed from the premises.
- D. The Contractor shall provide the City's Contract Manager with a list of personnel scheduled to enter the building, seven days in advance. The list shall identify the persons by name, date of birth, driver's license number, the times that they will be inside the building and the areas where they will be working. Only persons previously approved by the City for the issuance of security badges will be admitted to the building.
- E. The Contractor shall comply with all other security requirements imposed by the City and shall ensure that all employees and Subcontractors are kept fully informed as to these requirements.

## **EXHIBIT A—SCOPE OF WORK (12/2/20)**

**CITY OF AUSTIN**  
**SOLICITATION NUMBER: RFP 5800 BCR3023**  
**WORKERS' COMPENSATION THIRD PARTY CLAIMS ADMINISTRATION SERVICES**  
**SCOPE OF WORK v3 Revised 112320**

**I. PURPOSE**

The City of Austin, hereinafter referred to as the "City", seeks responses to this Request for Proposal (RFP) from qualified workers' compensation third party administrator (TPA) firms, hereinafter referred to as "Contractor" with public sector experience that can provide all of the services described in this Scope of Work.

**A. Service Requested**

The City seeks workers' compensation claim administration, utilization review, and all other services identified in this RFP and associated with the City's workers' compensation self-insured program. Three fiscal years of the City's historic data is included as Exhibit 1 – City of Austin Account Data.

**B. Term of Contract**

The initial term of the contract shall be for 36-months. The initial contract term is anticipated from March 1, 2021 through February 28, 2024. The Contract may be extended beyond the initial term for up to two (2) additional 12-month periods at the City's sole option.

**C. Accepted General Industry Terms and Abbreviations**

<b>General Industry Term</b>	<b>Abbreviation</b>
Benefit Review Conference	BRC
Contested Case Hearing	CCH
Center for Medicare and Medicaid Services	CMS
Department Workers' Compensation Representative	DWCR
Designated Doctor	DD
Division of Workers' Compensation	DWC
First Report of Injury	DWC-1 or FROI
Health Insurance Portability and Accountability Act	HIPAA
Impairment Rating	IR
Independent Review Officer	IRO
Medical Disability Advisor	MDA
Occupational Disability Guidelines	ODG
Pharmacy Benefit Manager	PBM
Plain Language Notice	PLN
Required Medical Exam	RME
Retrospective Utilization Review	RUR
Subsequent Injury Fund	SIF
Texas Department of Insurance	TDI
Texas Administrative Code	TAC
Workers' Compensation	WC

**CITY OF AUSTIN**  
**SOLICITATION NUMBER: RFP 5800 BCR3023**  
**WORKERS' COMPENSATION THIRD PARTY CLAIMS ADMINISTRATION SERVICES**  
**SCOPE OF WORK v3 Revised 112320**

4. **Indemnity Claims:** claims with eight (8) or more days of disability, denied claims with potential for indemnity, claims scheduled for hearings.
5. **Catastrophic Claims:** claims including but not limited to: Post Traumatic Stress Disorder (PTSD), cancer, lifetime income benefits, paralysis, severe burns, heart attack, amputations, fatalities, brain damage, blindness, or other claims with massive internal injuries.

**I. Dedicated Claims Unit**

A dedicated claim adjusting unit is required to work on the City's account. Contractor shall staff the unit to provide the services this scope of work requires. City will approve changes for the following key positions: Account Manager, Claims Supervisor/Manager, Catastrophic Claims adjuster.

1. **Account Manager** – Point person for and providing priority to the City's Account. Account Manager shall have a minimum of seven (7) years' experience in this position. The Account Manager shall be available to discuss concerns, coordinate meetings, prepare account reports, and coordinate with all staff to resolve issues at every level.
2. **Claims Supervisor/Manager** – Dedicated to supervising the adjusting staff. Shall have a minimum of five (5) years' experience as a supervisor or manager as well as prior Catastrophic Claims adjusting experience. A current Texas WC license is required. Supervisor/Manager shall possess skills to address specific claim concerns and complex claim issues and make immediate independent decisions to resolve issues.
3. **Dedicated Certified Case Manager (CCM)** – 100% dedicated to the City's account and available on site with adjusters to assist in and focus on claim medical management and prompt return to work. 5 years' experience as a CCM with appropriate certifications is required. CCM shall not perform pre-authorization services or field case management duties.
4. **Dedicated Claim Adjusters** - 100% dedicated, competent and experienced in adjusting WC claims. All adjusters are required to hold a current Texas WC license while adjusting claims on behalf of the City. Contractor can propose other types of adjuster positions also to handle the City's claims.
  - a. **Indemnity Lost Time Adjuster(s)** shall have a minimum of five (5) years' experience adjusting claims. Indemnity Claim files shall not exceed 125 open claims.
  - b. **Catastrophic Claims Adjuster(s)** shall have a minimum of seven (7) years' experience handling Catastrophic Claims with some training and knowledge of old law claims prior to 1991. The claim file load shall not exceed 100 open claims. Adjuster must be familiar with the Cancer Presumption and PTSD statutes.
  - c. **Medical Only Claim Adjuster(s)** shall have a minimum of at least 1 year of experience handling Medical Only claims. Claim files shall not exceed 200 open claims. This claim file count does not include Record Only claims.

**J. Changes in Statutes/Rules/Legislation**

1. Contractor shall keep apprised of all changes to statutes, rules and legislation that affects the City's program. Contractor shall share notice of proposed changes to statutes, rules and legislation with the City and provide written notice acknowledging the proposed legislation.
2. Contractor shall provide a copy of implemented changes thirty (30) days prior to the changes becoming effective and shall provide the City with written procedures to be implemented when the proposed changes become effective.

**CITY OF AUSTIN**  
**SOLICITATION NUMBER: RFP 5800 BCR3023**  
**WORKERS' COMPENSATION THIRD PARTY CLAIMS ADMINISTRATION SERVICES**  
**SCOPE OF WORK v3 Revised 112320**

**II. BACKGROUND**

**A. City**

1. The City is self-insured and does not carry excess WC insurance. The City operates on a fiscal year from October 1 through September 30. The City's Risk Management division is responsible for the City's WC program monitoring, oversight and contract management. The program covers approximately 15,343 regular and temporary employees in 38 departments. Employee headcounts in the five (5) largest City departments are: Police – 2,451; Austin Energy – 1,745; Parks and Recreation – 1,640; Fire – 1,275; Austin Water Utility – 1,134.
2. The City currently has a contract with Albert Risk Management Consultants for annual external claims management audits. The City contracts separately for actuarial services through Aon Risk Consultants and an actuarial study is conducted yearly.
3. The City has its' own Return to Work, Wage Continuation, Serious Injury Supplement and Line of Duty leave programs which are coordinated by DWCRs located in each department. The City encourages employees to return to work as soon as possible and strives to have limited duty positions available whenever possible. The City's law department handles subrogation recovery for the City's WC program.

**B. Current Service Provider**

1. York Risk Services has been the City's TPA since March 1, 2002. Sedgwick acquired York Risk Services in September 2019. Sedgwick is contracted to provide these services until contract expiration on February 28, 2021.
2. Claims are currently housed in the York IClaims Expert (YCE) and FOCUS RMIS systems. The claims may be transferred to the JURIS and via One systems prior to the expiration of the contract. The City currently stores approximately 100GB of claims records in the claims system. The RMIS interfaces with an in-house bill review program, Zebra, provided by Schedule Link Program (SLP).
3. Claim files have been imaged since 2005, and all documents are scanned and viewed electronically. All pre-authorizations and bills, attachments and explanation of benefits (EOB's) are interfaced with the electronic claims file.
4. The Risk Management division has licenses for six (6) computers to utilize the contractor's claims software. The City's 38 departments have access to both the claims and RMIS systems through an internet browser. DWC-1, DWC-3 and DWC-6 forms are completed and submitted by departments to Sedgwick electronically using a web-based reporting system. The current contractor's RMIS includes extensive standard and ad hoc reporting capabilities.

**III. SCOPE OF WORK**

**A. General Requirements**

Contractor shall:

1. Conduct work in strict compliance with all applicable Federal and Texas Administrative laws, rules, regulations, policies, performance requirements, and advisories associated with this scope of work.
2. Meet with the City following contract execution to discuss contract requirements and implementation plans.

**CITY OF AUSTIN**  
**SOLICITATION NUMBER: RFP 5800 BCR3023**  
**WORKERS' COMPENSATION THIRD PARTY CLAIMS ADMINISTRATION SERVICES**  
**SCOPE OF WORK v3 Revised 112320**

3. Ensure all correspondences to injured employees shall include a reference of representation on behalf of the City.
4. Provide proactive claims administration to facilitate the prompt delivery of quality medical care, fair and reasonable claims management, and to ensure fiscal responsibility.
5. Fill key vacant positions within 60 calendar days if there is a vacancy and shall take immediate remedial measures to avoid delays in services as outlined in the contract.
6. Develop a process to work with any third-party vendors to ensure seamless communication and effective claims management processes.
7. Not seek reimbursement from City employees for any claim file related payments made erroneously due to errors within the control of the Contractor.
8. Comply with agreed upon performance guarantees and report performance to the City within the agreed upon timeframes.
9. Forward copies of all correspondence pertaining to the City and received from any Federal or State agency within two (2) business days of receipt to City Risk Management that references: Data Calls, Notice of Violations, Sanctions, Warnings, DWC complaints against City or Contractor, Hearings or IRO's findings regarding Medical Fee/Disputes, Performance Based Oversight, HIPAA Violations, data deficiencies found in electronic data, and all other official memorandums advising of actions outside of customary claim practices.
10. Provide a response within ten (10) business days to Federal or Texas Administrative audits, legal notices, issues of non-compliance, interest due and other similar findings if such response is required to fulfill an obligation. Contractor shall make recommendations for the City's compliance or recourse and prepare a response for the City's approval.
11. Not voluntarily respond to or represent the City at any Federal or State agency without first obtaining the City's written approval. All documentation, justification, and if appropriate, remedial actions, shall be coordinated and reported to the City before any response is made on the City's behalf.
12. Provide a written Business Continuity Plan to City Risk Management annually.

