

CITY OF STOCKTON  
STANDARD AGREEMENT

Agreement Number:

1. This Agreement is entered into between the City of Stockton ("City") and Athens Insurance Services ("Contractor") to provide Workers' Compensation Claims Administration as set forth in Exhibit A to this Agreement.

2. The term of this Agreement is as follows, unless amended as described in Exhibit A and Exhibit C section 8:  
Commences on: October 1, 2023 Terminates on: September 30, 2026

3. The maximum not to exceed amount to be paid to Contractor for the term of this Agreement, including if authorized, reimbursement of expenses, is: \$ 2,600,480

4. The complete Agreement consists of all the following Agreement documents which by reference are incorporated and made a part of this Agreement. The parties agree to comply with the terms and conditions of this Agreement.  
(a) Exhibit A – Statement of Work  
(b) Exhibit B – Insurance  
(c) Exhibit C – General Terms & Conditions  
(d) Exhibit D – Professional Services Special Terms & Conditions  
(e) Exhibit E – Compensation Schedule

**IN WITNESS WHEREOF, the authorized parties have executed this Agreement.**

**CONTRACTOR**

Athens Insurance Services, Inc.

Contractor's Name (if other than an individual, state whether a corporation, partnership, etc.):

3923EF9B79A249F  
James Jenkins  
DocuSigned By: James Jenkins

8/21/2023 | 8:19 AM PDT

Authorized Signature

Date

James Jenkins - President

Printed Name and Title of Person Signing

P.O. Box 696, Concord, CA, 94522

Address

**CITY OF STOCKTON**

Harry Black, City Manager

Date

ATTEST:

Eliza R. Garza CMC, City Clerk

APPROVED AS TO FORM:

Lori M. Asuncion, City Attorney

BY:

**EXHIBIT A**  
**STATEMENT OF WORK**

**1. Project Objectives**

1.1 The Contractor shall provide administration of the City's self-insured workers' compensation program including claims adjusting services and related activities as described below.

**2. Project Scope**

**2.1 Caseload**

Examiners shall have a caseload not to exceed one hundred and twenty-five (125) open indemnity claims, which includes future medical claims (weighted as 2:1). The Claims Supervisor shall not carry a caseload.

**2.2 Claim File Set Up**

A 24-hour telephonic claim reporting service shall be provided for City staff use to report new workers' compensation claims.

Upon receipt of the Employer's Report of Occupational Injury or Illness or Application for Adjudication of Claim, the Contractor shall prepare an individual claim file within one (1) business day for each claim. Preparation of the claim file shall include entering each new claim into the computer system and establishing appropriate initial reserves. Initial reserves will be set based on the facts known at the time the case is entered into the computer and clearly documented in the claim's activity record. The file shall be available to the City, including its representatives, claims auditors, and agents, for inspection and contain all medical and factual information on each reported claim.

**2.3 Coverage**

The Contractor shall verify coverage was provided on the date of injury or illness in accordance with the City program dates and governing documents. If applicable, the Contractor shall exercise due diligence in joining applicable co-defendants. All activity to verify coverage and to join co-defendants shall be clearly documented in the claim's activity record.

**2.4 Index Bureau and Electronic Data Exchange System**

The Contractor shall subscribe to the Index Bureau, Electronic Data Exchange System, (EDEX), and other recommended organizations in order to obtain background history on individual claims. Costs to subscribe to these services shall be included in the pricing structure. The Examiner shall request a report from the Index Bureau, EDEX, or other recommended organizations on all new indemnity claims. Subsequent requests should be made every six (6) to twelve (12) months thereafter on all active indemnity claims.

## 2.5 Employer Contact

The Contractor shall request the Employer's Report of Occupational Injury or Illness form within one (1) business day when or if notification of any injury or illness by any source is received first.

If the Division of Workers' Compensation (DWC) Form 1, has not been received by the Contractor within two (2) business days after receiving the Employer's Report of Occupational Injury or Illness, the Examiner will contact the City to ensure the DWC Form 1 was given to the employee within one (1) business day of knowledge of the injury. If a DWC Form 1 has not been given to the injured employee, the Contractor shall immediately send the DWC Form 1 directly to the employee.

The Contractor shall contact the City within one (1) business day of receipt of notice of a claim by any source to conduct an initial and meaningful investigation. Such contact with the City shall be clearly documented in the claim's activity record.

When a claim reaches or exceeds \$100,000 in total incurred value, the Contractor shall report to the City every ninety (90) calendar days regarding the status of the claim. The claim status report will be provided to the City's Workers' Compensation Program Manager. Such report shall include a current status of the claim, the Examiner's plan of action for the future handling of the claim, and the current paid to date and total incurred amounts listed by indemnity (broken down by Temporary Disability (TD) and Permanent Disability PD), vocational rehabilitation, medical, and expense categories.

Contractor shall return phone calls to the City shall be accomplished within one (1) business day.

## 2.6 Employee Contact

In all non-litigated, lost time cases, where the employee has not returned to work, communication shall be established with the injured employee within one (1) business day of receipt of notice of claim. Such contact will continue as often as necessary, but at least monthly. Such contact with the employee

shall be clearly documented in the claim's activity record.

Return phone calls to employees shall be accomplished within one (1) business day.

All correspondence from employees shall be responded to within five (5) calendar days of receipt.

## 2.7 Compensability

The compensability determination (accept claim, deny claim, or delay acceptance pending the results of additional investigation) and the reasons for such determination shall be made and clearly documented in the file within five (5) business days of the receipt of the notification of the loss. Delay of benefit notices shall be mailed in compliance with the Division of Industrial Relations' (DIR) guidelines. Copies of benefit notices shall be maintained in the applicable claim file. The Contractor shall obtain authority from the City to delay or deny a claim. The City's authorization will be clearly documented in the applicable claim file or in the claim's activity record.

A final compensability decision shall not be extended beyond ninety (90) calendar days from the City's knowledge of the claim.

## 2.8 Investigations

Contractor shall promptly initiate investigation of issues identified as material to potential litigation. The City shall be alerted to the need for an outside investigation as soon as possible and the Examiner shall appoint an investigator who is acceptable to the City. The City shall be kept informed on the scope and results of all investigations. All activities shall be clearly documented in the claim's activity record.

## 2.9 Reserves

Reserves shall be established based on the facts of the claim and the probable cost of each claim in accordance with Office of Self Insurance (OSIP) Regulation §15300. A reserve rationale for each reserve change shall be clearly documented in the file notes. All reserve categories shall be reviewed on a regular basis but not less than at least every thirty (30) calendar days. The use of a paper or electronic reserve worksheet is required on all claims and shall be maintained in the applicable claim file.

## 2.10 Payments

City of Stockton has established a zero-balance account, which shall at all times contain sufficient funds to enable the Contractor to make timely payments of claims, allocated loss expenses, and other amounts the Contractor will be authorized to make on behalf of City. To comply with the

positive pay requirements, the Contractor shall electronically submit the information required by City's financial institution with each check run. The submissions shall be at no additional cost to the City.

#### 2.11 Collections

All collections will be logged and posted to the file but shall be sent to City's office with accompanying support for deposit. The support shall list the date the collection was posted to the claim file. No City refunds or other collections shall be deposited by the Contractor in any Contractor or client accounts.

