

PROFESSIONAL SERVICE CONTRACT TRANSMITTAL RECORD

CONTRACT PO NUMBER 2895772
 STANDARD PO NUMBER
 CHANGE ORDER #

Insurance Requirement

ACCOUNTS PAYABLE WILL HOLD UP ALL CONTRACT PAYMENTS UNTIL ALL INSURANCE CERTIFICATES/POLICIES REQUIRED UNDER THE CONTRACT HAVE BEEN RECEIVED. CONTRACTORS SHOULD BE MADE AWARE OF THIS REQUIREMENT.

TYPE OF CONTRACT: (Check One) <input type="checkbox"/> CONSTRUCTION/DEMOLITION <input type="checkbox"/> LEASE <input type="checkbox"/> DEED <input checked="" type="checkbox"/> PROFESSIONAL SERVICES	DEPARTMENT HEAD'S SIGNATURE 	DEPARTMENT FINANCE DEPT./ RISK MANAGEMENT DIVISION PHONE NO. 313-628-1159 JULY 17, 2004
FUNDING SOURCE (Percent) FEDERAL % STATE % CITY 100% OTHER %	DEPARTMENT CONTACT PERSON DONALD SETTLES	REVISION N REVISION N
CONTRACTOR'S NAME: CMI, A YORK RISK SERVICES COMPANY CONTRACTOR'S ADDRESS: 99 CHERRY HILL ROAD, SUITE 102 PARSIPPANY, NJ 07054		
ENGINEER'S ESTIMATE <input type="checkbox"/> CONTRACT <input type="checkbox"/> CHANGE <input type="checkbox"/> TOTAL CONTRACT AMOUNT \$2,402,918.00 TOTAL CPO AMOUNT \$2,402,918.00 CHANGE AMOUNT \$		
PHONE NO. <input checked="" type="checkbox"/> CORPORATION <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> INDIVIDUAL		
FEDERAL EMPLOYER/SOCIAL SECURITY NUMBER: MINORITY FIRM <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
PURPOSE OF CONTRACT: WORKERS' COMPENSATION THIRD PARTY ADMINISTRATOR CHARGE ACCOUNT: 1001-350890-000147-617903-05185-000000-A5510		

TIME & DATE IN	APPROVER MUST ALSO MAKE APPROPRIATE NOTES IN ORACLE PURCHASE ORDER	TIME & DATE IN
	REQUESTING DEPARTMENT AUTHORIZED DEPARTMENT REPRESENTATIVE	7/16/14
JUL 16 2014	BUDGET <input checked="" type="checkbox"/> RECOMMEND APPROVAL <input type="checkbox"/> RECOMMEND DENIAL BUDGET DIRECTOR OR DEPUTY	JUL 16 2014
	GRANT MANAGEMENT SECTION <input type="checkbox"/> RECOMMEND APPROVAL <input type="checkbox"/> RECOMMEND DENIAL _____ GRANT ACCOUNTANT	
7/16/14	FINANCE DEPARTMENT <input checked="" type="checkbox"/> RECOMMEND APPROVAL <input type="checkbox"/> RECOMMEND DENIAL FINANCE DIRECTOR OR DEPUTY	7/16/14
	LAW DEPARTMENT <input type="checkbox"/> RECOMMEND APPROVAL <input type="checkbox"/> RECOMMEND DENIAL CORPORATION COUNSEL	7/16/14
	PURCHASING DIVISION PURCHASING DIRECTOR	7/16/14
CITY COUNCIL APPROVAL JCC REFERENCE: PAGE _____ DATE _____		

Use Only One Set For Each Contract Package

Approved
Fax

SERVICES CONTRACT
BETWEEN
CITY OF DETROIT, MICHIGAN
AND
CMI, A York Risk Services Company, Inc.

CONTRACT NO.

2895772

CONTRACT PROVISIONS

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**CITY OF DETROIT
SERVICES CONTRACT**

This Services Contract ("Contract") is entered into by and between the City of Detroit, a Michigan municipal corporation, acting by and through its _____
(name of department)
Department ("City"), and CML, A York Risk Services Company, a Michigan corporation,
(name of contractor) (state of the union) (form of business)
with its principal place of business located at
99 Cherry Hill Road, Suite 102, Parsippany, NJ 07054 ("Contractor").
(complete address)

Recitals:

Whereas, the City desires to engage the Contractor to render certain ("Services") as set forth in this Contract; and

Whereas, the Contractor desires to perform the Services as set forth in this Contract; and

Accordingly, the parties agree as follows:

**Article 1.
Definitions**

1.01 The following words and expressions or pronouns used in their stead shall be construed as follows:

"Additional Services" shall mean any services in addition to the services set forth in Exhibit A that are related to fulfilling the objectives of this Contract and are agreed upon by the parties by written Amendment.

"Amendment" shall mean modifications or changes in this Contract that have been mutually agreed upon by the City and the Contractor in writing and approved by the City Council.

"Associates" shall mean the personnel, employees, consultants, subcontractors, agents, and parent company of the Contractor or of any Subcontractor, now existing or subsequently created, and their agents and employees, and any entities associated, affiliated, or subsidiary to the Contractor or to any subcontractor, now existing or subsequently created, and their agents and employees.

"City" shall mean the City of Detroit, a municipal corporation, acting through the office or department named in the Contract as contracting for the Services on behalf of the City.

"City Council" shall mean the legislative body of the City of Detroit.

"Contract" shall mean each of the various provisions and parts of this document, including all attached Exhibits and all Amendments, as executed and approved by the appropriate City departments or offices, Emergency Manager, City Council and by the Purchasing Director.

"Contractor" shall mean the party that contracts with the City by way of this Contract, whether an individual, sole proprietorship, partnership, corporation, or other form of business organization, and its heirs, successors, personnel, agents, employees, representatives, executors, administrators and assigns.

"Exhibit A" is the Scope of Services for this Contract and sets forth all pertinent data relating to performance of the Services.

"Exhibit B" is the Fee Schedule for this Contract and sets forth the amount of compensation to be paid to the Contractor, including any Reimbursable Expenses, and any applicable hourly rate information.

"Records" shall mean all books, ledgers, journals, accounts, documents, and other collected data in which information is kept regarding the performance of this Contract.