**City will:**

13. Monitor and audit claims for continuous compliance with this Scope of Work, Texas Labor Code, TAC, Medicare Secondary Payor Program, and any other rule or regulation applicable to the City's WC Program.
14. Reserve the right to request a change in Contractor's staff or subcontractors at no additional cost to the City.

**B. Transition Requirements**

1. Contractor shall work with current vendor to ensure all required information is received with no disruption in service.
2. Contractor's systems shall be online to image and process new workers' compensation claims as of 12:01 a.m. on March 1, 2021.:
3. By May 1, 2021 Contractor shall establish:

**CITY OF AUSTIN**  
**SOLICITATION NUMBER: RFP 5800 BCR3023**  
**WORKERS' COMPENSATION THIRD PARTY CLAIMS ADMINISTRATION SERVICES**  
**SCOPE OF WORK v3 Revised 112320**

- a. a local claims office,
  - b. an operational claims database with all historic claims information mapped,
  - c. a web-based claims reporting system with access capabilities by all departments.
4. By June 1, 2021:
  - a. Contractor shall review, triage and enter action plans for all open claim files.
5. At the end of the contract period:
  - a. The Contractor shall cooperate with the City and assist in all efforts to transition the City's account to a new successful proposer. The Contractor shall follow the City's closing account instructions. All data shall be transferred to the City or its designee as directed by the City in a format mutually agreed upon by all parties.

**C. Overpayments/Leakage and Reimbursement**

1. Contractor shall notify the City of all medical and indemnity overpayments and leakage as a result of error, duplicate payments, or unavoidable circumstances. The Contractor shall provide a written monthly report of all overpayments. The Contractor shall notify the City immediately of any overpayment \$5,000 and above via email.
2. Contractor shall reimburse the City for any overpayment resulting from Contractor error within 30 calendar days if there is no opportunity to recover from future benefits or from the Subsequent Injury Fund (SIF). City will reduce the future claims administration fee invoice if the Contractor fails to reimburse the City within the above timeframe.

**D. Financial Requirements**

1. Contractor (hereinafter Sedgwick) shall work with the City's Financial Services Department to implement procedures for banking arrangements, transfers, and bank reconciliations. Contractor shall implement fraud prevention services on the bank account issuing claim checks. Transfers will be based on bi-weekly issued checks.
2. A Sedgwick managed bank account will be opened. No escrow deposit will be required by the City. The account will be funded daily by the City using the ACH debit funding method. City will maintain their own ZBA bank account that existed under the previous contract for services. Sedgwick will ACH debit the City owned ZBA account for the payment activity on a daily basis for activity that occurred on the Sedgwick managed account. Payments issued Day 1 are drafted from the City owned ZBA account on Day 3. This is expected to perform on a daily basis; however on rare occasions more than one ACH debit per day may be required.

**Other details:**

- a. Future payments made from the JURIS platform will be the only payments made to the Sedgwick account. Payments made from JURIS will not be made on the existing client managed account.
- b. Sedgwick will provide a monthly report showing all billable transactions for the previous month and which invoice the transaction was tied to. Payments issued on Day 1 will be invoiced on Day 2 and withdrawn from City's ZBA account on Day 3.



**CITY OF AUSTIN**  
**SOLICITATION NUMBER: RFP 5800 BCR3023**  
**WORKERS' COMPENSATION THIRD PARTY CLAIMS ADMINISTRATION SERVICES**  
**SCOPE OF WORK v3 Revised 112320**

c. Sedgwick will send a daily invoice that has all of the back-up payment records that built the invoice. The daily invoice will be a PDF invoice, but a CSV file containing all of transactions shall accompany the PDF invoice. Sedgwick's billing system currently has approximately 50 various data points pertaining to the transactions and claims. The City of Austin can customize the CSV file based on the 50 data points.

2. Sedgwick shall bear any costs associated with the establishment of an account and shall also be responsible for check stock at no cost to the City. Approximately 24,000 drafts are issued per year.
3. Sedgwick shall be responsible for generating and mailing 1099 forms via United States Postal Service or electronically to service providers and the Internal Revenue Service in compliance with the State of Texas requirements for unclaimed property reporting.
4. Sedgwick shall provide a Pay Category report monthly that specifies payments made to injured employees, and the types of benefits paid, by claim number by City department. Contractor shall be required to provide other financial reports as agreed upon by the City and the Contractor.
5. The City's Risk Manager shall review and make final approval determination on any binding "settlement" on any claim and approval must be documented in the file.

**E. Management Information Systems (MIS) Requirements**

1. Contractor shall have a secure, established, supported MIS. MIS shall store the City's claims data in an account structure and a labor distribution structure associated with the City's Fund Department Unit information in 3 separate fields with a minimum of 12-character recognition: (Fund-4/Department -4/Unit-4). Contractor's MIS shall contain separate data fields for claims data management.
2. Contractor's system shall be integrated between the claims management system, bill review and preauthorization functions. The integration shall include both document and data management functionality with the ability to add separate customized fields of data.
3. Contractor's system shall provide interactive web-based access to authorized City employees for searching, viewing and printing claim information and the ability to generate and download statistical reports. Contractor's system shall have the capability to restrict information by department.
4. Contractor shall provide the City with access to the MIS for as many users as the City requires. The estimated number of simultaneous users at the City is twelve (12). The City has had as many as 90 total users with access to the claims system and approximately 45 users with access to the reporting system. City will authorize MIS access to individuals based on job duties and level of information needed. A report of current MIS users including access levels, date access granted, date last accessed, and date access withdrawn shall be available.
5. The MIS shall be accessible to authorized City employees twenty-four (24) hours a day, seven (7) days a week, from any computer with internet capability. Problems accessing the MIS shall be corrected within one (1) business day of notification to the Contractor.
6. Contractor shall provide a report retrieval system for the delivery of required program reports, including reports containing full social security numbers.

**CITY OF AUSTIN**  
**SOLICITATION NUMBER: RFP 5800 BCR3023**  
**WORKERS' COMPENSATION THIRD PARTY CLAIMS ADMINISTRATION SERVICES**  
**SCOPE OF WORK v3 Revised 112320**

7. Contractor shall have the capability of receiving employee information from the City's payroll system biweekly in a format mutually agreed upon and shall front load this data in order to pre-populate fields within forms DWC-1, DWC-3 and DWC-6 for use by all DWCR's.
8. Contractor shall provide electronic data submission capability as required by TDI-DWC rules and (CMS) administrative guidelines. Contractor shall implement all system upgrades required to maintain the MIS in compliance with administrative requirements at no additional cost to the City.
9. Contractor shall route all electronic data transmissions through a secure, firewalled server and encrypted using a minimum 128-bit encryption algorithm such as the Advanced Encryption Standard (AES); or as required by government agencies such as the TDI and Texas Department of Information Resources. Contractor shall provide the City with verification reports that the data has been successfully sent and accepted.
10. Contractor shall maintain daily backup and 24-hour recovery systems for all MIS data in the event of a disruption or system failure.
11. Contractor shall not be required to provide any standard computer hardware or software to the City. Contractor shall notify the City of any specialized computer hardware or software required for City computers to interface with the claim management system. Specialized equipment or software shall be provided to the City at no additional cost to the City.

**F. Provider Networks**

1. Contractor shall operate within a Network should one be chosen and a contract be awarded by the City through a separate RFP process. A Network is not currently planned by the City.

**G. Business Hours and Availability**

1. Claims adjusting office shall be located in Austin, Texas or within a contiguous surrounding county but not farther than 40 miles from 5202 East Ben White Blvd. Telephone hours for all services shall be 7:00 a.m. - 5:00 p.m. (Central Time), Monday through Friday. The City agrees to allow staff to telework as long as at least two persons are on site at the office and a person with authority to resolve issues is readily available and accessible. Contractor shall receive written permission from the City should the entire staff need to telework.
2. An on-call staff contact is required to be available during non-business hours.
3. Contractor shall coordinate with the City any conflict in service hours when holidays and/or office closures differ from the City's. When conflicts in holiday schedules arise, the Contractor shall adhere to the City's schedule for providing services as outlined herein unless an exception is pre-approved by the City.

**H. File Definitions as referenced in this scope of work:**

1. **Record Only Claims:** claims with no lost time, medical treatment or injury sustained. Does not include denied claims or exposure claims.
2. **Medical Only Claims:** claims with less than eight (8) days disability, claims requiring medical treatment less than 90 days or less than \$10,000 in incurred costs. Claims that exceed this threshold should be transferred to an Indemnity adjuster. Includes denied claims and exposure claims with no testing or a negative test result.
3. **Medical Management Claims:** claims with no indemnity due, hearing loss claims with no indemnity paid, long term claims with future medical treatment expected with indemnity exhausted.