#### 2.12 Provision of Benefits

The Contractor shall provide all compensation and medical benefits in a timely manner and in compliance with the statutory requirements of the California Labor Code. Contractor shall compute and pay temporary disability benefits to injured employees based upon earnings information and authorized disability periods. Contractor shall compute the daily differential between average weekly wage and temporary partial or temporary total disability and report that daily differential to the City on the 1<sup>st</sup> and 16<sup>th</sup> days of each month on any claims where temporary total or temporary partial disability was paid during the preceding pay period. The Contractor shall review, compute, and pay all informal ratings, death benefits, Findings and Awards, life pensions, or Compromise and Release settlements. However, all such benefits shall be paid from the City's established zero-balance account that will be linked to the City's "positive pay" account.

#### 2.13 Initial Indemnity Payment

The initial indemnity payment or voucher shall be issued and mailed to the injured employee together with a properly completed DWC benefit notice within fourteen (14) calendar days of the first day of disability. Copies of benefit notices will be maintained in the applicable claim file.

Late payments must include the self-imposed 10% penalty in accordance with Labor Code Section 4650.

#### 2.14 Subsequent Indemnity Payments

All indemnity payments or vouchers subsequent to the first payment will be verified, except for those payments where permanent disability is expected beyond ninety (90) calendar days in which case those payments will be verified in ninety (90) day increments. All disability payments will be issued in compliance with Labor Code Section 4651.

Late payments must include the self-imposed 10% penalty in accordance with Labor Code Section 4650.

Copies of benefit notices issued with subsequent benefits will be maintained in the applicable claim file.

## 2.15 Medical Administration

The Contractor, absent a Medical Provider Network (MPN), shall select a panel of general practitioners, specialists, hospitals, and emergency treatment facilities to which injured employees should be referred and regularly review and update the panel.

The physician's office shall be contacted within three (3) calendar days of notice of all new claims to conduct an initial investigation as to the medical aspects of the claim and discuss the City's return-to-work goals. Such contact shall continue as needed during the continuation of temporary disability to assure that treatment is related to a compensable claim and clearly documented in the claim's activity record.

The Contractor shall maintain contact with treating physicians to ensure employees receive proper medical treatment and are returned to full or modified employment at the earliest possible date.

The Contractor shall maintain direct contact with medical providers to ensure their reports are received in a timely manner.

The Contractor shall arrange medical evaluations when needed, reasonable, and/or requested in compliance with the current California Labor Code.

The Contractor shall ensure that medical bills are reduced to the Official Medical Fee Schedule (OMFS) and recommended rates established by the Administrative Director of Workers' Compensation. The use of a service contractor is acceptable provided approval is first obtained from the City. The City shall pay for the use and benefits of the services provided; however, fees charged by the service contractor shall have been approved by the City's Workers' Compensation Program Manager prior to the provision of and payment for services.

The City's Workers' Compensation Program Manager will approve the service contractor's fees on a monthly basis prior to payment by Proponent to the service provider. Such fees will be charged to the applicable claim file and will be paid from the medical category.

The Contractor shall provide, at City's expense, utilization review (UR) and/or professional managed care services on an as-needed basis to injured employees, provided the City's approval is obtained prior to the

provision of such service. Contractor may use a service contractor, following the City Worker's Compensation Program Manager approval. Such fees will be charged to the applicable claim file and will be paid from the medical category. Establishment of the UR referral criteria shall be approved by City prior to implementation and submission to the state as part of the City's UR Plan.

#### 2.16 Medical Payments

Medical bills shall be reviewed by the assigned claims examiner, assistant, or supervisor for correctness, payment approval, and ensure they are paid within time limits established by Labor Code Section 4603.2. If all or part of the bill is being disputed, the Contractor shall notify the medical provider, on the appropriate form letter, within time limits established by Labor Code Section 4603.2.

#### 2.17 Transportation Expense

Transportation reimbursement shall be mailed within five (5) calendar days of the receipt of the claim for reimbursement. Advance travel expense payments shall be mailed to the injured employee at least ten (10) calendar days prior to the anticipated date of travel.

#### 2.18 Return-to-Work

The Contractor shall provide assistance to the City in coordinating return-to-work program information that is appropriate for injured employees while recovering and prior to their return to regular duties.

The Contractor shall notify the City immediately upon receipt of an employee's permanent work restrictions so that the City can determine the availability of permanent modified or alternative work. Notification shall clearly be documented in the claim's activity record, within one (1) business day.

The Contractor shall consult with the City on a bi-weekly basis in those cases where the injury residuals might involve work restrictions and assist the City in the provision of modified duty when appropriate.

Should the City contract with a service partner to assist with return-to-work, the Contractor shall cooperate with the assignment of cases or the provision of information in order to help facilitate a successful return-to-work program.

#### 2.19 Permanent Disability

The Contractor shall provide information and assistance to injured employees in completing the necessary forms to obtain a permanent disability rating.

The Contractor shall determine the nature and extent of permanent disability and arrange for an informal disability rating whenever possible to avoid Workers' Compensation Appeals Board (WCAB) litigation. The Contractor shall take advantage of any apportionment potential to prior claims, disabilities, and impairments. The Contractor shall also advise the City of potential credits and penalties to permanent disability benefits should the City accommodate permanent/alternative work for at least twelve (12) months.

Permanent Disability benefits shall be provided in accordance with Labor Code Section 4658. All permanent disability benefit notices shall be sent to the employee as required by the California Labor Code, Title 8 California Code of Regulations 9812. Copies of benefit notices will be maintained in the applicable claim file.

#### 2.20 Vocational Rehabilitation

In accordance with all applicable California laws in place at the date of injury, the Contractor shall:

- A. Determine the Qualified Injured Worker/Non-Qualified Injured Worker status;
- B. Advise the injured worker of his/her right to rehabilitation benefits;
- C. Provide appropriate vocational rehabilitation benefits;
- D. Control rehabilitation costs;
- E. Attempt to secure the prompt conclusion of vocational rehabilitation benefits; and
- F. Provide notification to the Proponent should work restrictions require a permanent or modified accommodation.

#### 2.21 Diary Review

All claim files shall be reviewed at least every thirty (30) calendar days for active claims and at least every three (3) months for claims that have settled but are open for the employee's future medical care. The Examiner shall distinguish the regular diary review from routine file documentation in the claim's activity record. A plan of action will be included and separately labeled in the file notes during a diary review. The plan of action shall include, but not be limited to, the employee's current work status, medical status, review of reserves, and future activity to move the claim towards resolution. The Proponent shall monitor the diary reviews by printing a "No Activity" report each month to identify any files that have fallen off the diary system. The Contractor will provide to City a copy of the "No Activity" report

referenced in Section 39, "Loss Runs", of this document by the 10<sup>th</sup> calendar day of each month.

#### 2.22 Plan of Action

Each claim file shall contain the Examiner's plan of action for the future handling of that claim. Such plan of action shall be clearly stated including the reasoning for the plan. The plan of action shall be updated at least every forty-five (45) calendar days and clearly identified in the claims activity record. The initial plan of action shall be clearly documented in the claim's activity record within fourteen (14) calendar days of the initial claim set-up.