"Reimbursable Expenses" shall mean only those costs incurred by the Contractor in the performance of the Services, such as travel costs and document reproduction costs, that are identified in Exhibit B as reimbursable.

"Services" shall mean all work that is expressly set forth in Exhibit A, the Scope of Services, and all work expressly or impliedly required to be performed by the Contractor in order to achieve the objectives of this Contract.

"Subcontractor" shall mean any person, firm or corporation, other than employees of the Contractor, that contracts with the Contractor, directly or indirectly, to perform in part or assist the Contractor in achieving the objectives of this Contract.

"Technology" shall mean any and all computer-related components and systems, including but not limited to computer software, computer code, computer programs, computer hardware, embedded integrated circuits, computer memory and data storage systems, whether in the form of read-only memory chips, random access memory chips, CD-ROMs, floppy disks, magnetic tape, or some other form, and the data retained or stored in said computer memory and data storage systems.

"Unauthorized Acts" shall mean any acts by a City employee, agent or representative that are not set forth in this Contract and have not been approved by City Council as part of this Contract.

"Work Product" shall mean the originals, or copies when originals are unavailable, of all materials prepared by the Contractor under this Contract or in anticipation of this Contract, including but not limited to Technology, data, studies, briefs, drawings, maps, models, photographs, files, records, computer printouts, estimates, memoranda, computations, papers, supplies, notes, recordings, and videotapes, whether such materials are reduced to writing, magnetically or optically stored, or kept in some other form.

Article 2. Engagement of Contractor

- 2.01 By this Contract, the City engages the Contractor and the Contractor hereby agrees to faithfully and diligently perform the Services set forth in Exhibit A, in accordance with the terms and conditions contained in this Contract.
- 2.02 The Contractor shall perform in a satisfactory manner as shall be determined within the sole and reasonable discretion of the City. In the event that there shall be any dispute between the parties with regard to the extent, character and progress of the Services to be performed or the quality of performance under this Contract, the interpretation and determination of the City shall govern.
- 2.03 The Contractor shall confer as necessary and cooperate with the City in order that the Services may proceed in an efficient and satisfactory manner. The Services are deemed to include all conferences, consultations and public hearings or appearances deemed necessary by the City to ensure that the Contractor will be able to properly and fully perform the objectives as set forth in this Contract.
- 2.04 All Services are subject to review and approval of the City for completeness and fulfillment of the requirements of this Contract. Neither the City's review, approval nor payment for any of the Services shall be construed to operate as a waiver of any rights under this Contract, and the Contractor shall be and will remain liable in accordance with applicable law for all damages to the City caused by the Contractor's negligent performance or nonperformance of any of the Services furnished under this Contract.
- 2.05 The Services shall be performed as set forth in Exhibit A, or at such other locations as are deemed appropriate by the City and the Contractor for the proper performance of the Services.

- 2.06 The City and the Contractor expressly acknowledge their mutual understanding and agreement that there are no third party beneficiaries to this Contract and that this Contract shall not be construed to benefit any persons other than the City and the Contractor.
- 2.07 It is understood that this Contract is not an exclusive services contract, that during the term of this Contract the City may contract with other firms, and that the Contractor is free to render the same or similar services to other clients, provided the rendering of such services does not affect the Contractor's obligations to the City in any way.

Article 3.
Contractor's Representations and Warranties

- 3.01 To induce the City to enter into this Contract, the Contractor represents and warrants that the Contractor is authorized to do business under the laws of the State of Michigan and is duly qualified to perform the Services as set forth in this Contract, and that the execution of this Contract is within the Contractor's authorized powers and is not in contravention of federal, state or local law.
- 3.02 The Contractor makes the following representations and warranties as to any Technology it may provide under this Contract:
- (a) That all Technology provided to the City under this Contract shall perform according to the specifications and representations set forth in Exhibit A and according to any other specifications and representations, including any manuals, provided by the Contractor to the City;
 - (b) That the Contractor shall correct all errors in the Technology provided under this Contract so that such technology will perform according to Contractor's published specifications;
 - (c) That the Contractor has the full right and power to grant the City a license to use the Technology provided pursuant to this Contract;
 - (d) That any Technology provided by Contractor under this Contract is free of any software, programs or routines, commonly known as "disabling code," that are designed to cause such Technology to be destroyed, damaged, or otherwise made inoperable in the course of the use of the Technology;

- (e) That any Technology containing computer code and provided under this Contract is free of any known or reasonably discoverable computer program, code or set of instructions, commonly known as a “computer virus,” that is not designed to be a part of the Work Product and that, when inserted into the computer’s memory: (i) duplicates all or part of itself without specific user instructions to do so, or (ii) erases, alters or renders unusable any Technology with or without specific user instructions to do so, or (iii) that provide unauthorized access to the Technology and
- (f) That all Technology shall be delivered new and in original manufacturer’s packaging and shall be fully warranted for repair or replacement during the term of this Contract as amended or extended.
- (g) That any Technology that it is provided to the City shall:
 - (1) Accurately recognize and process all time and date data including, but not limited to, daylight savings time and leap year data, and
 - (2) Use accurate same-century, multi-century, and similar date value formulas in its calculations, and use date data interface values that accurately reflect the correct time, date and century.

Article 4.
Contract Effective Date and Time of Performance

- 4.01 This Contract shall be approved by the required City departments, approved by the City Council, Emergency Manager and signed by the City’s Purchasing Director. The effective date of this Contract shall be the date upon which the Contract has been authorized by resolution of the City Council. The term of this Contract shall terminate on September 1, 2017, subject to earlier termination under Article 11.
- 4.02 Prior to the approvals set forth in Section 4.01, the Contractor shall have no authority to begin work on this Contract. The Finance Director shall not authorize any payments to the Contractor, nor shall the City incur any liability to pay for any services rendered or to reimburse the Contractor for any expenditure, prior to such award and approvals.
- 4.03 The City and the Contractor agree that the commencement and duration of the Contractor's performance under this Contract shall be determined as set forth in Exhibit A.