**CITY OF AUSTIN**  
**SOLICITATION NUMBER: RFP 5800 BCR3023**  
**WORKERS' COMPENSATION THIRD PARTY CLAIMS ADMINISTRATION SERVICES**  
**SCOPE OF WORK v3 Revised 112320**

4. **Indemnity Claims:** claims with eight (8) or more days of disability, denied claims with potential for indemnity, claims scheduled for hearings.
5. **Catastrophic Claims:** claims including but not limited to: Post Traumatic Stress Disorder (PTSD), cancer, lifetime income benefits, paralysis, severe burns, heart attack, amputations, fatalities, brain damage, blindness, or other claims with massive internal injuries.

**I. Dedicated Claims Unit**

A dedicated claim adjusting unit is required to work on the City's account. Contractor shall staff the unit to provide the services this scope of work requires. City will approve changes for the following key positions: Account Manager, Claims Supervisor/Manager, Catastrophic Claims adjuster.

1. **Account Manager** – Point person for and providing priority to the City's Account. Account Manager shall have a minimum of seven (7) years' experience in this position. The Account Manager shall be available to discuss concerns, coordinate meetings, prepare account reports, and coordinate with all staff to resolve issues at every level.
2. **Claims Supervisor/Manager** – Dedicated to supervising the adjusting staff. Shall have a minimum of five (5) years' experience as a supervisor or manager as well as prior Catastrophic Claims adjusting experience. A current Texas WC license is required. Supervisor/Manager shall possess skills to address specific claim concerns and complex claim issues and make immediate independent decisions to resolve issues.
3. **Dedicated Certified Case Manager (CCM)** – 100% dedicated to the City's account and available on site with adjusters to assist in and focus on claim medical management and prompt return to work. 5 years' experience as a CCM with appropriate certifications is required. CCM shall not perform pre-authorization services or field case management duties.
4. **Dedicated Claim Adjusters** - 100% dedicated, competent and experienced in adjusting WC claims. All adjusters are required to hold a current Texas WC license while adjusting claims on behalf of the City. Contractor can propose other types of adjuster positions also to handle the City's claims.
  - a. **Indemnity Lost Time Adjuster(s)** shall have a minimum of five (5) years' experience adjusting claims. Indemnity Claim files shall not exceed 125 open claims.
  - b. **Catastrophic Claims Adjuster(s)** shall have a minimum of seven (7) years' experience handling Catastrophic Claims with some training and knowledge of old law claims prior to 1991. The claim file load shall not exceed 100 open claims. Adjuster must be familiar with the Cancer Presumption and PTSD statutes.
  - c. **Medical Only Claim Adjuster(s)** shall have a minimum of at least 1 year of experience handling Medical Only claims. Claim files shall not exceed 200 open claims. This claim file count does not include Record Only claims.

**J. Changes in Statutes/Rules/Legislation**

1. Contractor shall keep apprised of all changes to statutes, rules and legislation that affects the City's program. Contractor shall share notice of proposed changes to statutes, rules and legislation with the City and provide written notice acknowledging the proposed legislation.
2. Contractor shall provide a copy of implemented changes thirty (30) days prior to the changes becoming effective and shall provide the City with written procedures to be implemented when the proposed changes become effective.

**CITY OF AUSTIN**  
**SOLICITATION NUMBER: RFP 5800 BCR3023**  
**WORKERS' COMPENSATION THIRD PARTY CLAIMS ADMINISTRATION SERVICES**  
**SCOPE OF WORK v3 Revised 112320**

**K. Training**

1. Contractor shall ensure that staff is kept abreast of rule changes, advisories, alerts and code revisions and shall train staff prior to changes and revisions of the DWC laws, rules, and regulations taking place at no cost to the City. Contractor's dedicated staff shall periodically undergo training on City policies and procedures, customer service, subrogation and other relevant topics.
2. Contractor shall provide training a maximum of four (4) times per year to City personnel at City meetings regarding WC program topics at no additional cost to the City.

**L. Claim File Adjusting**

1. Contractor shall assign new claims to adjusters within one (1) business day of receiving first report of injury or DWC-1.
2. Adjuster shall adhere to three (3) point contact (Injured Employee, DWCR, and medical provider) on claims with any lost time within one (1) business day of receipt of claim notice. Contractor shall continue efforts to contact until completion. Contractor shall consider other steps if unable to make contact after three attempts.
3. Adjuster shall adhere to three (3) point contact on claims with no lost time within three (3) business days of receipt of claim notice, with injured employees contacted by telephone no later than the fifth (5th) business day unless the claim file is documented with justified exception.
4. Adjuster shall contact the injured employee no less than every 15 days while employee is on No Duty or limited duty status. Claim notes shall be detailed and documented to include date and time of contact, contact name(s), as well as the summary of the communication.
5. Adjuster or FCM shall contact the injured employee within twenty-four (24) hours or when practical on all Catastrophic claims. Contact with injured employee and medical provider shall be no less than every seven (7) days unless the City has agreed in writing to other timeframes.
6. Adjuster shall contact claimants with prosthetics or claims open due to on-going medical no less than every 180 days (6 months) with a documented plan and diary in the claim file.
7. Recorded statements shall be taken on all Indemnity Claims and Catastrophic Claims within two (2) business days of notice of the injury. Supervisor and witness statements shall be obtained within three (3) business days of notification of the injury. Contractor shall contact the DWCR or City Risk Management for assistance if unable to secure recorded statements after four (4) business days. All recorded statements shall be transcribed when requested by the City or for legal proceedings.
8. Contractor shall order a Central Index Bureau (CIB) report on all lost time claims and document the claim file. A CIB shall be ordered every six (6) months until case is closed. CIB costs shall not be allocated to the claim file.
9. Contractor shall review all prior injuries to determine whether a claim is new or a continuation of a previous injury and whether any contribution or recovery from SIF applies.
10. Claims Supervisor/Manager shall review all PTSD and Cancer claims. Contractor shall coordinate and facilitate a round table discussion with City Risk Management and other interested parties within 13 calendar days after notice and prior to acceptance or denial.
11. Supervisory/Management Reviews shall be consistent and claim files shall be documented to reflect supervisor involvement. The Claims Supervisor/Manager shall be involved when complaints are received from injured employees or others or when concerns arise regarding poor

**CITY OF AUSTIN**  
**SOLICITATION NUMBER: RFP 5800 BCR3023**  
**WORKERS' COMPENSATION THIRD PARTY CLAIMS ADMINISTRATION SERVICES**  
**SCOPE OF WORK v3 Revised 112320**

claims handling, or a lack of responsiveness is displayed. The Claims Supervisor/Manager shall contact City Risk Management staff within one (1) business day of receiving a complaint.

12. Contractor shall review the work that goes into a claim file for quality and accuracy, including, but not limited to: provider, Peer, DD, RME, Investigation, and Case Management reports, bill review's recommendation for payments, pre-authorization determinations, and other utilization review work products. Adjusters shall report sub-standard activity to their supervisor for appropriate intervention to ensure the expected level of quality is provided.
13. Contractor's staff shall attend BRC's on non-complex issues such as disputes concerning Maximum Medical Improvement and IR.
14. Contractor shall ensure that all utilization review service fees are charged to the claim file as an allocated expense.
15. Contractor shall utilize the ODG and MDA guidelines. The City requires workflow that utilizes these guidelines. At a minimum, the Contractor shall establish the following processes:
  - a. Claim details and reports are available to utilization review providers and specifically communicated to pre-authorization and bill review.
  - b. Provide complete, organized and comprehensive medical and clinical data from claim files in order to produce IR reviews, pre-authorizations, peers, RUR's, early compensability assessments, treatment guideline reviews, RME, and DD reports.
  - c. System notes are utilized to identify diagnosis and treatment and justification of medical necessity and the expected length of disability. Identify if ODG or MDA guidelines are exceeded.
  - d. Diary dates to manage the claim by disability guidelines with exceptions noted in the claim file and managed relative to the severity of the claim. Outcomes from peer reviews, RMEs, DDs, must be communicated with utilization review personnel.
16. Bill review processes shall include a system of identification of claims when medical is paid and falls outside of guidelines.
17. Pre-Authorization approvals on treatment outside of guidelines shall have justification and the medical necessity from the requesting provider documented.
18. Adjusters receive notice of all pre-authorizations and provide claim file information for consideration including PLN wording for the pre-authorization determination letter.
19. CCM shall contact the injured employee and DWCR by telephone or e-mail within one (1) business day after a surgery has been denied.
20. A scanned copy of all documents sent for review are in the WC claim file.
21. An order form shall be utilized to detail what is being requested and include any additional questions regarding medical necessity when a Post DD RME service is requested.
22. An FCM request form shall be sent to City Risk Management prior to assignment to refer claims that meet referral guidelines; except when there is an emergency or hospitalized injured employee.
23. Adjusters shall document claims that meet FCM guidelines but are not referred with an explanation identified in the claim file.

**CITY OF AUSTIN**  
**SOLICITATION NUMBER: RFP 5800 BCR3023**  
**WORKERS' COMPENSATION THIRD PARTY CLAIMS ADMINISTRATION SERVICES**  
**SCOPE OF WORK v3 Revised 112320**

24. Adjusters shall work with the CCM or FCM to review treatment, ODG or MDA guidelines, medical improvement, pharmaceuticals, and to identify appropriate avenues to medically manage the claim.
25. Adjuster shall initiate a FCM visit with injured employees whose injury requires a hospital stay of three (3) or more days. This visit is expected to occur no later than the third (3rd) day of the hospital stay.