#### 2.23 Claim Supervision

The Contractor shall provide supervisory staff that will regularly review the work product of the Examiners. The Supervisor shall review at least ten percent (10%) of each Examiner's caseload, Indemnity 120 days and Future Medical 180 days, to ensure each Examiner is following the performance standards outlined in this proposal. In addition, the Supervisor shall conduct a regular quarterly review of all open indemnity claims with reserves in excess of \$100,000 and all problem or complex claims. Such reviews shall be labeled as "Supervisor Review" and clearly documented in the claim's activity record.

#### 2.24 Claim Reconciliation

All claim files shall be reconciled to ensure all indemnity payments have been made correctly. The reconciliation should verify that payments were made in the correct amount and from the correct claim file. The physical file should be verified with the computer information. All open claim files shall be reconciled semi-annually and at the time of submission for closure. Proof of the reconciliation should remain in the claim file and clearly documented in claims activity record.

#### 2.25 Settlements

The Contractor shall obtain the City's authorization on all settlements. The Contractor shall forward settlement authority requests to the City in a format approved by the City's Workers' Compensation Program Manager. All requests for settlement authority shall be clear and concise and include a written claim analysis, estimate of permanent disability, and the Contractor's comments and recommendations. All written settlement authority requests shall be directed to City's Workers' Compensation Program Manager to provide authority to settle.

#### 2.26 Award Payment

Payments on Awards, Computations, or Compromise and Release agreements shall be issued within ten (10) business days or sooner if necessary, to ensure payment within twenty (20) calendar days of the Workers' Compensation Appeals Board, (WCAB) approval date, following receipt of the appropriate document.

#### 2.27 Future Medical Claims

Claims that remain open to monitor future medical care shall remain open for two (2) years from the last payment of benefit in accordance with OSIP Regulations §15400.2. Reviews shall be documented in the claim notes to include settlement information, future medical care outline, last date and type of treatment, name of excess carrier, excess carrier reporting level, and excess carrier reporting history. Reserves for future medical treatment shall be reviewed every six (6) months and adjusted for use over a three (3) year average and the injured employee's life expectancy based on the latest version of the U.S. Life Table in accordance with OSIP Regulations §15300. The reason(s) and calculation(s) for the adjustment(s) shall be clearly documented in the claim's activity record.

Contractor shall evaluate future medical claims at least annually to determine a reasonable settlement value to resolve future medical and any other future benefits.

#### 2.28 Subrogation

In all cases where a third party is responsible for the injury to the employee, the Contractor shall consult with the City to determine if subrogation should be pursued. The Contractor shall send a letter to the City indicating they will pursue subrogation unless instructed otherwise by the City. When subrogation is to be pursued, the third party shall be contacted within ten (10) business days with notification of the City's right to subrogation and the recovery of certain claim expenses. If the third party is a governmental agency, a claim shall be filed with the governing agency within six (6) months of the injury or notice of injury.

Periodic contact shall be made with the responsible third party and/or insurer to provide notification of the amount of the estimated recovery to which the City will be entitled.

If the injured worker brings a civil action against the party responsible for the injury, the Contractor shall consult with the Workers' Compensation Program Manager about the value of the subrogation claim and other considerations. If subrogation rights are waived, Proponent shall obtain written authority from City's Workers' Compensation Program Manager or Risk Manager. Upon the City's authorization, subrogation counsel shall

be assigned to file a Lien or a Complaint in Intervention in the civil action. Upon assignment of the case to an authorized subrogation attorney, the Contractor shall request a "not to exceed" estimate of fees for such representation. The fees shall be authorized by the City prior to commencement of work by counsel. Should the "not to exceed" fees be reached, the Contractor shall be responsible for obtaining continuing authority prior to incurring additional costs. Such contact with the City shall be documented in the claims activity record. Should the costs exceed the estimated fees without proper verbal authority from the City, the Contractor may be responsible for reimbursement to the City for the additional cost(s).

Whenever practical, the Contractor should take advantage of any settlement in a civil action by attempting to settle the workers' compensation claim by means of a Third-Party Compromise and Release. If such attempt does not succeed, then every effort should be made through the WCAB to offset claim expenses through a credit against the proceeds from the employee's civil action.

#### 2.29 Litigated Cases

Contractor shall promptly initiate investigation of issues identified as material to potential litigation. The City shall be alerted to the need for an outside investigation as soon as possible and the examiner shall appoint an investigator who is acceptable to the City. The City shall be kept informed on the scope and results of all investigations.

When defense counsel is not necessary, the Contractor shall work closely with the applicant's attorney in informal disposition of litigated cases. All assignments to outside counsel will be done with the City's authorization and consent. The Contractor shall prepare clear and concise litigation referrals to outside counsel outlining the issues of the claim and duties that will be handled by defense counsel. Such referral shall be documented in the Contractor's claims activity record. In conjunction with the member, the Contractor shall monitor the outside counsel's progress. The Contractor shall audit all defense counsel's bills before payment is authorized. Defense counsel shall provide to the Contractor, with a copy to the City, an initial case analysis and a plan of action within ten (10) business days of the assignment.

All preparation for a trial shall involve the City so that all material evidence and witnesses are utilized to obtain a favorable result for the defense.

The Manager, Supervisor, or the Examiner shall attend WCAB hearings, rehabilitation hearings, other court proceedings, meetings with defense counsel, and meetings with City's staff, departments, and employee groups as necessary and as requested to do so.

### 2.30 Fraudulent Claims

The Contractor shall consult with the City regarding any claim believed to be fraudulent prior to referring to the Contractor's in-house special investigation unit for further investigation and potential referral to the District Attorney. If Contractor does not have an in-house special investigation unit, the claim shall be referred to an investigator, with the City's prior approval, to conduct further investigation.

### 2.31 Excess Insurance

Cases that have the potential to exceed City's self-insured retention shall be reported in accordance with the reporting criteria established by the excess insurance policies. All cases that meet the established reporting criteria are to be reported within five (5) business days of the day on which it is known the criterion is met. A copy of the submission to the excess carrier shall be forwarded to City's Workers' Compensation Program Manager until such time the Contractor is instructed otherwise. Any related excess reimbursements will be posted to the file and the payment will be forwarded to City for deposit.

### 2.32 Penalties

Late payment of all benefits must include the self-imposed penalty in accordance with California Labor Code 4650. The Contractor shall provide the City quarterly listings of any administrative penalties paid in the quarters ending; March 31, June 30, September 30, and December 31, which were the responsibility of the Contractor, check from the Contractor shall be payable to the City for reimbursement. The check and report shall be submitted to the City by the 20<sup>th</sup> of the following month after the quarter ends. Evidence of the penalty reimbursement shall be noted within the claim file and posted within the payment detail as a recovery/reimbursement.