Article 5.
Data To Be Furnished Contractor

5.01 Copies of all information, reports, records, and data as are existing, available, and deemed necessary by the City for the performance of the Services shall be furnished to the Contractor upon the Contractor's request. With the prior approval of the City, the Contractor will be permitted access to City offices during regular business hours to obtain any necessary data. In addition, the City will schedule appropriate conferences at convenient times with administrative personnel of the City for the purpose of gathering such data.

Article 6.
Contractor Personnel and Contract Administration

- 6.01 The Contractor represents that, at its own expense, it has obtained or will obtain all personnel and equipment required to perform the Services. It warrants that all such personnel are qualified and possess the requisite licenses or other such legal qualifications to perform the services assigned. If requested, the Contractor shall supply a résumé of the managerial staff or consultants it proposes to assign to this Contract, as well as a dossier on the Contractor's activities and major undertakings.
- 6.02 The City may interview the Contractor's managerial staff and other employees assigned to this Contract. The Contractor shall not use any managerial staff or other employees to whom the City objects and shall replace in an expedient manner those rejected by the City. The Contractor shall not replace any of the personnel working on this Contract with new personnel without the prior written consent of the City.
- 6.03 When the City deems it reasonable to do so, it may assign qualified City employees or others to work with the Contractor to complete the Services. Nevertheless, it is expressly understood and agreed by the parties that the Contractor shall remain ultimately responsible for the proper completion of the Services.
- 6.04 The relationship of the Contractor to the City is and shall continue to be that of an independent contractor and no liability or benefits, such as workers' compensation, pension rights or liabilities, insurance rights or liabilities, or other rights or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to either party or either party's agent, Subcontractor or employee as a result of the performance of this Contract. No relationship other than that of independent contractor shall be implied between the parties or between either party's agents, employees or Subcontractors. The Contractor agrees to indemnify, defend, and hold the City harmless against any claim based in whole or in part on an allegation that the Contractor or any of its Associates qualify as employees of the City, and any related costs or expenses, including but not limited to legal fees and defense costs.

- 6.05 The Contractor warrants and represents that all persons assigned to the performance of this Contract shall be regular employees or independent contractors of the Contractor, unless otherwise authorized by the City. The Contractor's employees' daily working hours while working in or about a City of Detroit facility shall be the same as those worked by City employees working in the facility, unless otherwise directed by the City.
- 6.06 The Contractor shall comply with and shall require its Associates to comply with all security regulations and procedures in effect on the City's premises.

**Article 7.
Compensation**

- 7.01 Compensation for Services provided as estimated at Two million four hundred two thousand nine hundred eighteen and 00/100 Dollars (\$2,402,918.00), and will be paid in the manner set forth in Exhibit B.
- 7.02 Payment for Services provided under this Contract is governed by the terms of Ordinance No. 40-98, entitled "Prompt Payment of Vendors," being Sections 18-5-71 through 18-5-79 of the 1984 Detroit City Code.

The City employee responsible for accepting performance under this Contract is

Donald Settles
Risk Manager
Finance Department/Risk Management Division
Coleman A. Young Municipal Center
2 Woodward Ave., Suite 810
Detroit, Michigan 48226
Telephone: (313) 628-1159
Facsimile: (313) 224-4247

The City employee from whom payment should be requested is:

Glenn Hodges
Risk Manager
Finance Department/Risk Management Division
Coleman A. Young Municipal Center
2 Woodward Ave., Suite 810
Detroit, Michigan 48226
Telephone: (313) 224-5130
Facsimile: (313) 224-4247

Article 8.
Maintenance and Audit of Records

- 8.01 The Contractor shall maintain full and complete Records reflecting all of its operations related to this Contract. The Records shall be kept in accordance with generally accepted accounting principles and maintained for a minimum of three (3) years after the Contract completion date.
- 8.02 The City and any government-grantor agency providing funding under this Contract shall have the right at any time without notice to examine and audit all Records and other supporting data of the Contractor as the City or any agency deems necessary.
- (a) The Contractor shall make all Records available for examination during normal business hours at its Detroit offices, if any, or alternatively at its facility nearest Detroit. The City and any government-grantor agency providing funds for the Contract shall have this right of inspection. The Contractor shall provide copies of all Records to the City or to any such government-grantor agency upon request.
 - (b) If in the course of such inspection the representative of the City or of another government-grantor agency should note any deficiencies in the performance of the Contractor's agreed upon performance or record-keeping practices, such deficiencies will be reported to the Contractor in writing. The Contractor agrees to promptly remedy and correct any such reported deficiencies within ten (10) days of notification.
 - (c) Any costs disallowed as a result of an audit of the Records shall be repaid to the City by the Contractor within thirty (30) days of notification or may be set off by the City against any funds due and owing the Contractor, provided, however, that the Contractor shall remain liable for any disallowed costs exceeding the amount of the setoff.
 - (d) Each party shall pay its own audit costs. However, if the dollar amount of the total disallowed costs, if any, exceeds three percent (3%) of the dollar amount of this Contract, the Contractor shall pay the City's audit costs.
 - (e) Nothing contained in this Contract shall be construed or permitted to operate as any restriction upon the powers granted to the Auditor General by the City Charter, including but not limited to the powers to audit all accounts chargeable against the City and to settle disputed claims.
- 8.03 The Contractor agrees to include the covenants contained in Sections 8.01 and 8.02 in any contract it has with any Subcontractor, consultant or agent whose services will be charged directly or indirectly to the City for Services performed pursuant to this Contract.