**M. Certified Case Manager (CCM)**

1. CCM shall have interface capability with the ODG and actively work with adjusters, pre-authorization nurse, and bill review analyst to provide plans of action, explanations, and recommendations for medical management.
2. CCM shall facilitate communication between medical providers, adjuster, employer, and employee to achieve return to work goals, identify claims outside the ODG or MDA, review medical treatment, identify over-utilization, and document appropriate avenues to medically manage the claim.
3. CCM shall communicate with medical providers regarding treatment and disability guidelines appropriate for the claimant's injury/illness, justification for treatment or work status exceeding ODG or MDA guidelines, coordination of medical management items, and temporary limited duty assignment possibilities.
4. CCM shall coordinate information with pre-authorization and adjusters when medical procedures are denied and communicate with the injured employee about the reason for denial.
5. CCM shall consult with the City's Return to Work Coordinator on cases where the injured employee has been on no duty or limited duty status for 30 days.
6. CCM shall regularly provide initial and follow-up written reports. All case management reports shall be available for viewing by the City in the claims system.

**N. Pre-Authorization and Bill Review**

1. Contractor shall provide a licensed registered pre-authorization nurse to handle pre-authorizations. The nurse shall have access to a Medical Director and a wide variety of peer review doctors. The nurse shall have access to claim notes and communicate with adjusters and bill review analysts.
2. Contractor shall provide an experienced bill review analyst to handle medical bills. Analyst shall have access to medical professionals and is expected to communicate with the adjusters, pre-authorization nurse, and have access to claim notes.
3. The bill review process shall not include auto adjudication unless it is proven the criteria shall be met in critical areas of evaluating all medical bills. Sedgwick's auto adjudication rate is approximately 50%. Criteria include simple CPT codes, office visits, labs and x-rays that are billed within fee schedules.
4. Contractor shall not charge the City for duplicate bills.
5. Bill charges exceeding \$50,000 must be reported to the City after their review and before processing for recommended payment and producing an EOB.

**CITY OF AUSTIN**  
**SOLICITATION NUMBER: RFP 5800 BCR3023**  
**WORKERS' COMPENSATION THIRD PARTY CLAIMS ADMINISTRATION SERVICES**  
**SCOPE OF WORK v3 Revised 112320**

6. Contractor shall establish E-billing and include a procedure to obtain appropriate medical documentation. Contractor shall pursue recovery if a payment is recommended and paid in error.

**O. Peer Reviews, RME's, and RUR Services**

1. Contractor's system shall be integrated with the claims system to ensure all utilization review information is available to both utilization review personnel and claims adjusters.
2. A Registered Nurse shall be assigned to the City's account and peer review physicians shall be specialists in specific areas when necessary, such as with claims associated with PTSD and Cancer.
3. Peer Reviewers shall consider information provided by the adjuster regarding previous medical procedures, treating doctor reports and opinions, and peer and RME reports when making a medical decision regarding medical necessity.
4. Peer reviews, RMEs, and RUR's shall be based on the medical and clinical data supplied. Medical opinions shall be supported within the written report. A poor-quality report shall be returned until it responds to the questions asked and supports the opinion.
5. Contractor's reports shall reference the historical medical information and procedures performed and provide specific clinical criteria and medical references utilized in the evaluation to substantiate the medical opinion provided.
6. Extenuating circumstances, patient co-morbidities, objective signs of functional improvement for treatment conducted, measurable goals and progress points expected from additional treatment shall be documented when medical care is an exception to the ODG.

**P. Field Case Management (FCM) and Vocation Rehabilitation Services**

1. Contractor shall include field case management services and vocational rehabilitation services that meet the minimum requirements of this scope of work. Contractor shall have proficient bilingual (English/Spanish) ability, if requested, for an assignment.
2. The claim file shall be charged as an allocated expense for these services.
3. If Field Case Manager from outside the Austin area is utilized, the City will not be liable for the costs associated with travel time and mileage from outside the Austin area. **Sedgwick plans to have an Austin-based FCM designated to the account whose mileage would be covered. Sedgwick will be willing to limit the travel and mileage to hour travel time each way (about 60 miles).**
4. The Field Case Manager shall be a licensed Registered Nurse with one of the following certifications – CCM, CDMS, CRC, CRRN, or COHN – and 5 years' experience in field case management and experience with WC catastrophic injuries.
5. The Field Case Manager must be a registered nurse when attending physician or hospital appointments with the claimant.
6. The Field Case Manager shall contact the injured employee within one (1) business day of assignment, and within twenty-four (24) hours for emergency assignments.
7. Contractor's written updates/reports shall provide:
  - a. Insight and recommendations to support timely coordination of medical care, diagnostics, and rehabilitation.

**CITY OF AUSTIN**  
**SOLICITATION NUMBER: RFP 5800 BCR3023**  
**WORKERS' COMPENSATION THIRD PARTY CLAIMS ADMINISTRATION SERVICES**  
**SCOPE OF WORK v3 Revised 112320**

- b. An assessment of the potential for return to work in the current or an alternate job.
- c. An action plan for ongoing open communication between all involved parties and service providers.

**Q.Legal Services**

1. Contractor shall include legal services that meet the minimum requirements of this scope of work.
2. The law firm shall have an office located within Austin or the contiguous surrounding area and have attorneys with 10 years' experience specializing in handling legal services for Texas WC claims assigned to the City's account.
3. Licensed attorneys shall represent the City at hearings before the Texas administrative office for dispute resolution, complaints, violations, and performance-based oversight issues.
4. A staff attorney shall, for cases set for hearing:
  - a. Review the file and be prepared prior to the hearing.
  - b. Advise and assist adjusters to resolve disputes prior to hearings.
  - c. Communicate with the adjuster and City Risk Management regarding hearing dates and cancellations, and any situations that affect the date and time of a BRC or CCH.
  - d. The attorney shall confer with City Risk Management Staff and/or adjuster before attending hearings.
  - e. Provide a written report within five (5) business days after BRC/CCH.
  - f. Coordinate agreements with City Risk Management and the claims supervisor.
5. A staff attorney shall be available for up to two (2) presentations per year to DWCRs.
6. A staff attorney shall be available to advise and discuss claim files with adjusters and with City Risk Management on WC issues and law, rules, and legal decisions.
7. A staff attorney shall meet and confer on WC issues where the City (with or without) the Contractor must make policy decisions.
8. The law firm shall share bulletins, opinions, and interpretations with City Risk Management when WC is affected by case law, landmark appeal panel decisions, legislation signed by the Governor, or DWC's activities, including rule making.
9. Cases in litigation, proceeding to court, or up for Judicial Review are not included in the services requested.
10. Contractor shall subcontract with a separate independent law firm should a second legal opinion on any of the above scope of work items be requested by the City. The subcontracted independent law firm is only required to provide a second legal opinion and not provide any other legal services in this scope of work.

**R.Reserves**

1. Contractor shall justify and document claim file reserves and incremental changes in reserves in every claim file using a system reserve screen or a boiler plate reserve worksheet.



**CITY OF AUSTIN**  
**SOLICITATION NUMBER: RFP 5800 BCR3023**  
**WORKERS' COMPENSATION THIRD PARTY CLAIMS ADMINISTRATION SERVICES**  
**SCOPE OF WORK v3 Revised 112320**

2. Contractor shall set appropriate reserves and shall not close claims with hearing aids, prosthetics, and Lifetime Income Benefits, or any claim with expectations of a future need for medical expense.
3. Contractor shall reserve claims for "the most probable outcome" or life expectancy and adjust as they mature. Reserve methodology and outside resources utilized should be referenced in each file. Reserves must be set within ten (10) business days of receipt of the first notice of loss, revisited in twenty-five (25) business days, and thereafter a reserve diary is required on active claims. Reserves set by life expectancy shall be based on a reputable source such as the Social Security Administration Life Expectancy Table.
4. Contractor shall reserve fatality claims for Sworn employees for life expectancy for an eligible spouse. Fatality claims for Non-Sworn employees shall be reserved for eligible children to age 18 and spouse only and reviewed again once age 18 is reached. Prior to setting reserves, Contractor shall produce a Reserve Worksheet/Analysis to City Risk Management.

**S. Impairment Ratings**

1. Contractor shall review IR's ten percent (10%) or above for accurate formulation. Reviews must be conducted within three (3) business days of receipt of IR. Contractor shall document any discrepancy and proceed to a DD within five (5) business days after notice of the discrepancy.

**T. Subrogation**

1. The City's law department administers its own subrogation and third-party recovery program and handles all negotiations.
2. Contractor shall identify all claims with the potential for subrogation and scan the DWC-1's for these claims to the law department. Any subsequent knowledge of potential subrogation or a third-party tortfeasor on a claim shall be shared with City Risk Management prior to referral to law department.
3. Contractor shall provide the City's law department with any claim file information as requested by downloading the claim file onto agreed upon media. Response to the City attorney's requests shall be made within three (3) business days.
4. The law department will issue a Recovery Memo to the City's Risk Manager and the Contractor. Contractor shall note in both the claim notes and the bill review software the amount recovered when the Recovery Memo is received. Contractor will credit the claim file reflecting the recovery in the financial screen. Contractor shall prepare a PLN advising parties to the claim of the intent to recover amounts over \$1,000.
5. Contractor shall notify the injured employee within one (1) business day that medical and indemnity benefits shall terminate immediately and how much of the net recovery must be exhausted prior to resuming medical and indemnity benefits.
6. Contractor shall develop and maintain a cumulative excel report of all claims receiving a recovery memo. The report criteria shall be developed, and report parameters agreed to by the City.
7. Contractor shall track payments made in accordance with statutes and rules that govern subrogation. Contractor shall ensure that benefits have not been paid that should be covered by the net recovery.