### 2.33 Case Closure

The Contractor's Supervisor must review all medical only claims open beyond ninety (90) calendar days from the date of entry by the Contractor for potential closure or conversion to indemnity claim status. Claims with \$3,000 or more paid-to-date on any claim open beyond one hundred eighty (180) calendar days from date of entry shall be converted to indemnity status and a reasonable, precautionary indemnity reserve shall be placed on the claim. All indemnity cases, where permanent disability is not an issue, shall be closed within sixty (60) calendar days of the final financial transaction or final correspondence to the injured worker as required by law. All indemnity claims, where permanent disability is an issue but excluding

settlement, will remain open for two (2) years from the last payment of benefits and then closed within sixty (60) calendar days of that date.

#### 2.34 Forms

The Contractor shall provide all necessary forms for the processing of benefits or claims information including: the Employer's Report of Occupational Injury or Illness, DWC Form 1, medical service orders, return-to-work slips, lost time information reports, vouchers, checks, and other related forms. The cost of providing these forms shall be included within the contract price set forth in this Proposal.

### 3. **Specifications**

3.1 Contractor shall comply with all applicable sections of the Labor Code of the State of California and Rules and Regulations established by the State of California Office of Self-Insurance Plans (OSIP).

### 4. **Major Deliverables**

#### 4.1 Computer Access

Contractor shall handle claims from a web-based claims system at the inception of the contract. The Contractor shall provide online access at no additional charge to the City's Risk Services team. Such data shall be in a format accessible from the City's computers and will permit City to print copies of the data on its printers. The Contractor shall provide training on the software system to the City Risk Services Administrator. If the City, under the Contractor's guidance, is not able to maintain online interface with data maintained by the Contractor, the Contractor shall be required to provide a copy of all data processed during the previous month to the Risk Services Administrator's office on a disk, email or flash drive by the tenth (10<sup>th</sup>) calendar day following month end.

#### 4.2 Reporting and Records Retention

Claim status reports requested by City, in addition to the regular ninety (90) day status reports referenced in this agreement, shall be provided by the Contractor to the City within ten (10) business days. Verbal status reports requested by the City shall be provided by the Contractor within two (2) business days. Computer generated loss data reports requested by the City shall be provided within twenty (20) business days.

The Contractor shall provide a computer-generated monthly caseload report to City for all Examiners handling City claims. The report shall include all clients and claims each Examiner is handling and shall be provided to City electronically within ten (10) business days of closure of the previous

month.

The Contractor shall provide the City with monthly and quarterly reports in the format and number requested. The excel reports may be provided in hard copy, flash drive, email, or via online access format.

Reports include, but may not be limited to, the following:

- Loss Experience Reports.
- Location Report.
- Growth Analysis and Loss Narrative Report.
- Management Summary Reports.
- Weekly and Monthly Claims Register Report.
- Monthly Claims Summary Reports.
- Annual Report to the State.
- Annual Tax Statements, including Federal Form 1099 and State form 599 as appropriate.
- Large Loss Reports – Over \$25,000 and \$100,000.

Additional reports that shall be available include:

- List of Providers –Including the data in the correct format for City to prepare the IRS 1099s.
- Litigated Claims.
- Claims involving modified duty including dates of return to modified duty and full duty.
- Claims involving subrogation.
- Vocational Rehabilitation Claims.
- Medical Case Management Claims.
- First Aid Claims.
- Excess Insurance Claims.
- Total Incurred for open and closed Claims.

Prepare the Public Entities Self-Insurer's Annual Report as required by the Department of Industrial Relations (DIR) Office of Self-Insurance Plans; and submit it to the City no later than thirty (30) days prior to the due date.

The Contractor shall maintain all loss information as required by the Workers' Compensation Insurance Rating Bureau.

The Contractor shall assist in the preparation of all reports that are now, or will be required by the State of California or other government agencies with respect to self-insurance programs. The Contractor will also assist in the preparation of all reports for other statistical database organizations or excess coverage provider as requested by the City.

#### 4.3 Records Retention

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

All records, products and claim files shall be the property of the City. Contractor shall be responsible for providing program tapes, data tapes and system documentation to the City upon request from the Contractor's data system at Contractor's expense. Contractor shall make claim files available to City upon request and shall be delivered to City upon termination of the contract.

#### 4.4 Loss Runs

The Contractor shall, at its expense, by the tenth (10<sup>th</sup>) calendar day of the following month, unless otherwise specified below:

- A. Provide the following information monthly to the City, as it pertains to their respective claims, electronically, diskette, flash drive or in written format:
  - i. A listing of all open claims showing the employee's name, claim number, date of injury, paid amount, future liability, total incurred, and any amounts recovered;
  - ii. OSHA 300 and 300A log reports or listing of all information needed for the City to Complete OSHA 300 and 300A logs. The logs and/or report shall include claims where temporary disability benefits were paid during the applicable month showing the paid-to-date amounts, from and through dates of temporary disability benefits paid, claim number, and date of injury; and
  - iii. A summary listing by fiscal year to include, but not limited to; paid to date amounts, future liability or reserve amounts, total incurred amounts, number of open claims, number of closed claims, and average cost per claim.
- B. Provide the following information monthly to the City electronically in Excel format:

- i. A register listing of all open and closed claims listing fiscal year and then alphabetically by member, to include the following: the employee's name, claim number, date of injury, occupation, text description of the injury, date of first lost time, date of return to modified duty, date of return to full duty, number of days temporary total and/or partial disability benefits were paid, future liability or reserves separated by type, any amounts recovered for subrogation or excess insurance, free form text description of the claim and descriptions of cause, site, and nature.
  - ii. A summary report listing alphabetically by City Department(s) and then by program year showing paid to date amounts, future liability or reserve amounts, total incurred amounts, number of open claims, number of closed claims, and average cost per claim;
  - iii. A summary report listing by program year showing paid-to-date amounts, future liability or reserve amounts, total incurred amounts, number of open claims, number of closed claims, and average cost per claim;
  - iv. A check register, excluding vouchers, in check number order, including any voids, refunds, and recoveries received with a page showing the total payments for the month by fiscal year;
  - v. A check register; including all activity, in check number order, including any voids, refunds, and recoveries received with a page showing the total payments for the month, to be run by City and then fiscal year;
  - vi. A voucher register report by fiscal year; and
  - vii. A "No Activity" report listing the claims that have had no activity during the previous six (6) months. The report components should include no reserve changes, no payments, no recoveries, no refunds, and/or no claims activity record.
- C. Provide the following quarterly reports, in addition to the regular monthly reports, to the City electronically in Excel format:
- i. A listing of any administrative penalties paid during the quarter that were the responsibility of the Proponent.
- D. Provide a report to the City annually in written format as of June 30, in addition to the regular monthly and quarterly reports, a year-end report. The report shall include all open and closed claims run by fiscal year and then alphabetically, to include the employees' name, claim number, date of injury, occupation, text description of the injury, number of days temporary disability benefits were paid, future liability or reserves separated by type,

and any amounts recovered for subrogation or excess insurance; and

- E. Provide other special reports required by the City including, but not limited to, loss trend reports, claim abstract reports, reports required by actuaries, excess insurance carriers, etc., provided that such reports do not require data elements that have not previously been collected by the Contractor on behalf of the City. If new programming is required in order to provide such reports, the Proponent shall pay at its own expense for new or special programming costs.

Any corrections to the loss runs shall be made within thirty (30) calendar days of the request for correction.