Article 9.
Indemnity

- 9.01 The Contractor agrees to indemnify, defend, and hold the City harmless against and from any and all liabilities, obligations, damages, penalties, claims, costs, charges, losses and expenses (including, without limitation, fees and expenses for attorneys, expert witnesses and other consultants) that may be imposed upon, incurred by, or asserted against the City or its departments, officers, employees, or agents by reason of any of the following occurring during the term of this Contract:
- (a) Any negligent or tortious act, error, or omission attributable in whole or in part to the Contractor or any of its Associates; and
 - (b) Any failure by the Contractor or any of its Associates to perform their obligations, either express or implied, under this Contract; and
 - (c) Any and all injury to the person or property of an employee of the City where such injury arises out of the Contractor's or any of its Associates performance of this Contract.
- 9.02 The Contractor shall examine all places where it will perform the Services in order to determine whether such places are safe for the performance of the Services. The Contractor undertakes and assumes all risk of dangerous conditions when not performing Services inside City offices. The Contractor also agrees to waive and release any claim or liability against the City for personal injury or property damage sustained by it or its Associates while performing under this Contract on premises that are not owned by the City.
- 9.03 In the event any action shall be brought against the City by reason of any claim covered under this Article 9, the Contractor, upon notice from the City, shall at its sole cost and expense defend the same.
- 9.04 The Contractor agrees that it is the Contractor's responsibility and not the responsibility of the City to safeguard the property that the Contractor or its Associates use while performing this Contract. Further, the Contractor agrees to hold the City harmless for any loss of such property used by any such person pursuant to the Contractor's performance under this Contract.
- 9.05 The indemnification obligation under this Article 9 shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable under workers' compensation acts or other employee benefit acts.
- 9.06 The Contractor agrees that this Article 9 shall apply to all claims, whether litigated or not, that may occur or arise between the Contractor or its Associates and the City and agrees to indemnify, defend and hold the City harmless against any such claims.

**Article 10.
Insurance**

10.01 During the term of this Contract, the Contractor shall maintain the following insurance, at a minimum and at its expense:

<u>TYPE</u>	<u>AMOUNT NOT LESS THAN</u>
(a) Workers' Compensation	Michigan Statutory minimum
(b) Employers' Liability	\$500,000.00 minimum each disease \$500,000.00 minimum each person \$500,000.00 minimum each accident
(c) Commercial General Liability Insurance (Broad Form Comprehensive)	\$1,000,000.00 each occurrence \$2,000,000.00 aggregate
(d) Automobile Liability Insurance (covering all owned, hired and non-owned vehicles with personal and property protection insurance, including residual liability insurance under Michigan no fault insurance law)	\$1,000,000.00 combined single limit for bodily injury and property damage
(e) Professional Liability (E & O)	\$5,000,000.00 each occurrence \$5,000,000.00 aggregate
(f) Commercial Crime Coverage Including Third Party coverage	\$5,000,000.00 Policy Limit

10.02 The commercial general liability insurance policy shall include an endorsement naming the "City of Detroit" as an additional insured. The additional insured endorsement shall provide coverage to the additional insured with respect to liability arising out of the named insured's ongoing work or operations performed for the additional insured under the terms of this Contract. The commercial general liability policy shall state that the Contractor's insurance is primary and not excess over any insurance already carried by the City of Detroit and shall provide blanket contractual liability insurance for all written contracts.

- 10.03 Each such policy shall contain the following cross-liability wording: "In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder."
- 10.04 All insurance required by this Contract shall be written on an occurrence-based policy form, if the same is commercially available.
- 10.05 The Commercial General Liability policy shall be endorsed to have the general aggregate apply to the Services provided under this Contract only.
- 10.06 If during the term of this Contract changed conditions or other pertinent factors should, in the reasonable judgment of the City, render inadequate the insurance limits, the Contractor shall furnish on demand such additional coverage or types of coverage as may reasonably be required under the circumstances. All such insurance shall be effected at the Contractor's expense, under valid and enforceable policies, issued by insurers licensed to conduct business in Michigan and are otherwise acceptable to the City.
- 10.07 All insurance policies shall name the Contractor as the insured and shall provide a commitment from the insurer that such policies shall not be canceled or reduced without written notice to the City as required in the policy. Certificates of insurance evidencing the coverage required by this Article 10 shall, in a form acceptable to the City, be submitted to the City prior to the commencement of the Services and at least fifteen (15) days prior to the expiration dates of expiring policies.
- 10.08 If any work is subcontracted in connection with this Contract, the Contractor shall require each Subcontractor to effect and maintain the types and limits of insurance set forth in this Article 10 and shall require documentation of same, copies of which documentation shall be promptly furnished the City.
- 10.09 The Contractor shall be responsible for payment of all deductibles contained in any insurance required under this Contract. The provisions requiring the Contractor to carry the insurance required under this Article 10 shall not be construed in any manner as waiving or restricting the liability of the Contractor under this Contract.

Article 11.
Default and Termination

11.01 This Contract shall remain in full force and effect until the end of its term unless otherwise terminated for cause or convenience according to the provisions of this Article 11.

11.02 The City reserves the right to terminate this Contract for cause. Cause is an event of default.

- (a) An event of default shall occur if there is a material breach of this Contract, and shall include the following:
- (1) The Contractor fails to begin work in accordance with the terms of this Contract; or
 - (2) The Contractor, in the judgment of the City, is unnecessarily, unreasonably, or willfully delaying the performance and completion of the Work Product or Services; or
 - (3) The Contractor ceases to perform under the Contract; or
 - (4) The City is of the opinion that the Services cannot be completed within the time provided and that the delay is attributable to conditions within the Contractor's control; or
 - (5) The Contractor, without just cause, reduces its work force on this Contract to a number that would be insufficient, in the judgment of the City, to complete the Services within a reasonable time, and the Contractor fails to sufficiently increase such work force when directed to do so by the City; or
 - (6) The Contractor assigns, transfers, conveys or otherwise disposes of this Contract in whole or in part without prior approval of the City; or
 - (7) Any City officer or employee acquires an interest in this Contract so as to create a conflict of interest; or
 - (8) The Contractor violates any of the provisions of this Contract, or disregards applicable laws, ordinances, permits, licenses, instructions or orders of the City; or