**U. Medicare Secondary Mandatory Reporting and Recovery**

**CITY OF AUSTIN**  
**SOLICITATION NUMBER: RFP 5800 BCR3023**  
**WORKERS' COMPENSATION THIRD PARTY CLAIMS ADMINISTRATION SERVICES**  
**SCOPE OF WORK v3 Revised 112320**

1. Contractor shall provide Medicare Secondary Reporting Services and assume the role and responsibility of the Account Manager and the Reporting Agent pursuant to the Medicare, Medicaid, SCHIP Extension Act 2007, 42 USCA §1395y, as amended. This role includes all aspects of the Medicare Conditional Payment process. Contractor shall complete all mandatory paperwork to ensure this relationship is documented with CMS.
2. Contractor shall prepare and submit all queries and quarterly reports to the CMS at no cost to the City.
3. Contractor shall charge Medicare services to the individual claim file and pay under a specific code for Medicare Services as an allocated expense.

**V. Return to Work:**

1. Contractor shall inform the treating physician of the City's return to work program and coordinate with the DWCR to acquire the Essential Functions/Job Task list for the injured employee's assignment within ten (10) business days of employees' losing fourteen (14) days or more of work.
2. Contractor shall provide the following information:
  - a) Advise City Risk Management of injured employees with lost time exceeding 30 days.
  - b) Provide consultation on specific files that have been assigned to the City's Return to Work program upon request.

**W. Wage Continuation/Line of Duty Leave**

1. The City recovers specific Temporary Income Benefits (TIBS) payments based upon Local Government Code Sec. 143.073, "Line of Duty Illness or Injury Leave of Absence", and Texas Labor Code - Sec. 504.051 "Offset Against Payments for Incapacity".
2. Contractor shall supply the following to City Risk Management to administer the program:
  - a) A weekly check register report with stub notes available to City Risk Management every Monday by 3:00 p.m. *Refer to Exhibit 5.*
  - b) Electronic copies of PLN's or the data contained within them, daily.
3. Contractor shall communicate with City Risk Management daily with information on claims where the waiting period is about to become due and issue waiting period check amounts as indicated by the City.
4. Contractor shall notify City Risk Management via email upon first notice/receipt of a TIBS check returned and voided by the employee.

**X. Child Support**

1. Contractor shall adhere to the City's process for confirming and initiating child support liens with the City Payroll office. The Child Support process identifies claimants receiving TIBS by comparing the check register with the City's payroll system child support garnishment deduction codes.

**CITY OF AUSTIN**  
**SOLICITATION NUMBER: RFP 5800 BCR3023**  
**WORKERS' COMPENSATION THIRD PARTY CLAIMS ADMINISTRATION SERVICES**  
**SCOPE OF WORK v3 Revised 112320**

2. The City will identify new claimants that are receiving both child support and No Duty Status TIBs and confirm Contractor payments of child Support for employees receiving these checks and communicate this to both City payroll and the Contractor.

**Y. PBM Network & Durable Medical Provider Network**

1. Contractor shall provide a PBM Network and Durable Medical Provider Network.
2. PBM shall audit and pay pharmacy bills in accordance with DWC fee guidelines or special discounts negotiated with providers and shall submit the Electronic Data Information required by DWC.
3. PBM shall review pharmacy bills for any irregularities such as: overlapping dates of service, unrelated fees, up-coding and unbundling, diagnosis unrelated to the compensable injury, utilization of the appropriate ANSI codes, denial of N drugs if not pre-authorized, completion of RUR for all Y Drugs, and identification of compound drugs.

**Z. Investigation and Surveillance Services**

1. Contractor charges related to these services shall be charged directly to the claim file as an allocated expense.
2. Contractor shall submit all investigation requests to City Risk Management for approval and include an investigation plan, estimated costs, justification and expected outcomes, and contact information.
3. Contractor shall begin the investigation within three (3) business days of assignment unless other timeframes have been agreed upon with the City.
4. Contractor shall provide a verbal status report to the adjuster as soon as any activity is captured for further instruction.
5. A final written detailed summary shall be submitted within ten (10) business days after completion of assignment and include supporting documentation and details of how the information was obtained.

**AA. Reports, Meetings and Audits**

1. Contractor shall, at a minimum, be required to generate the following reports:
  - a. **Weekly and Monthly Check Register** consisting of indemnity payments disbursed weekly, stub notes that include the reason for the payment (i.e. waiting period, no duty status, partial duty status, limited duty status, for claimant's attorney, or wage garnishment) **Refer to Exhibit 5**. Voided checks or stop payments shall also be noted on the register.
  - b. **End of Month Pay Category Report** indicating the types of payments made during the month by claimant showing work performed and the allocated expenses made to the claim files for designated timeframes; supporting documentation may be required.
  - c. **Executive Summary (Refer to Exhibit 2)** consisting of Account Management data and statistics.
  - d. **End of Month Reports** supporting the data included in **Exhibit 2**. Additional criteria may be added to the reports.
  - e. **End of Month Overpayment Report** listing the injured employee name, claim number, type of indemnity payment error, reason for error, error date and amount due, check

**CITY OF AUSTIN**  
**SOLICITATION NUMBER: RFP 5800 BCR3023**  
**WORKERS' COMPENSATION THIRD PARTY CLAIMS ADMINISTRATION SERVICES**  
**SCOPE OF WORK v3 Revised 112320**

number, recovery activity and expected date of recovery reimbursement; recovery source; if error due to Contractor, date that check sent to City. *Refer to Exhibit 6.*

- f. **Monthly DWC-1 and DWC-3 Reports** listing all new claims in the previous month, including the date the DWC-1 and DWC-3 was received, the date of knowledge by the City and calculations of the timely criteria for receipt.
  - g. **Quarterly Reserve Change Report** listing all reserve changes to claim files in the past quarter.
  - h. **Monthly Financial Reports** as agreed upon after banking arrangements have been completed with the successful Contractor.
  - i. **Monthly Certified Case Manager Report** identifying the medical status/return to work status and other data as specified by Risk Management for all active cases reviewed by the Case Manager.
  - j. **Monthly Field Case Management Active Cases Report** of active cases for telephonic, field management, or vocational rehabilitation, the date assigned, and confirmation that criteria and objectives are being met. A quarterly closure report shall be generated with date of closure, reason for closure, and total days for the assignment. Initial and Closure reports shall be submitted within ten (10) business days of assignment; interim case updates shall be provided by e-mail to the adjuster and City Risk Management within two (2) business days of attending a doctor's appointment with an employee.
  - k. **Pre-Authorization and RUR Report** displaying the utilization review activity for the month received and processed by claimant, merged quarterly, semi-annually, and annually.
  - l. **Monthly Subrogation Report** identifying the employee, claim number, amount subrogated, and amount tracked as processed and date a PLN was issued. *Refer to Exhibit 7.*
  - m. **Performance Log** identifying contractor performance based on key industry performance indicators *Refer to Exhibit 3.*
  - n. **Quarterly Active Claims Count** to include prior years active claim open at the beginning of the fiscal year, new claim reported for the quarter, and prior year's claims closed at the beginning of the fiscal year but re-opened during the quarter.
  - o. **Investigation and Surveillance Report** as required listing the claims referred for private investigation, time frame for the investigation, hours billed and the quality of the report and timeliness of the investigation.
  - p. **Annual Actuary Data Report** including all loss development data required by the actuary to produce an actuary report for the City.
  - q. **Financial Analysis Report** –showing total amounts of payments made under each pay category by Fiscal Year and by claim year and # of claims paid on in that year. A separate pivot table is required that carves out medical expenses and lists medical costs of claims by claim year and # of payments that were made. *Refer to Exhibit 4.*
  - r. **PBM Report** indicating both paper bills and E-Bills showing the # of E-bills received, rejected, the reason for rejection, and total # of paper and E-bills processed and submit such reports at intervals to be agreed upon with the City.
2. **Meetings** – Contractor shall be required to have relevant key staff participate in the following meetings and others as required:

**CITY OF AUSTIN**  
**SOLICITATION NUMBER: RFP 5800 BCR3023**  
**WORKERS' COMPENSATION THIRD PARTY CLAIMS ADMINISTRATION SERVICES**  
**SCOPE OF WORK v3 Revised 112320**

- a. **Monthly Operations Meeting** with Risk Management to review account issues, including bill review, pre-authorization and progress reports of issues tracked in an issue and resolution log, a summary of business transacted in the previous month, identification of trends, and other topics appropriate for a high-level operations meeting.
  - b. **Claim Review Meetings with City Departments** or with Risk Management to review open claims and other claim management issues that may be important. This meeting is coordinated by the Contractor and may be set up as recurring.
  - c. **Account Management Meeting** as needed to review status of issues and project chart, outstanding concerns. Contractor's Account Manager is required to attend as well as other relevant personnel based on the agenda.
  - d. **Bi-weekly Meeting with Claims Supervisor/ Manager** as needed, with City staff to discuss claim issues and concerns, staffing, opportunities for improvements and resolution of issues.
3. **Audits** - Contractor shall be required to conduct or participate in a variety of audits:
- a. **Monthly DWC-3 & DWC-1 Audits** for all new claims that in the previous month. Contractor shall utilize a lag report to audit for timely receipt of DWC-3 and DWC-1 forms.
  - b. **DWC-6 & General Claim File Activity Audits** Contractor shall send all PLNs issued for the previous month by the 10<sup>th</sup> of the following month to the City.
  - c. **SSAE 16** conducted annually in accordance with American Institute of Certified Public Accountants (AICPA) standards by a certified auditing firm at the Contractor's own cost. The audit does not have to be specific to City but of the vendor's Account Service Provider environment. Final audit reports shall be delivered to the City by November 1<sup>st</sup> of each year.
  - d. **Annual Audit** City shall coordinate and advise the Contractor of the onsite audit to be performed by the outside auditing firm. Contractor shall allow the auditing firm access to claim files, procedures, pre-authorization, bill review, and other ancillary service products utilized in the management of the City's program.
  - e. **Random Audits** all work products are subject to audit on a random basis. Contractor shall respond within five (5) business days unless the urgency of the situation requires a more immediate response.