#### 4.5 Availability of Personnel

The Contractor shall maintain at all times, one (1) or more of the Examiners assigned to City's claims, or in their absence, a Supervisor or Manager above the supervisory level, to be available by telephone for emergencies through a 24-hour emergency telephone number. The Contractor shall provide a toll-free telephone number at no additional charge to the City.

The Contractor shall ensure at least one (1) or more of the Examiners assigned to the City's claims are available to the City and/or on-site every business day throughout the term of this proposal.

#### 4.6 Claim Reviews

The Examiner shall provide on-site file reviews with each City Department as outlined below:

More than 25 open claims – monthly

5-25 open claims - Quarterly

Less than 5 open claims – Teleconference

Other periodic on-site file reviews will be scheduled based upon the needs of the City.

#### 4.7 City Services

The Contractor shall provide special on-site training services annually to City staff ensuring that when City staff are processing workers' compensation claims they are effectively carrying out the procedures required for a successful program. A copy of City's Workers' Compensation Claims Procedures Manual should be readily available for review by the City staff or representative.

The Contractor shall require its Examiners or other Contractor personnel, attend City meetings when necessary, as requested by the City to report on

the general state of the program since the last meeting and on any particular cases of interest to the City.

The Contractor shall consult annually with the City on the establishment and coordination of necessary procedures and practices to meet the needs of the City with respect to the administration and processing of claims.

The Contractor shall require an Examiner to be available and readily respond to a City staff request for assistance with problem cases, including on-site visits to the City.

The Contractor shall provide the City with information regarding statutes, proposed changes to statutes, and changes to the rules and regulations affecting the City and its responsibility as a legally uninsured workers' compensation authority.

The Contractor shall assist in developing and recommending policies and procedures in areas as required by the City.

#### 4.8 Employee Services

As required, the Contractor will develop, for review by the City, materials which will provide information and guidance to the City's employees regarding workers' compensation and the self-insurance program.

As required, the Contractor will meet with and assist injured employees in resolving problems that arise from injury or illness claims.

#### 4.9 Examiner Training

The Contractor shall annually certify to the City that each claims Examiner handling the City's claims is in compliance with all legal and regulatory licensing and continuing educational requirements as presently or in the future shall be promulgated and required by the State of California. Such certification for the prior year shall be in the form of a letter to be received no later than April 1 of each year.

#### 4.10 Right to Audit or Review

The City or its designated representative is authorized to visit the Contractor's processing and/or storage premises, for purpose of performing a claims audit or review, and have access to all data, including paper documents, microfilm, microfiche, and magnetically stored data which relate to payments or non-payments made by the City. Additionally, Contractor shall undergo claims audits by PRISM or their contracted auditor. Any assistance or service provided in response to a claims audit described above will be rendered at no additional cost to the City.

#### 4.11 Legislative and Judicial Activity

Contractor shall keep the City informed as to recent changes or proposed changes in statutes, rules, laws and judicial decisions affecting the City's responsibility and the responsibilities of its personnel under a self-insured Workers' Compensation program.

#### 4.12 Conflict of Interest

The Contractor shall avoid all conflicts of interest or appearance of conflicts of interest in performance of this agreement. If, during any given year, the Contractor receives compensation from any party for services included in this proposal, such as bill review, managed care, or investigations services, the Contractor shall disclose total compensation received in prior year. Such disclosure shall be in the form of a letter and shall be received by the City no later than April 1 of each year.

These performance standards may be modified, or additions made prior to execution of a contract, and re-evaluated throughout the term of the contract. All claims handling services shall comply with statutory requirements.

### 5. Internal and External Standards and Guidelines

5.1 Contractor's activities will meet the requirements of the State of California Department of Industrial Relations, the claim handling requirements of PRISM and City policy and procedure.

### 6. Notices

Pursuant to Exhibit C – General Terms and Conditions, Paragraph 15 – Notices, the mailing address for all required notices is as follows:

**Contractor:** Athens Administrators

Attention: Andrea Contreras

P.O. Box 696

Concord, CA, 94522

**City:** City of Stockton

Attn: Risk Services

425 N. El Dorado Street

Stockton, CA 95202

### 7. Key Personnel

Timothy Claiborne – 209-937-8618

Andrea Contreras – 925-826-1286

Ryan Collado – 925-826-1182

**10. Option to Renew.**

The initial three (3) year term of the Agreement may be extended up to two (2) years by a written amendment executed by both parties. However, the total term of the Agreement including the extended term shall not exceed five (5) years.

**Exhibit B:**  
**Insurance Requirements**  
(Third Party Administrator for Workers Comp)

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

**MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

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

3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.  
***(Not required if consultant provides written verification it has no employees)***

4. **Professional Liability/Errors and Omissions** Insurance appropriate to the Consultant's profession, with limit no less than **\$2,000,000** per occurrence or claim, **\$2,000,000** aggregate.

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

**Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

***Additional Insured Status***

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

***Primary Coverage***

For any claims related to this contract, the **Contractor's insurance coverage shall be primary and non-contributory** and at least as broad as ISO CG 20 01 04 13 as respects the City of Stockton, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies. The City of Stockton does not accept endorsements limiting the Contractor's insurance coverage to the sole negligence of the Named Insured.

***Umbrella or Excess Policy***

The Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

***Notice of Cancellation***

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

***Waiver of Subrogation***

Contractor hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any

endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer.

### ***Self-Insured Retentions***

Self-insured retentions must be declared to and approved by the City of Stockton. The City of Stockton may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City of Stockton. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds \$25,000 unless approved in writing by City of Stockton. Any and all deductibles and SIRs shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. City of Stockton may deduct from any amounts otherwise due Contractor to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. City of Stockton reserves the right to obtain a copy of any policies and endorsements for verification.

### ***Acceptability of Insurers***

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City of Stockton.

### ***Claims Made Policies (Professional & Pollution only)***

If any of the required policies provide claims-made coverage:

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

***Verification of Coverage***

Contractor shall furnish the City of Stockton with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause **and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements**. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the City of Stockton before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

***Subcontractors***

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City of Stockton is an additional insured on insurance required from subcontractors.

***Duration of Coverage***

CGL & Excess liability policies **for any construction related work, including, but not limited to, maintenance, service, or repair work**, shall continue coverage for a minimum of 5 years for Completed Operations liability coverage. Such Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work***.

***Special Risks or Circumstances***

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

**Certificate Holder Address**

The address for mailing certificates, endorsements and notices shall be:

City of Stockton  
Its Officers, Officials, Employees, and Volunteers  
400 E Main Street, 3<sup>rd</sup> Floor – HR  
Stockton, CA 95202

## EXHIBIT C

## GENERAL TERMS AND CONDITIONS

1. **Goods, Equipment and Services.** Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City the services described in Exhibit A of the Agreement. Contractor shall provide said services at the time, place and in the manner specified in Exhibit A of the Agreement.

2. **City Assistance, Facilities, Equipment and Clerical Support.** Except as set forth in Exhibit A, Contractor shall, at its sole cost and expense, furnish and maintain all facilities and equipment that may be required for furnishing services pursuant to this Agreement. If applicable, City shall furnish to Contractor only the facilities and equipment listed in Exhibit A to the Agreement.