- (9) The performance of the Contract, in the sole judgment of the City, is substandard, unprofessional, or faulty and not adequate to the demands of the task to be performed; or
 - (10) The Contractor fails in any of the agreements set forth in this Contract; or
 - (11) The Contractor ceases to conduct business in the normal course; or
 - (12) The Contractor admits its inability to pay its debts generally as they become due.
- (b) If the City finds an event of default has occurred, the City may issue a Notice of Termination for Cause setting forth the grounds for terminating the Contract. Upon receiving a Notice of Termination for Cause, the Contractor shall have ten (10) calendar days within which to cure such default. If the default is cured within said ten (10) day period, the right of termination for such default shall cease. If the default is not cured to the satisfaction of the City, this Contract shall terminate on the sixtieth calendar day after the Contractor's receipt of the Notice of Termination for Cause, unless the City, in writing, gives the Contractor additional time to cure the default. If the default is not cured to the satisfaction of the City within the additional time allowed for cure, this Contract shall terminate for cause at the end of the extended cure period.
- (c) If, after issuing a Notice of Termination for Cause, the City determines that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued as a Notice of Termination for Convenience. Alternatively, in the City's discretion, the Notice of Termination for Cause may be withdrawn and the Contract, if terminated, may be reinstated.
- (d) The Contractor shall be liable to the City for any damages it sustains by virtue of the Contractor's breach or any reasonable costs the City might incur in enforcing or attempting to enforce this Contract. Such costs shall include reasonable fees and expenses for attorneys, expert witnesses and other consultants. However, if the Contractor makes a written offer prior to the initiation of litigation or arbitration, then the City shall not be entitled to such attorney fees unless the City declines the offer and obtains a verdict or judgment for an amount more than ten percent (10%) above the amount of the Contractor's last written offer prior to the initiation of litigation or arbitration. The City may withhold any payment(s) to the Contractor, in an amount not to exceed the amount claimed in good faith by the City to represent its damages, for the purpose of setoff until such time as the exact amount of damages due to the City from the Contractor is determined. It is expressly understood that the Contractor shall remain liable for any damages the City sustains in excess of any setoff.

- (e) The City's remedies outlined in this Article 11 shall be in addition to any and all other legal or equitable remedies permissible.

11.03 The City shall have the right to terminate this Contract at any time at its convenience by giving the Contractor five (5) business days written Notice of Termination for Convenience. As of the effective date of the termination, the City will be obligated to pay the Contractor the following: (a) the fees or commissions for Services completed and accepted in accordance with Exhibit A in the amounts provided for in Exhibit B; (b) the fees for Services performed but not completed prior to the date of termination in accordance with Exhibit A in the amounts set forth in the Contractor's rate schedule as provided in Exhibit B; and (c) the Contractor's costs and expenses incurred prior to the date of the termination for items that are identified in Exhibit B. The amount due to the Contractor shall be reduced by payments already paid to the Contractor by the City. In no event shall the City pay the Contractor more than maximum price, if one is stated, of this Contract.

11.04 After receiving a Notice of Termination for Cause or Convenience, and except as otherwise directed by the City, the Contractor shall:

- (a) Stop work under the Contract on the date and to the extent specified in the Notice of Termination;
- (b) Obligate no additional Contract funds for payroll costs and other costs beyond such date as the City shall specify, and place no further orders on subcontracts for material, services, or facilities, except as may be necessary for completion of such portion of the Services under this Contract as is not terminated;
- (c) Terminate all orders and subcontracts to the extent that they relate to the portion of the Services terminated pursuant to the Notice of Termination;
- (d) Preserve all Records and submit to the City such Records and reports as the City shall specify, and furnish to the City an inventory of all furnishings, equipment, and other property purchased for the Contract, if any, and carry out such directives as the City may issue concerning the safeguarding or disposition of files and property; and
- (e) Submit within thirty (30) days a final report of receipts and expenditures of funds relating to this Contract, and a list of all creditors, Subcontractors, lessors and other parties, if any, to whom the Contractor has become financially obligated pursuant to this Contract.

11.05 After termination of the Contract, each party shall have the duty to assist the other party in the orderly termination of this Contract and the transfer of all rights and duties arising under the Contract, as may be necessary for the orderly, un-disrupted continuation of the business of each party.

Article 12.
Assignment

12.01 The Contractor shall not assign, transfer, convey or otherwise dispose of any interest whatsoever in this Contract without the prior written consent of the City; however, claims for money due or to become due to the Contractor may be assigned to a financial institution without such approval. Notice of any assignment to a financial institution or transfer of such claims of money due or to become due shall be furnished promptly to the City. If the Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause stating that the right of the assignee to any monies due or to become due shall be subject to prior liens of all persons, firms, and corporations for Services rendered or materials supplied for the performance of the Services called for in this Contract.

Article 13.
Subcontracting

13.01 None of the Services covered by this Contract shall be subcontracted without the prior written approval of the City and, if required, any grantor agency. The City reserves the right to withhold approval of subcontracting such portions of the Services where the City determines that such subcontracting is not in the City's best interests.

13.02 Each subcontract entered into shall provide that the provisions of this Contract shall apply to the Subcontractor and its Associates in all respects. The Contractor agrees to bind each Subcontractor and each Subcontractor shall agree to be bound by the terms of the Contract insofar as applicable to the work or services performed by that Subcontractor.

13.03 The Contractor and the Subcontractor jointly and severally agree that no approval by the City of any proposed Subcontractor, nor any subcontract, nor anything in the Contract, shall create or be deemed to create any rights in favor of a Subcontractor and against the City, nor shall it be deemed or construed to impose upon the City any obligation, liability or duty to a Subcontractor, or to create any contractual relation whatsoever between a Subcontractor and the City.

- 13.04 The provisions contained in this Article 13 shall apply to subcontracting by a Subcontractor of any portion of the work or services included in an approved subcontract.
- 13.05 The Contractor agrees to indemnify, defend, and hold the City harmless against any claims initiated against the City pursuant to any subcontracts the Contractor enters into in performance of this Contract. The City's approval of any Subcontractor shall not relieve the Contractor of any of its responsibilities, duties and liabilities under this Contract. The Contractor shall be solely responsible to the City for the acts or defaults of its Subcontractors and of each Subcontractor's Associates, each of whom shall for this purpose be deemed to be the agent or employee of the Contractor.

Article 14.
Conflict of Interest

- 14.01 The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the Services under this Contract. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed by it.
- 14.02 The Contractor further covenants that no officer, agent, or employee of the City and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or performance of this Contract has any personal or financial interest, direct or indirect, in this Contract or in its proceeds, whether such interest arises by way of a corporate entity, partnership, or otherwise.
- 14.03 The Contractor warrants (a) that it has not employed and will not employ any person to solicit or secure this Contract upon any agreement or arrangement for payment of a commission, percentage, brokerage fee, or contingent fee, other than bona fide employees working solely for the Contractor either directly or indirectly, and (b) that if this warranty is breached, the City may, at its option, terminate this Contract without penalty, liability or obligation, or may, at its option, deduct from any amounts owed to the Contractor under this Contract any portion of any such commission, percentage, brokerage, or contingent fee.
- 14.04 The Contractor covenants not to employ an employee of the City for a period of one (1) year after the date of termination of this Contract without written City approval.