**BB. Invoice and Payment Address:**

The City's preference is to have invoices emailed to [Kayla.wilson@austintexas.gov](mailto:Kayla.wilson@austintexas.gov) or mailed to the below address:

	City of Austin
Department	Human Resources Department
Attn:	Risk Management 5202
Address	P.O. Box 1088
City, State, Zip Code	Austin, Texas 78767

For questions regarding your invoice/payment please contact the City Contract Manager.

**CITY OF AUSTIN**  
**SOLICITATION NUMBER: RFP 5800 BCR3023**  
**WORKERS' COMPENSATION THIRD PARTY CLAIMS ADMINISTRATION SERVICES**  
**SCOPE OF WORK v3 Revised 112320**

**CC. Designation of Key Personnel**

The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor shall promptly notify the City and obtain approval for the replacement. Such approval shall not be unreasonably withheld. The Contractor's and City's key personnel are identified as follows:

	<u>Name</u>	<u>Phone Number</u>	<u>Email Address</u>
Contractor Contract Manager	<i>Contractor shall specify upon contract execution</i>		
City Contract Manager	Leslie Milvo	(512) 974-3245	Leslie.milvo@austintexas.gov
City Project Manager	Kayla Wilson	(512) 974-3309	Kayla.wilson@austintexas.gov
City Contract Administrator, Procurement Specialist	Jim Howard	(512) 974-2031	Jim.Howard@austintexas.gov

**EXHIBIT B—CONTRACTOR’S PAYMENT/FEE  
SCHEDULE**



## Service Fees

Prepared by Sedgwick | December 2020



[WWW.SEDGWICK.COM](http://WWW.SEDGWICK.COM)



## **EXHIBIT C—REVISED PERFORMANCE GUARANTEES**

**CITY OF AUSTIN**  
**WORKERS' COMPENSATION THIRD PARTY CLAIMS ADMINISTRATION SERVICES**  
**SOLICITATION NO: RFP 5800 BCR3023**  
**ATTACHMENT 7 PERFORMANCE GUARANTEES REVISED**

	<b>Performance Measure</b>	<b>Acceptable Performance</b>	<b>Liquidated Damage</b>	<b>Calculation</b>	<b>Agree Yes/No</b>
1.	Performance Based Oversight (PBO) as calculated by DWC. PBO is performed every 2 years.	95% or higher Performance Based Oversight overall tier rating	<b>Every 2 Years:</b> \$10,000 for an overall tier rating below 95%	PBO – results provided by DWC every 2 years	YES
2.	Annual Audit of Claims Management, Preauthorization and Bill Review.	Annual Audit results at 90% or higher for each category audited.	<b>Annual:</b> \$5,000 for each category where the audit result is below 90% The 3 categories are: 1. Claims Management 2. Preauthorization 3. Bill Review	Annual Audit – final audit results as provided by external audit company	YES
3.	DWC Carrier Scorecard results for the average of the 12 months from March thru February of each year. Example: The March of 2022 Review will be based upon results from the months of March 2021 – Feb 2022	Carrier Scorecard with each category at a minimum average for the 12 months at 95%: 1. Timely Paid initial TIBs 2. Timely Reported initial TIBs 3. Timely Processing of medical Bills 4. Timely Reporting of Medical Bills 5. Timely Processing of Reconsideration Medical Bills 6. Reporting of Reconsideration Medical Bills	<b>Annual:</b> \$5,000 for each of the 6 categories 1 – 6 that fall below 95%	The Annual Average of each month of data by category for the previous 12 months from March thru February each year.	YES
4.	End of Fiscal Year Reports delivered to the City by the 10 <sup>th</sup> of October each year. 1. Annual Fiscal Year End Loss Run 2. Annual FY End Fund Agency Report	Each report must be delivered accurately and timely by the 10 <sup>th</sup> October each year.	<b>Annual:</b> \$5,000 per business day penalty for each report not received by the 10 <sup>th</sup> of October not to Exceed \$15,000.	Each of the 2 reports are due annually on the 10 <sup>th</sup> of October and must be accurate. If a report is late or inaccurate a \$5,000 per business day daily penalty shall be calculated.	YES
5.	Medicare Secondary	Each Report must be delivered accurately by the 30 <sup>th</sup> day of each	<b>Quarterly:</b>	Each of the 3 reports are due by the 30 <sup>th</sup> day after the end of	

**CITY OF AUSTIN**  
**WORKERS' COMPENSATION THIRD PARTY CLAIMS ADMINISTRATION SERVICES**  
**SOLICITATION NO: RFP 5800 BCR3023**  
**ATTACHMENT 7 PERFORMANCE GUARANTEES REVISED**

	Performance Measure	Acceptable Performance	Liquidated Damage	Calculation	Agree Yes/No
	Payer Reports delivered to the City by the 30 <sup>th</sup> day after the end of each <b>contract</b> quarter: 1. Listing Claimants in the Query submission. 2. Listing Claimants CMS identified as beneficiary. 3. Listing Claimants and the diagnoses returned to CMS.	<b>contract</b> quarter as established with CMS.	\$1,000 daily penalty for each report not to exceed \$10,000 for the quarter.	Each <b>contract</b> quarter. <b>Contract quarters are: March – May, June – Aug, Sept. – Nov. Dec – Feb.</b> If a report is late or inaccurate a \$1,000 daily penalty per report shall be calculated to a maximum penalty of \$10,000 per report per quarter.	YES
6.	Performance Log Results For 3 Categories (Refer to Exhibit 3 in 0500 Scope of Work) Categories are: 1. Claims Management 2. Utilization Management/Bill Review 3. EDI	<b>Contract</b> Quarterly average for each category must be a minimum of 95%.	<b>Contract Quarterly:</b> \$2,500 for each category that is below 95% average score	Each <b>contract</b> quarter. <b>Contract quarters are: March – May, June – Aug, Sept. – Nov. Dec – Feb.</b> The percentages for each component within each of the 3 main categories are averaged together to arrive at an overall average score per category.	YES
7.	End of Month Reports delivered to the City by the 15 <sup>th</sup> of each month: 1. Bank Reconciliation 2. Pay Category Report 3. Lost Time Injury Report 4. Executive Summary 5. Financial Analysis	Each report must be delivered accurately and timely by the 15 <sup>th</sup> of each month.	<b>Monthly:</b> \$2,500 business day daily penalty for each report that is inaccurate or late, not to exceed \$10,000 for the month	Each of the 5 reports are due by the 15 <sup>th</sup> of the month and must be accurate. If a report is late or inaccurate, a \$2,500 business day daily penalty per report shall be calculated to a maximum penalty of \$10,000 per report per month.	YES

**CITY OF AUSTIN**  
**WORKERS' COMPENSATION THIRD PARTY CLAIMS ADMINISTRATION SERVICES**  
**SOLICITATION NO: RFP 5800 BCR3023**  
**ATTACHMENT 7 PERFORMANCE GUARANTEES REVISED**

	Performance Measure	Acceptable Performance	Liquidated Damage	Calculation	Agree Yes/No
8.	<p>End of Month Reports delivered to the City by the 15<sup>th</sup> of each month:</p> <ol style="list-style-type: none"> <li>1. Pre-Authorization Report</li> <li>2. Check Register</li> <li>3. Indemnity report</li> <li>4. 90 Day Open Claims Report</li> <li>5. New Claims Report</li> <li>6. Dedicated Nurse Report</li> <li>7. Overpayment Report</li> <li>8. RUR Log</li> <li>9. ANSI Code Report</li> </ol>	Each Report must be delivered accurately and timely by the 15 <sup>th</sup> of each month	<p><b>Monthly:</b></p> <p>\$1,000 business day daily penalty for each report not to exceed \$5,000 for the month</p>	Each of the 9 reports are due by the 15 <sup>th</sup> of the month and must be accurate. If a report is late or inaccurate, a \$1,000 per business day daily penalty per report shall be calculated to a maximum penalty of \$5,000 per report per month.	YES





# Response to Request for Proposal

Prepared by Sedgwick | July 2020





**ADDENDUM  
PURCHASING OFFICE  
CITY OF AUSTIN, TEXAS**

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**Solicitation: RFP 5800 BCR3023**

**Addendum No: 1**

**Date of Addendum: 6/9/2020**

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This addendum is to incorporate the following changes to the above referenced solicitation:

**I. Clarification:**

The Pre-Offer Conference Location has been changed to the following:

- I.1 Pre-offer meeting scheduled for June 12, 2020 @ 10:30 AM CST, Access to meeting:
  - I.1.1 Microsoft Teams: [Join Microsoft Teams Meeting](#) ;
  - I.1.2 Call in: **+1 512-831-7858** United States, Austin (Toll), Conference ID: 586 899 290#

**II. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.**



**ADDENDUM  
PURCHASING OFFICE  
CITY OF AUSTIN, TEXAS**

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**Solicitation: RFP 5800 BCR3023**

**Addendum No: 2**

**Date of Addendum: 6/18/2020**

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This addendum is to incorporate the following changes to the above referenced solicitation:

**I. Clarification:**

**C1.** Delete Attachment 3-Extended Services and replace with Attachment 3-Extended Services Revised v2.

**II. Questions:**

**Q1.** Is this a new requirement, or is there a vendor currently providing these services? If so, may I have the vendor name, contract term, and contract amount?