3. **Compensation.** City shall pay Contractor for services rendered pursuant to this Agreement as described more particularly in Exhibit A and Exhibit E to the Agreement.

3.1 Invoices submitted by Contractor to City must contain a brief description of work performed, time spent and City reference number. Within thirty (30) days of receipt of Contractor's invoice, City will review invoice, and if acceptable make payment on approved invoice.

3.2 Upon completion of work and acceptance by City, Contractor shall have sixty (60) days in which to submit final invoicing for payment. An extension may be granted by City upon receiving a written request thirty (30) days in advance of said time limitation. The City shall have no obligation or liability to pay any invoice for work performed which the Contractor fails or neglects to submit within sixty (60) days, or any extension thereof granted by the City, after the work is accepted by the City.

4. **Sufficiency of Contractor's Work.** All Contractor services, work, and deliverables shall be performed in a good and workmanlike manner with due diligence in accordance with the degree of skill normally exercised by similar contractors supplying services and work of a similar nature, and in conformance with applicable laws, codes and professional standards. Contractor's work shall be adequate and sufficient to meet the purposes of this Agreement.

5. **Ownership of Work.** All reports, work product, all other documents completed or partially completed by Contractor or its approved subcontractors, in performance of this Agreement, and if applicable, drawings, designs, and plan review comments shall become the property of the City. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Contractor and its approved subcontractors agree

to execute any additional documents that may be necessary to evidence such assignment. All materials shall be delivered to the City upon completion or termination of the work under this Agreement. If any materials are lost, damaged or destroyed before final delivery to the City, the Contractor shall replace them at its own expense. Contractor and its approved subcontractors shall keep materials confidential. Materials shall not be used for purposes other than performance of services under this Agreement and shall not be disclosed to anyone not connected with these services, unless the City provides prior written consent.

6. **Timeliness.** Time is of the essence in this Agreement. Further, Contractor acknowledges that the failure of Contractor to comply with the time limits described in Exhibit A and Exhibit F may result in economic or other losses to the City.

7. **Changes.** Both parties to this Agreement understand that it may become desirable or necessary during the term of this Agreement for City to modify the scope of services provided for under this Agreement. Any material extension or change in the scope of work shall be discussed with City and the change and cost shall be memorialized in a written amendment to the original contract prior to the performance of the additional work. Until the amendment is so executed, City will not be responsible to pay any charges Contractor may incur in performing such additional services, and Contractor shall not be required to perform any such additional services.

8. **Amendment.** No variation of the terms of this Agreement shall be valid unless an amendment is made in writing and signed by both parties.

9. **Contractor's Status.**

9.1 In performing the obligations set forth in this Agreement, Contractor shall have the status of an independent contractor and Contractor shall not be considered to be an employee of the City for any purpose. All persons working for or under the direction of Contractor are its agents and employees and are not agents or employees of City. Contractor by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of City. Except as expressly provided in Exhibit A, Contractor has no authority or responsibility to exercise any rights or power vested in the City. No agent, officer or employee of the City is to be considered an employee of the Contractor. It is understood by both Contractor and City that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

9.2 Contractor shall determine the method, details and means of performing the work and services to be provided by Contractor under this Agreement. Contractor shall be responsible to City only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to City's

control with respect to the physical action or activities of Contractor in fulfillment of this Agreement. Contractor has control over the manner and means of performing the services under this Agreement. If necessary, Contractor has the responsibility for employing other persons or firms to assist Contractor in fulfilling the terms and obligations under this Agreement.

9.3 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the Contractor.

9.4 It is further understood and agreed that Contractor must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's assigned personnel under the terms and conditions of this Agreement.

#### **10. Subcontractor.**

10.1 Subcontractors shall not be recognized as having any direct or contractual relationship with City. Contractor shall be responsible for the work of subcontractors, which shall be subject to the provisions of this Agreement. Subcontractors will be provided with a copy of the Agreement and be bound by its terms. Contractor is responsible to City for the acts and omissions of its subcontractors and persons directly or indirectly employed by them.

10.2 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages working conditions, discipline, hiring, and discharging or any other term of employment or requirement of law shall be determined by Contractor.

10.3 It is further understood and agreed that Contractor must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's personnel.

#### **11. Termination.**

11.1 Termination for Convenience of City. The City may terminate this Agreement at any time by mailing a notice in writing to Contractor. The Agreement shall then be deemed terminated, and no further work shall be performed by Contractor. If the Agreement is so terminated, the Contractor shall be paid for the work actually completed at the time the notice of termination is received.

11. 2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

11.3 Funding- Non-Appropriation. It is mutually understood between the Parties that payment to the Contractor for performance shall be dependent upon the availability of appropriations by the City Council for the purposes of this Agreement. No legal liability on the part of the City for any payment may arise under this Agreement until funds are made available and until the Contractor has received funding availability, which will be confirmed in writing. If funding for any fiscal year is reduced or deleted, or if the City loses funding for any reason, the City, in its sole discretion, shall have the option to either (a) cause this Agreement to be canceled or terminated pursuant to applicable provisions of the Agreement; or (b) offer to amend the Agreement to reflect the reduced funding for this Agreement.

12. Non-Assignability. The Contractor shall not assign, sublet, or transfer this Agreement or any interest or obligation in the Agreement without the prior written consent of the City, and then only upon such terms and conditions as City may set forth in writing. Contractor shall be solely responsible for reimbursing subcontractors.

13. Indemnity and Hold Harmless. To the fullest extent permitted by law, Contractor shall hold harmless, defend and indemnify City of Stockton and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder or its failure to comply with any of its obligations contained in this agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the City of Stockton. This obligation is independent of, and shall not in any way be limited by, the minimum insurance obligations contained in this agreement. These obligations shall survive the completion or termination of this agreement.

14. Insurance. During the term of this Agreement, Contractor shall maintain in full force and effect at its own cost and expense the insurance coverage as set forth in the attached Exhibit B to this Agreement and shall otherwise comply with the other provisions of Exhibit B to this Agreement.

15. Notices. All notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed in Exhibit A to this Agreement.

16. Conformance to Applicable Laws. Contractor shall comply with all applicable Federal, State, and Municipal laws, rules, and ordinances. Contractor shall not discriminate in the employment of persons or in the provision of services under this Agreement on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person.

17. **Licenses, Certifications and Permits.** Prior to the City's execution of this Agreement and prior to the Contractor's engaging in any operation or activity set forth in this Agreement, Contractor shall obtain a City of Stockton business license, which must be kept in effect during the term of this Agreement. Contractor covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Agreement. Such licenses, certificates and permits shall be maintained in full force and effect during the term of this Agreement.

18. **Records and Audits.** Contractor shall maintain all records regarding this Agreement and the services performed for a period of three (3) years from the date that final payment is made. At any time during normal business hours, the records shall be made available to the City to inspect and audit. To the extent Contractor renders services on a time and materials basis, Contractor shall maintain complete and accurate accounting records, in a form prescribed by City or, if not prescribed by City, in accordance with generally accepted accounting principles, such records to include, but not be limited to, payroll records, attendance cards, time sheets, and job summaries.