Article 15.
Confidential Information

- 15.01 In order that the Contractor may effectively fulfill its covenants and obligations under this Contract, it may be necessary or desirable for the City to disclose confidential and proprietary information to the Contractor or its Associates pertaining to the City's past, present and future activities. Since it is difficult to separate confidential and proprietary information from that which is not, the Contractor shall regard, and shall instruct its Associates to regard, all information gained as confidential and such information shall not be disclosed to any organization or individual without the prior consent of the City. The above obligation shall not apply to information already in the public domain or information required to be disclosed by a court order.
- 15.02 The Contractor agrees to take appropriate action with respect to its Associates to ensure that the foregoing obligations of non-use and non-disclosure of confidential information shall be fully satisfied.

Article 16.
Compliance With Laws

- 16.01 The Contractor shall comply with and shall require its Associates to comply with all applicable federal, state and local laws.
- 16.02 The Contractor shall hold the City harmless with respect to any damages arising from any violation of law by it or its Associates. The Contractor shall commit no trespass on any public or private property in performing any of the Services encompassed by this Contract. The Contractor shall require as part of any subcontract that the Subcontractor comply with all applicable laws and regulations.

Article 17.
Amendments

- 17.01 The City may consider it in its best interest to change, modify or extend a covenant, term or condition of this Contract or require the Contractor to perform Additional Services that are not contained within the Scope of Services as set forth in Exhibit A. Any such change, addition, deletion, extension or modification of Services may require that the compensation paid to the Contractor by the City be proportionately adjusted, either increased or decreased, to reflect such modification. If the City and the Contractor mutually agree to any changes or modification of this Contract, the modification shall be incorporated into this Contract by written Amendment.

- 17.02 Compensation shall not be modified unless there is a corresponding modification in the Services sufficient to justify such an adjustment. If there is any dispute as to compensation, the Contractor shall continue to perform the Services under this Contract until the dispute is resolved.
- 17.03 No Amendment to this Contract shall be effective and binding upon the parties unless it expressly makes reference to this Contract, is in writing, is signed and acknowledged by duly authorized representatives of both parties, is approved by the appropriate City departments and the City Council, and is signed by the Purchasing Director.
- 17.04 The City shall not be bound by Unauthorized Acts of its employees, agents, or representatives with regard to any dealings with the Contractor and any of its Associates.

Article 18.
Fair Employment Practices

- 18.01 The Contractor shall comply with, and shall require any Subcontractor to comply with, all federal, state and local laws governing fair employment practices and equal employment opportunities.
- 18.02 The Contractor agrees that it shall, at the point in time it solicits any subcontract, notify the potential Subcontractor of their joint obligations relative to non-discrimination under this Contract, and shall include the provisions of this Article 18 in any subcontract, as well as provide the City a copy of any subcontract upon request.
- 18.03 Breach of the terms and conditions of this Article 18 shall constitute a material breach of this Contract and may be governed by the provisions of Article 11, "Default and Termination."

Article 19.
Notices

19.01 All notices, consents, approvals, requests and other communications ("Notices") required or permitted under this Contract shall be given in writing, mailed by postage prepaid, certified or registered first-class mail, return receipt requested, and addressed as follows:

If to the Finance Department on behalf of the City:

City of Detroit
Finance Department – Procurement Division
Coleman A. Young Municipal Center,
2 Woodward Avenue, Suite 1008
Detroit, Michigan 48226
Attention: Mr. Boysie Jackson

If to the Contractor:

CMI, A York Risk Services Company
99 Cherry Hill Road, Suite 102
Parsippany, NJ 07054
Attention: Mr. Christopher Cramer

19.02 All Notices shall be deemed given on the day of mailing. Either party to this Contract may change its address for the receipt of Notices at any time by giving notice of the address change to the other party. Any Notice given by a party to this Contract must be signed by an authorized representative of such party.

19.03 The Contractor agrees that service of process at the address and in the manner specified in this Article 19 shall be sufficient to put the Contractor on notice of such action and waives any and all claims relative to such notice.

Article 20.
Proprietary Rights and Indemnity

- 20.01 The Contractor shall not relinquish any proprietary rights in its intellectual property (copyright, patent, and trademark), trade secrets or confidential information as a result of the Services provided under this Contract. Any Work Product provided to the City under this Contract shall not include the Contractor's proprietary rights, except to the extent licensed to the City.
- 20.02 The City shall not relinquish any of its proprietary rights, including, but not limited to, its data, privileged or confidential information, or methods and procedures, as a result of the Services provided under this Contract.
- 20.03 The parties acknowledge that should the performance of this Contract result in the development of new proprietary and secret concepts, methods, techniques, processes, adaptations, discoveries, improvements and ideas ("Discoveries"), and to the extent said Discoveries do not include modifications, enhancements, configurations, translations, derivative works, and interfaces from the Contractor's intellectual property, trade secrets or confidential information, said Discoveries shall be deemed "Work(s) for Hire" and shall be promptly reported to the City and shall belong solely and exclusively to the City without regard to their origin, and the Contractor shall not, other than in the performance of this Contract, make use of or disclose said Discoveries to anyone. At the City's request, the Contractor shall execute all documents and papers and shall furnish all reasonable assistance requested in order to establish in the City all right, title and interest in said Discoveries or to enable the City to apply for United States patents or copyrights for said Discoveries, if the City elects to do so.
- 20.04 Any Work Product provided by the Contractor to the City under this Contract shall not be disclosed, published, copyrighted or patented, in whole or in part, by the Contractor. The right to the copyright or patent in such Work Product shall rest exclusively in the City. Further, the City shall have unrestricted and exclusive authority to publish, disclose, distribute and otherwise use, in whole or in part, any of the Work Product. If Work Product is prepared for publication, it shall carry the following notation on the front cover or title page: "This document was prepared for, and is the exclusive property of, the City of Detroit, Michigan, a municipal corporation."
- 20.05 The Contractor warrants that the performance of this Contract shall not infringe upon or violate any patent, copyright, trademark, trade secret or proprietary right of any third party. In the event of any legal action related to the above obligations of the Contractor filed by a third party against the City, the Contractor shall, at its sole expense, indemnify, defend and hold the City harmless against any loss, cost, expense or liability arising out of such claim, whether or not such claim is successful.