**A1.** No, this is not a new requirement. The City has an existing contract providing these services. The existing contract is 2/28/2016 through 2/28/2021, in the amount of \$10,107,454.00. Refer to the solicitation Section II, Background for any other additional background information.

**Q2.** Are the services described in this RFP continually needed, even beyond the term of the contract, and therefore may be bid out once again?

**A2.** Yes, the services for this RFP are ongoing. The City anticipates continually contracting these services in the future.

**Q3.** We would like to request the City's current open claim count broken out by loss time and med only.

**A3.** The City's current open claims as of 5/31/2020 are Lost Time at 366 and Medical Only at 462. These numbers are going to change daily, this is a snapshot as of 5/31/2020.

**Q4.** Regarding Exhibit 1-7. What are the estimated open takeover claims? Is it 499 open Medical Only and 389 Indemnity? If so, how many would you classify as Catastrophic claims?

**A4.** The City's current open claims as of 5/31/2020 are Lost Time (indemnity) at 366 and Medical Only at 462. The Lost Time (Indemnity) claims include approximately 40 Catastrophic Claims as defined within the scope of work as of 6/15/2020.

**Q5.** Regarding Exhibit 1-7. Does the City have specific criteria for Cat adjuster assignments?

**A5.** Yes, the City will have specific criteria for Cat adjuster assignments. The assignments will be based on claims that are defined as Catastrophic, along with other claims that have complex issues that require extensive investigation and/or monitoring.

**Q6.** Regarding Exhibit 1-7. Please provide the number of cancer claims and hearing aid claims that are open by Indemnity and MO?

**A6.** As of June 15, 2020, there is 1 (one) open cancer Indemnity claim and 291 Hearing Loss medical only claims.

**Q7.** Does the City anticipate extending the solicitation?

**A7.** The City does not anticipate extending the solicitation at this time.

**Q8.** What is the current structure of the City TPA team?

**A8.** Currently the third party administrator (TPA) team has one Claims Manager or Supervisor, two Lost Time (Indemnity) Adjusters, two Medical Only Adjusters, a Claims Associate and a Dedicated Case Manager.

**Q9.** Is the TPA team located in Austin?

**A9.** Yes, the current third party administrator (TPA) team is located in Austin.

**Q10.** A Catastrophic Adjuster is listed in the RFP, is that presently a position or something new the City is looking for?

**A10.** A Catastrophic Adjuster is not presently a delineated position. It is a newly defined position that is based upon specific expertise handling catastrophic injuries as defined within the Scope of Work.

**Q11.** Legal services requirement, "Q1. Contractor shall include legal services that meet the minimum requirements of this scope of work." Are you referring to an existing law firm in Austin charged to the file like an attorney not an employee of the Contractor?

**A11.** Yes, this applies to legal services performed by a law firm and not an employee of the contractor.

**Q12.** How do you envision evaluating the law firm that would be identified in the response?

**A12.** Attachment 3. Section E, Legal Services in the Solicitation Instructions, has questions about the legal services. The RFP Evaluation factors includes the evaluation of Attachment 3 under the Program Technical Plan.

**Q13.** Will the claim counts be reviewed in the reports (Exhibits 1-7)? Because when you look at the frequency of claim info. presented on exhibit 1 in relationship to caseload requirements that falls into the number of adjusters they appear to be off. For instance, requiring 200 for medical only but 1600 medical only claims listed in Exhibit 1.

**A13.** These numbers can fluctuate for medical only claims, however the claim count for a Medical Only Adjuster will not exceed 200 open claims. The 1600 Medical Only claims include exposure claims that require baseline testing in many instances and are reported to the TPA but are closed by the 14<sup>th</sup> day as a denial.

**Q14.** Is the City considering accepting unbundled services?

**A14.** No, the City is not considering unbundled services. This RFP requires a bundled approach.

**Q15.** Do you have to have Texas public entity business to submit to this solicitation because in Attachment 1, it specifically talks about public entities.?

**A15.** No, it is not a requirement to have business with a Texas public entity, however preference may be given to client public entity firms.

### **III. Additional Information:**

The Pre-offer meeting sign-in sheet is included with this Addendum.

### **IV. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.**





**ADDENDUM  
PURCHASING OFFICE  
CITY OF AUSTIN, TEXAS**

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**Solicitation: RFP 5800 BCR3023**

**Addendum No: 3**

**Date of Addendum: 6/29/2020**

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This addendum is to incorporate the following changes to the above referenced solicitation:

**I. Extension:**

The proposal due date is hereby extended until July 23, 2020 at 2:00 PM, CST. The proposal opening time is rescheduled to July 23, 2020 at 3:00 PM, CST.

**II. Clarification:**

**C1.** Update the Scope of Work, Section III, as provided below:

Replace Section III, O. Peer Reviews, RME's, and RUR Services #2 in its entirety with the following:

2. A nurse shall perform utilization review functions as required in DWC rules and regulations and peer review physicians shall be specialists in specific areas when necessary, such as with claims associated with PTSD and Cancer.

Replace Section III, P. Field Case Management (FCM) and Vocation Rehabilitation Services #4 in its entirety with the following:

4. The Field Case Manager shall be a licensed Registered Nurse with one of the following certifications – CCM, CDMS, CRC, CRRN, or COHN -- and 5 years' experience in field case management and experience with WC catastrophic injuries.

**C2.** Replace Attachment 4-Extended Services Allocated Expenses in its entirety with Attachment 4-Extended Services Allocated Expenses v2 Revised 062920.

**C3.** Update Solicitation Instructions: Replace 10.8 Local Business Presence in its entirety with the following:

**Local Business Presence** - The City seeks opportunities for businesses in the Austin Corporate City Limits to participate on City contracts. The Local Business Presence form in the Offer and Certifications section must be completed to be considered for Local Business Presence. Points will be awarded through a combination of the Offeror's Local Business Presence and/or the Local Business Presence of their subcontractors. Evaluation of the Team's Percentage of Local Business Presence will be based on the dollar amount of work as reflected in the Offeror's MBE/WBE Compliance Plan or MBE/WBE Utilization Plan. Any Offers with subcontracting not indicating specific percentages or dollar amounts will not receive Local Business Presence points for subcontracting.

**C4. Update Offer and Certifications:**

Replace “Local Presence Certification – Optional” in its entirety, with the “Local Presence Certification-Optional – Revised 062920”, see page 9.

**III. Questions and Responses:**

	<b><u>Question</u></b>	<b><u>Response</u></b>
1.	Are the Performance Guarantees negotiable?	The City of Austin is open to negotiation discussions with the selected TPA. However, The RFP Evaluation factors include the evaluation of Attachment 7 under the Program Technical Plan.
2.	What are the current contracted rates for services on the RFP?	The rates for contracted services are considered proprietary information.
3.	What are the current not to exceed amounts?	The annual breakout for the current contract is: \$1,602,082; \$1,624,610; \$1,649,269; \$1,689,641; \$1,783,809; and \$1,758,043 for a total Not To Exceed contract amount of \$10,107,454. The current expiring contract Not To Exceed Amount includes the costs for all services identified in Attachment 4 that currently are not allocated to the claim file.
4.	Are you interested in a nurse triage program?	The City is not interested in considering a nurse triage program at this time.
5.	Are you interested in utilizing telemedicine?	Telemedicine is provided to all City of Austin employees and they may also utilize telemedicine for workers' compensation injuries.
6.	Do you have overpayments now in your program? If so, please describe how often and how it is effecting your process/workflow?	Yes, we currently have overpayments. It is difficult to describe how often overpayments occur, however overpayments/leakage occurs for a number of reasons. The City has a process in place for recovering overpayments which includes but is not limited to oversight and reviewing PLN's, internal audits of closed and open claims, review of monthly reports, review of DWC decisions as well as self-reporting by the TPA. The City and TPA utilize any and all resources available to recover overpayments pursuant to DWC statute and rules, including but not limited to seeking reimbursement from the Subsequent Injury Fund (SIF). The overpayments do not affect the program's process or workflow.
7.	What is the current number and positions of your dedicated staff now?	Currently the Third Party Administrator (TPA) team has one Claims Manager or Supervisor, two Lost Time (Indemnity) Adjusters, two Medical Only Adjusters, a Claims Associate and a Dedicated Case Manager
8.	How is a CAT claim defined? Please share the definitions of a CAT, IND, and MO claim?	The definitions of CAT, IND and MO claims are contained in the Scope of Work, Section III. H numbers 2,4, and 5 on page 6.