19. **Confidentiality.** Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City reports, information or conclusions.

20. **Conflicts of Interest.** Contractor covenants that other than this Agreement, Contractor has no financial interest with any official, employee or other representative of the City. Contractor and its principals do not have any financial interest in real property, sources of income or investment that would be affected in any manner of degree by the performance of Contractor's services under this Agreement. If such an interest arises, Contractor shall immediately notify the City.

21. **Waiver.** In the event either City or Contractor at any time waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or of any other covenant, condition or obligation. No payment, partial payment, acceptance, or partial acceptance by City shall operate as a waiver on the part of City of any of its rights under this Agreement.

22. **Governing Law.** California law shall govern any legal action pursuant to this Agreement with venue for all claims in the Superior Court of the County of San Joaquin, Stockton Branch or, where applicable, in the Federal District Court of California, Eastern District, Sacramento Division.

23. **No Personal Liability.** No official or employee of City shall be personally liable to Contractor in the event of any default or breach by the City or for any amount due Contractor.

**24. Severability.** If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or city statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

**25. Non-Discrimination.** During the performance of this Agreement, Contractor and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state, or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition (including genetic characteristics), marital status, age, political affiliation, gender identity, gender expression, sex or sexual orientation, family and medical care leave, pregnancy leave, or disability leave. Contractor and its officers, employees, agents, representative or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the City's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12990 (et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulation or Code of Federal Regulations. Title VI of the Civil Rights Act of 1964 requires that "no person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." (42 USC Section 2000d). <http://www.dol.gov/oasam/regs/statutes/titlevi.htm>. The City requires compliance with the requirements of Title VI in all of its programs and activities regardless of funding source.

**26. Force Majeure.** Neither party shall be responsible for delays or failures in performance resulting from acts of God, acts of civil or military authority, terrorism, fire, flood, strikes, war, epidemics, pandemics, shortage of power or other acts or causes reasonably beyond the control of that party. The party experiencing the force majeure event agrees to give the other party notice promptly following the occurrence of a force majeure event, and to use diligent efforts to re-commence performance as promptly as commercially practicable.

**27. Taxes and Charges.** Contractor shall be responsible for payment of all taxes, fees, contributions or charges applicable to the conduct of the Contractor's business.

**28. Cumulative Rights.** Any specific right or remedy provided in this Agreement will not be exclusive but will be cumulative of all other rights and remedies to which may be legally entitled.

**29. Advice of Attorney.** Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

**30. Heading Not Controlling.** Headings used in this Agreement are for reference purposes only and shall not be considered in construing this Agreement.

**31. Entire Agreement, Integration, and Modification.**

31.1 This Agreement represents the entire integrated agreement between Contractor and the City; supersedes all prior negotiations, representations, or agreements, either written or oral between the parties and may be amended only by a written Amendment signed by the Contractor and City Manager.

31.2 All Exhibits to this Agreement and this Agreement are intended to be construed as a single document.

**32. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

**33. Authority.** The individual(s) executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

**EXHIBIT D****PROFESSIONAL SERVICES SPECIAL TERMS AND CONDITIONS**

1. **Definitions.** The following words and phrases have the following meanings for purposes of this Agreement:

1.1 "Services" means, collectively, the services, duties and responsibilities described in Exhibit A of this Agreement and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement.

1.2 "Deliverable" means quantifiable goods or services that will be provided upon completion of a project. A deliverable is any tangible material, work or thing delivered by one party to the other, including associated technical documentation. A deliverable can be tangible or intangible parts of the development process, and often are specified functions or characteristics of the project.

2. **General.** The following terms and conditions are applicable for the Professional Services only. The special conditions shall be read in conjunction with the Standard Agreement, General Terms and Conditions ("GTC") Exhibit C, and all other Exhibits identified in the Standard Agreement.

2.1 Where any portion of the GTC is in conflict to or at variance with any provisions of the Special Conditions of the Agreement, then unless a different intention stated, the provision(s) of the Special Conditions of the Agreement shall be deemed to override the provision(s) of GTC only to the extent that such conflict or variations in the Special Conditions of the Agreement are not possible of being reconciled with the provisions of the GTC.

2.2 In the case of modification of a part or provision of the GTC, the unaltered part or provision, or both shall remain in effect. The Special Conditions shall relate to a particular project and be peculiar to that project but shall not weaken the character or intent of the GTC.

3. **Time for Performance.**

3.1 Contractor shall perform the services according to the schedule contained in Exhibit F.

3.2 Timeliness of Performance i) Contractor shall provide the Services, and Deliverables within the term and within the time limits required under this Agreement, pursuant to the provisions of Exhibit A and Exhibit F. ii) Neither Contractor nor Contractor's agents, employees nor subcontractors are entitled to any damages from the City, nor is any party entitled to be reimbursed by the City, for damages, charges or other

losses or expenses incurred by Contractor by reason of delays or hindrances in the performance of the Services, whether or not caused by the City.

#### **4. Standard of Performance**

In addition to Exhibit C, Section 4 and 17, Contractor agrees as follows:

4.1 Contractor's Services shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of Contractor's profession currently practicing under similar conditions. Contractor shall comply with the profession's standard of performance, applicable laws, regulations, and industry standards. By delivery of completed work, Contractor certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. If Contractor is retained to perform services requiring a license, certification, registration or other similar requirement under California law, Contractor shall maintain that license, certification, registration or other similar requirement throughout the term of this Agreement.

4.2 Contractor acknowledges that it is entrusted with or has access to valuable and confidential information and records of the City and with respect to that information, Contractor agrees to be held to the standard of care of a fiduciary. Contractor shall assure that all services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed, if required by law. Contractor must provide copies of any such licenses. Contractor remains responsible for the professional and technical accuracy of all Services or Deliverables furnished, whether by Contractor or its subcontractors or others on its behalf. All Deliverables must be prepared in a form and content satisfactory to the Using Agency and delivered in a timely manner consistent with the requirements of this Agreement.

4.3 If Contractor fails to comply with the foregoing standards, Contractor must perform again, at its own expense, all Services required to be re-performed as a direct or indirect result of that failure. Any review, approval, acceptance or payment for any of the Services by the City does not relieve Contractor of its responsibility for the professional skill and care and technical accuracy of its Services and Deliverables. This provision in no way limits the City's rights against Contractor either under this Agreement, at law or in equity.

#### **5. Compensation**

5.1 In addition to Section 3 Compensation in Exhibit C – GTC, the Contractor shall be compensated for the services provided under this Agreement as follows:

5.1.1 Contractor shall be compensated for services rendered and accepted under this Agreement and shall be paid monthly, in arrears on a not to exceed

basis, based upon the rates set forth in Exhibit E attached hereto and made a part of this Agreement. Contractor may vary the compensation for each task in Exhibit E provided that the total project compensation listed in Exhibit E and the Standard Agreement is not exceeded.

## **6. Personnel**

6.1 None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City. Any work or services subcontracted hereunder shall be specified by written agreement and shall be subject to each provision of this Agreement. Contractor shall provide subcontractor a copy of this fully executed Agreement.