20.06 The making of payments, including partial payments by the City to the Contractor, shall vest in the City title to, and the right to take possession of, all Work Product produced by the Contractor up to the time of such payments, and the City shall have the right to use said Work Product for public purposes without further compensation to the Contractor or to any other person.

20.07 Upon the completion or other termination of this Contract, all finished or unfinished Work Product prepared by the Contractor shall, at the option of the City, become the City's sole and exclusive property whether or not in the Contractor's possession. Such Work Product shall be free from any claim or retention of rights on the part of the Contractor and shall promptly be delivered to the City upon the City's request. The City shall return all of the Contractor's property to it. The Contractor acknowledges that any intentional failure or unreasonable delay on its part to deliver the Work Product to the City will cause irreparable harm to the City not adequately compensable in damages and for which the City has no adequate remedy at law. The Contractor accordingly agrees that the City may in such event seek and obtain injunctive relief in a court of competent jurisdiction to compel delivery of the Work Product, to which injunctive relief the Contractor consents, as well as seek and obtain all applicable damages and costs. The City shall have full and unrestricted use of the Work Product for the purpose of completing the Services.

Article 21.
Force Majeure

21.01 No failure or delay in performance of this Contract, by either party, shall be deemed to be a breach thereof when such failure or delay is caused by a force majeure event including, but not limited to, any Act of God, strikes, lockouts, wars, acts of terrorism, riots, epidemics, explosions, sabotage, breakage or accident to equipment, the binding order of any court or governmental authority, or any other cause, whether of the kind herein enumerated or otherwise, not within the control of a party. In the event of a dispute between the parties with regard to what constitutes a force majeure event, the City's reasonable determination shall be controlling.

Article 22.
Waiver

- 22.01 The City shall not be deemed to have waived any of its rights under this Contract unless such waiver is in writing and signed by the City.
- 22.02 No delay or omission on the part of the City in exercising any right shall operate as a waiver of such right or any other right. A waiver on any one (1) occasion shall not be construed as a waiver of any right on any future occasion.
- 22.03 No failure by the City to insist upon the strict performance of any covenant, agreement, term or condition of this Contract or to exercise any right, term or remedy consequent upon its breach shall constitute a waiver of such covenant, agreement, term, condition, or breach.

Article 23.
Miscellaneous

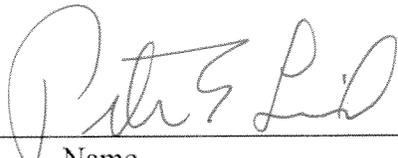
- 23.01 If any provision of this Contract or its application to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Contract shall not be affected and shall remain valid and enforceable to the fullest extent permitted by law.
- 23.02 This Contract contains the entire agreement between the parties and all prior negotiations and agreements are merged into this Contract. Neither the City nor the City's agents have made any representations except those expressly set forth in this Contract, and no rights or remedies are, or shall be, acquired by the Contractor by implication or otherwise unless expressly set forth in this Contract. The Contractor waives any defense it may have to the validity of the execution of this Contract.
- 23.03 Unless the context otherwise expressly requires, the words "herein," "hereof," and "hereunder," and other words of similar import, refer to this Contract as a whole and not to any particular section or subdivision.
- 23.04 The headings of the sections of this Contract are for convenience only and shall not be used to construe or interpret the scope or intent of this Contract or in any way affect the same.

- 23.05 This Contract and all actions arising under it shall be governed by, subject to, and construed according to the law of the State of Michigan. The Contractor agrees, consents and submits to the exclusive personal jurisdiction of any state or federal court of competent jurisdiction in Wayne County, Michigan, for any action arising out of this Contract. The Contractor also agrees that it shall not commence any action against the City because of any matter whatsoever arising out of or relating to the validity, construction, interpretation and enforcement of this Contract in any state or federal court of competent jurisdiction other than one in Wayne County, Michigan.
- 23.06 If any Associate of the Contractor shall take any action that, if done by a party, would constitute a breach of this Contract, the same shall be deemed a breach by the Contractor.
- 23.07 The rights and remedies set forth in this Contract are not exclusive and are in addition to any of the rights or remedies provided by law or equity.
- 23.08 For purpose of the hold harmless and indemnity provisions contained in this Contract, the term "City" shall be deemed to include the City of Detroit and all other associated, affiliated, allied or subsidiary entities or commissions, now existing or subsequently created, and their officers, agents, representatives, and employees.
- 23.09 The Contractor covenants that it is not, and shall not become, in arrears to the City upon any contract, debt, or other obligation to the City including, without limitation, real property, personal property and income taxes, and water, sewage or other utility bills.
- 23.10 This Contract may be executed in any number of originals, any one of which shall be deemed an accurate representation of this Contract. Promptly after the execution of this Contract, the City shall provide a copy to the Contractor.
- 23.11 As used in this Contract, the singular shall include the plural, the plural shall include the singular, and a reference to either gender shall be applicable to both.
- 23.12 The rights and benefits under this Contract shall inure to the City of Detroit and its agents, successors, and assigns.
- 23.13 The City shall have the right to recover by setoff from any payment owed to the Contractor all delinquent withholding, income, corporate and property taxes owed to the City by the Contractor, any amounts owed to the City by the Contractor under this Contract or other contracts, and any other debt owed to the City by the Contractor.