9.	In Report 2 - Bill Review Reports—45-90 Day; ANSI Code; Black Flag; EDI; Provider Type; Fees; Lag Report; Savings Report. Can you explain “Black Flag” data element.	The black flag data element is an element in the black flag report that provides a detailed claims list of all of the medical services that fall outside of the Occupational Disability Guidelines.
10.	In Report 6 - N drug status report - Can you confirm this means just N drugs that have been approved/paid.	These are drugs that have been approved/paid as well as N drugs that have been denied/not paid.
11.	Will the City please provide the City's pharmacy claims volume for 2019?	The City's pharmacy claims volume for 2019 was 2028 .
12.	Will the City please provide the City's pharmacy spend for 2019?	The City's pharmacy spend for 2019 was \$519,805 .
13.	Are there any hard copy files that will need to be stored at the expense of the TPA?	No, there are no hard copy files that need to be stored at the expense of the TPA.
14.	Please describe the current staffing model used by the TPA (the number of managers, supervisors, lost time adjusters, medical only adjusters and clerical support) and are they dedicated or designated.	Currently the third party administrator (TPA) team has one Claims Manager or Supervisor, two Lost Time (Indemnity) Adjusters, two Medical Only Adjusters, a Claims Associate and a Dedicated Case Manager. These roles are dedicated to the City of Austin account.
15.	Is the City interested in retaining all or part of the current TPA staff assigned to the City?	Retaining all or part of the TPA staff assigned to the current contract is not a requirement. Hiring of TPA staff for this contract is the contractor's responsibility.
16.	Can you provide current salary information for the TPA staff assigned to the City?	The City's contract with the TPA is on a "Not to Exceed" amount. The City is not provided with contractor staff salary information.
17.	Are CMS queries charged as an Allocated Expense under Additional Services, Mandatory CMS MMSEA reporting on Attachment 4?	Yes. Please refer to revised Attachment 4. A one time query charge per the life of the claim file is expected.
18.	Is the TPA required to use a specific bank for loss funding?	Currently the TPA is paying claims from a Zero Balance Account that is owned by the City. The funding arrangements negotiated between the City and the successful proposer will determine if the City requires the use of a specific bank for loss funding.
19.	How many medical bills are there per month or annually?	Please refer to Attachment 9, Exhibit 1 -- Medical Cost Containment Services. Three years of annual medical bill data is provided.
20.	Approximately how many EDI's, Index Bureau/ISO and Medicare filings/queries are there annually?	The City's annual data as of 2019 indicates: 17,000 EDI medical bills and 2,397 claim EDI's, 621 Index Bureau records, and 12,625 Medicare filings/queries.
21.	Can Index Bureau query charges be paid as an allocated expense against the individual claim file or will the City require the charges to be included in an annual fee quote?	Please refer to Scope of Work Section L. 8. The City requires CIB charges to be included in the annual fee quote. These charges cannot be allocated to the claim file.
22.	How many coronavirus claims have been reported to date?	Claims reported: 245; Accepted: 5; Pending: 11; Remainder: Denied or Report Only
23.	Please clarify the number of claims system accesses (number of people that will need ID's and passwords) the City will need.	Please refer to Scope of Work Section III, E. 4.

24.	Regarding Attachment 7, Performance Guarantees, what is the total dollar amount of penalties that have been charged to the current TPA per contract year?	This information is not available.
25.	What is the frequency of data downloads needed by the City?	Please refer to Scope of Work Section III, AA and Attachment 6 for data and report requirements. The City does not currently require data extracts that are uploaded into other City databases.
26.	Does the preauthorization nurse need to be a Registered Nurse (RN) or a Licensed Vocational Nurse (LVN) or either?	Please refer to Scope of Work section III, N. 1. The Pre-authorization nurse is required to be a registered nurse (RN).
27.	Is there an MWBE Goal?	There are no M/WBE goals identified for this solicitation, however the Subcontracting Utilization Form and if applicable the Subcontracting Utilization Plan in the "Offer and Certifications" document must be completed.
28.	There appears to be an option to submit in hard copy or electronically. Will the City accept electronic only?	The City accepts and encourages electronic submissions. However, a firm may submit a hardcopy response. The firm should only submit an electronic response or a hardcopy response. Please DO NOT submit both the recommended electronic response and a hardcopy response.
29.	Under Section 0 (2) the City is requesting an RN be assigned. This is a section regarding Peer Review, RME and RUR Services. What role would the RN have in this section?	The Contractor shall provide a nurse as required under Division of Workers' Compensation Subchapter U "Utilization Reviews for Health Care Provided Under Workers' Compensation Coverage".
30.	Does the Field Case Manager need to be an RN only? Does the City require they also be a CCM?	The City is revising Scope of Work section III.P.4 to clarify that the Field Case Manager shall have one of the following certifications: CCM, CDMS, CRC, CRRN, or COHN.
31.	This RFP includes a variety of attachments, many of which are the required questions to be answered about the proposer's services and their responses to the Scope of Services. Currently, those questions are in a table format with the question on the left and space for the answer. Is it permissible to keep the questions in order and labeled per the attachment, but move them to a comprehensive technical proposal with different formatting?	The actual Attachments can be converted into a different format, however, the data must be identified as applicable to the Attachment and provided in the same sequence as the Attachment.
32.	Does the City not use DD exams on their claims?	DD exams are utilized by the TPA as an integral part of the claims handling process. DD exam costs are charged to the claim file.
33.	Per Evaluation 11.1 the City prefers local business preference. What criteria is used to determine local preference?	The criteria for the Local Business Presence has been updated via this addendum. Please reference the changes to the Local Presence document revised 062920 and the solicitation instructions document.

34.	What are the current open claim counts for Medical Only claims and Indemnity claims?	The City's current open claims as of 5/31/2020 are Lost Time at 366 and Medical Only at 462. Open claims counts change daily, this is a snapshot as of 5/31/2020.
35.	Is there a bonus opportunity for the City's TPA if they meet or exceed the category? If so, what amount?	No, there is not a bonus opportunity if the successful proposer meets or exceeds a performance guarantee category.
36.	Is the performance guarantee negotiable?	The City of Austin is open to negotiation discussions with the selected TPA. However, The RFP Evaluation factors include the evaluation of Attachment 7 under the Program Technical Plan.
37.	Are the reports that are after the historical claim data something we need to provide the City in that format or can the TPA provide in another format?	The City does not require the reports to be in the exact same format as the sample reports provided to proposers as an attachment, however all data fields contained within the sample reports are required.

**IV. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.**

## GOAL DETERMINATION REQUEST FORM

<b>Buyer Name/Phone</b>	Bernie Rodrigez x49382	<b>PM Name/Phone</b>	Leslie Milvo
<b>Sponsor/User Dept.</b>	5800 HRD	<b>Sponsor Name/Phone</b>	Leslie Milvo x43245
<b>Solicitation No</b>	RFP 5800 BCR3023	<b>Project Name</b>	Workers' Compensation Claims Admin. Services
<b>Contract Amount</b>	12,249,806.00	<b>Ad Date (if applicable)</b>	5/11/20
<b>Procurement Type</b>			
<input type="checkbox"/> AD – CSP <input type="checkbox"/> AD – Design Build Op Maint <input type="checkbox"/> IFB – IDIQ <input checked="" type="checkbox"/> Nonprofessional Services <input type="checkbox"/> Critical Business Need <input type="checkbox"/> Sole Source* <input type="checkbox"/> AD – CM@R <input type="checkbox"/> AD – JOC <input type="checkbox"/> PS – Project Specific <input type="checkbox"/> Commodities/Goods <input type="checkbox"/> Interlocal Agreement <input type="checkbox"/> AD – Design Build <input type="checkbox"/> IFB – Construction <input type="checkbox"/> PS – Rotation List <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Ratification			
<b>Provide Project Description**</b>			
The City is seeking a qualified workers' compensation third party administrator (TPA) firm with public sector experience that can provide all of the services described in the Scope of Work.			
<b>Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No.</b>			
RFP 5800 TVN0042			
<b>List the scopes of work (commodity codes) for this project. (Attach commodity breakdown by percentage; eCAPRIS printout acceptable)</b>			
Enclosed is the scope of work. 95392 - 100%			
Bernie Rodriguez		5/4/2020	
<b>Buyer Confirmation</b>		<b>Date</b>	

\* Sole Source must include Certificate of Exemption

\*\*Project Description not required for Sole Source

<b>FOR SMBR USE ONLY</b>			
<b>Date Received</b>		<b>Date Assigned to BDC</b>	
<b>In accordance with Chapter2-9(A-D)-19 of the Austin City Code, SMBR makes the following determination:</b>			
<input type="checkbox"/> Goals	% MBE	% WBE	
<input type="checkbox"/> Subgoals	% African American	% Hispanic	
	% Asian/Native American	% WBE	
<input type="checkbox"/> Exempt from MBE/WBE Procurement Program		<input checked="" type="checkbox"/> No Goals	

## GOAL DETERMINATION REQUEST FORM

### This determination is based upon the following:

- |  |   |
|--|---|
| <input type="checkbox"/> Insufficient availability of M/WBEs       | <input type="checkbox"/> No availability of M/WBEs                  |
| <input type="checkbox"/> Insufficient subcontracting opportunities | <input checked="" type="checkbox"/> No subcontracting opportunities |
| <input type="checkbox"/> Sufficient availability of M/WBEs         | <input type="checkbox"/> Sufficient subcontracting opportunities    |
| <input type="checkbox"/> Sole Source                               | <input type="checkbox"/> Other                                      |

*If Other was selected, provide reasoning:*

### MBE/WBE/DBE Availability

MBE: 1      WBE: 0

### Subcontracting Opportunities Identified

No Subcontracting Opportunities.

Veronica Hawkins

05/05/20

**SMBR Staff**

**Signature/ Date**

*Jelene Cochran*

*5/5/2020*

**SMBR Director or Designee**

**Date**

**Returned to/ Date:**