6.2 Contractor agrees to assign only competent personnel according to the reasonable and customary standards of training and experience in the relevant field to perform services under this Agreement. Failure to assign such competent personnel shall constitute grounds for termination of this Agreement. The payment made to Contractor pursuant to this Agreement shall be the full and complete compensation to which Contractor and Contractor's officers, employees, agents, and subcontractors are entitled for performance of any work under this Agreement. Neither Contractor nor Contractor's officers or employees are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to employees of the City. The City will not make any federal or state tax withholdings on behalf of Contractor. The City shall not be required to pay any workers' compensation insurance on behalf of Contractor. Contractor shall pay, when and as due, any and all taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request.

6.3 Key Personnel: Because of the special skills required to satisfy the requirements of this Agreement, Contractor shall not reassign or replace key personnel without the written consent of the City, which consent the City will not unreasonably withhold. "key personnel" means those job titles and the persons assigned to those positions in accordance with the provisions of this Agreement. The City may at any time in writing notify Contractor that the City will no longer accept performance of Services under this Agreement by one or more Key Personnel listed. Upon that notice Contractor shall immediately suspend the services of the key person or persons and must replace him or them in accordance with the terms of this Agreement. A list of key personnel is found in Exhibit A, Scope of Services.

## **7. Reports and Information**

Contractor shall at such times and in such forms as the City may require furnish the City such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters are covered by this Agreement as specified in Exhibit A and Exhibit E.

**8. Findings Confidential**

All of the reports, information, data, et cetera, prepared or assembled by the Contractor under this Agreement are confidential and the Contractor agrees that they shall not be made available to any individual or organization without the prior written approval of the City. Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is required by applicable law or by proper legal or governmental authority, is already rightfully in the Contractor's possession without obligation of confidentiality, is independently developed by Contractor outside the scope of this Agreement or is rightfully obtained from third parties. Contractor shall give City prompt notice of any such legal or governmental demand and reasonably cooperate with City in any effort to seek a protective order or otherwise to contest such required disclosure.

**9. Copyright**

No materials, including but not limited to reports, maps, or documents produced as a result of this Agreement, in whole or in part, shall be available to Contractor for copyright purposes. Any such materials produced as a result of this Agreement that might be subject to copyright shall be the property of the City and all such rights shall belong to the City, and the City shall be sole and exclusive entity who may exercise such rights.

**10. Deliverables**

Contractor shall prepare or provide to the City various Deliverables. "Deliverables" include work product, such as written reviews, recommendations, reports and analyses, produced by Contractor for the City. The City may reject Deliverables that do not include relevant information or data, or do not include all documents or other materials specified in this Agreement or reasonably necessary for the purpose for which the City made this Agreement or for which the City intends to use the Deliverables. If the City determines that Contractor has failed to comply with the foregoing standards, it has 30 days from the discovery to notify Contractor of its failure. If Contractor does not correct the failure, or if it is possible to do so, within 30 days after receipt of notice from the City specifying the failure, then the City, by written notice, may treat the failure as a default of this Agreement. Partial or incomplete Deliverables may be accepted for review only when required for a specific and well-defined purpose and when consented to in advance by the City. Such Deliverables will not be considered as satisfying the requirements of this Agreement and partial or incomplete Deliverables in no way relieve Contractor of its commitments under this Agreement.

**11. Applicable Laws**

Deliverables must conform with all applicable federal, state, and local laws. Such conformity includes compliance with federal sanctions, and Contractor certifies that it has not and will not engage in prohibited transactions with sanctioned persons or entities.

**EXHIBIT E**  
**COMPENSATION SCHEDULE**

The Contractor shall be compensated for the services identified in Exhibit A, Exhibit C, and Exhibit D to this Agreement as follows:

**1. Project Price**

1.1 The maximum the Contractor shall be paid on this Agreement is \$4,512,845 (hereafter the "not to exceed" amount). The "not to exceed" amount includes all payments to be made pursuant to this Agreement, including City approved reimbursable expenses, if any. Nothing in this Agreement requires the City to pay for work that does not meet the Standard of Performance identified in Exhibit D section 4 or other requirements of this Agreement.

1.2 Standard Reimbursable Items: Only the reimbursable items identified in Exhibit A, C, and D (Compensation), shall be compensated to the Contractor. Reimbursable expenses will be reimbursed without markup. Fees plus reimbursable expenses shall not exceed the amount set forth in section 1.1 of this Exhibit and a copy of the original invoice for the items listed in i, ii or iii below shall be attached to the invoice submitted to the City for reimbursement. Payments shall be based upon work documents submitted by the Contractor to the City and accepted by the City as being satisfactory to City's needs. The City shall not pay a markup on any of the items listed in i, ii or iii. Additionally, items such a telephone, fax, postage or freight are already included in the billable hourly rate. Contractor shall be reimbursed the direct expenses, which are the actual cost of the following items that are reasonable, necessary and actually incurred, by the Contractor in connection with the services:

- i. Expenses, fees or charges for printing, reproduction or binding of documents at actual costs with no markup added to the actual cost.
- ii. Any filing fees, permit fees, or other fees paid or advanced by the Contractor at actual costs with no markup added to the actual cost.
- iii. Travel expenses shall be reimbursed in accordance with the City's travel policy, which is incorporated herein by reference. Reimbursement shall be made at actual costs with no markup added to the actual cost.

1.3 The Contractor shall be entitled to receive payments for its work performed pursuant to the Agreement. The City will pay Contractor based on invoices for acceptable work performed and approved until the "not to exceed" amount is reached. Thereafter, Contractor must complete services based on the Agreement without additional compensation unless there is a material change to the Statement of Work and Scope by a written Amendment.

1.4 If work is completed before the "not to exceed" amount is reached, the Contractor's compensation will be based on the Contractor's invoices previously submitted for acceptable work performed and approved.

1.5 Subcontractor Costs: Compensation for subcontractors shall be limited to the same restrictions imposed on the Contractor. Maximum markup Contractor may apply to subcontractor fees, minus reimbursable expenses, shall not exceed N/A %.

2. Flat Annual Fee. Below is the price for the services as described in Exhibit A of this Agreement.

Year	Description	Flat Annual Fee
1	Program Year 1 10/1/23-9/30/24	\$825,445
2	Program Year 2 10/1/24-9/30/25	\$858,875
3	Program Year 3 10/1/25-9/30/26	\$893,660
	Total for Initial 3 Years	\$2,577,980
4	Optional Year 1 10/1/26-9/30/27	\$929,853
5	Optional Year 2 10/1/27-9/30/28	\$967,512
	<b>TOTAL PRICE</b>	<b>\$4,475,345</b>

4. Additional Fees. An annual administration fee of \$7,500 will also be billed at not to exceed \$37,500 as follows:

Title	Unit Price
Annual Administration Fee	\$ 7,500

5. Invoice to Address. Each invoice submitted shall identify the specific task(s) listed in Exhibit A and this Exhibit, and the completed work product/deliverable for the agreed upon price listed in this Exhibit. Invoices shall be submitted to the below address:

City of Stockton Human Resources Department  
 Attention: Risk Services  
 400 E. Main Street, 3<sup>rd</sup> Floor  
 Stockton, CA 95202