(Signatures appear on next page)

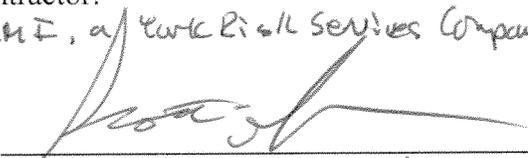
The City and the Contractor, by and through their duly authorized officers and representatives, have executed this Contract as follows:

Witnesses:

1. 
Name

2. 
Name

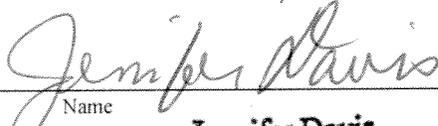
Contractor:

CNE, a York Risk Services Company, Inc.
By: 
Name Scott W. Gattner

Its: President
Title

Witnesses:

1. 
Name Ericka Y. Crawford

2. 
Name Jennifer Davis

City of Detroit
 Department:

By: Donald Setzer
Name

Its: Risk Manager
Title

THIS CONTRACT WAS APPROVED
BY THE CITY COUNCIL ON:

APPROVED BY LAW DEPARTMENT
PURSUANT TO § 6-406 OF THE
CHARTER OF THE CITY OF DETROIT

Date
Bonnie Jackson 7/16/24

Purchasing Director Date

CWR 7/16/24

Corporation Counsel Date

**THIS CONTRACT IS NOT VALID OR AUTHORIZED UNTIL APPROVED BY
RESOLUTION OF THE CITY COUNCIL AND/OR EMERGENCY MANAGER AND
SIGNED BY THE PURCHASING DIRECTOR.**

CITY ACKNOWLEDGMENT

STATE OF Michigan)
)SS.
COUNTY OF Wayne)

The foregoing contract was acknowledged before me the 16th day of July,
2014, by DONALD SETTLES,
(name of person who signed the contract)
the RISK MANAGER,
(title of person who signed the contract as it appears on the contract)
of FINANCE DEPARTMENT - RISK MANAGEMENT Div
(complete name of the City department)
on behalf of the City.

Jennifer J. Davis

Notary Public, County of Wayne

State of Michigan

My commission expires: October 20, 2014

JENNIFER J. DAVIS
Notary Public - Michigan
Wayne County
My Commission Expires October 20, 2014

CORPORATE ACKNOWLEDGMENT

STATE OF New Jersey)
)SS.
COUNTY OF Morris)

The foregoing contract was acknowledged before me the 10th day of New Jersey,
20 14, by Scott W. Gattner,
(name of person who signed the contract)
the President,
(title of person who signed the contract as it appears on the contract)
of CHI, a York Risk Services Company, Inc.,
(complete name of the corporation)

on behalf of the Corporation.

Peter F. Lind
PETER F. LIND

Notary Public, County of _____

State of _____

My commission expires: _____

Attorney at Law of the State of New Jersey

Exhibit A – Scope of Services

The term of this Contract shall begin on September 1, 2014 and shall terminate on September 1, 2017. Contractor shall commence performance of this Contract upon receipt of a written “Notice to Proceed” from the City and in the manner specified in the Notice to Proceed.

Both parties do hereby agree to the following terms and conditions:

1. Term of Agreement. Upon expiration of the Initial Term, this Agreement shall automatically renew for successive one (1) year periods (“Subsequent Term”), unless written notice of non-renewal is provided by either party at least ninety (90) days prior to the expiration of the then current term of this Agreement. The foregoing provisions are subject to early termination under Article 11 of the Contract.

2. Contractor agrees to provide the following administrative services to the City:
 - (a) Evaluating all of the City’s claims and loss reports for losses occurring during the term of this Agreement and making recommendations for the proper disposition of said claims.

 - (b) Establishing an incident or suspense file for any circumstance or event where no injury has been reported and/or is anticipated and/or being claimed.

 - (c) Maintaining complete records (hard copy and/or computerized) on all reported claims on behalf of and as custodian for the City, including the establishment of a file for each claim and code such claim in accordance with Contractor’s format. All claim files will be retained for ten (10) years after closing.

 - (d) Submitting a monthly report to the City of claim expenditures. Such reports shall contain and summarize all expenditures made and estimates of all potential benefit expenses based upon facts available. Estimates and projections (1) shall be for the customary purposes of recommending reserves for plan administration and accounting purposes only, and (2) are not intended as an evaluation of (or admission of) any actual legal liability or potential damage award if a claim were litigated.

 - (e) Preparing and delivering all appropriate benefit payments (indemnity and medical) utilizing an agreed upon payment method (check or voucher) drawn from the City’s Loss Fund (as defined below).

- (f) Recommending a panel of qualified physicians, surgeons and other specialists for the treatment of employees sustaining an occupational injury or disease in the states which require or permit such panels. Contractor shall review physician's findings, consult with doctors to resolve medical questions and, if requested by the City, arrange for and monitor rehabilitation services. Contractor shall review, or cause to be reviewed by a subcontractor as an Allocated Loss Expense (as further defined in Exhibit B), medical bills for compliance with fee schedules where appropriate and/or reasonable, customary and payable under the applicable state workers' compensation act.
- (g) Monitor the treatment programs recommended for claimant(s) by physicians, specialists and other health care providers by reviewing all reports prepared by said health care providers, and performing all investigative activities into claimant's medical history.
- (h) Upon request of the City, recommending attorneys to assist the City in any case where representation is desired, and consulting with and furnishing available claim information to any attorney chosen to represent the City. Contractor shall in no way be held responsible for any legal advice or representation provided to the City by said attorney.
- (i) Upon written request of the City, furnishing information maintained by Contractor to the City for assistance in the City making third party claims and reporting appropriate losses and details therein to the City's excess insurance carrier.
- (j) Discussing with the City all open claims, reserve estimates and claim management strategies at quarterly Claim Review meetings.
- (k) Consulting with the City on matters pertaining to insurance at times deemed necessary by the City or its consultants.
- (l) Assisting the City in the preparation and submission of the proper forms and reports as may be required by any governmental agency which regulates the handling of workers' compensation insurance claims or other insurance claims, including but not limited to, industrial commissions, workers' compensation offices, bureaus, state insurance departments or boards for all claims which are the subject of this Agreement.
- (m) Assisting the City in the preparation and filing of such annual reports for insured risks as required by the appropriate state agency.
- (n) Other ad hoc reports that the City may desire will be produced on receipt of a written request with a detailed description of what is desired. This request to be made in a timely fashion (with an adequate lead time to be agreed) and for which a charge may be made.

- (o) Collecting, processing and reporting data in the manner required by the Internal Revenue Service for the purpose of preparing 1099 Miscellaneous Income filings on behalf of the City for checks written for claims payments made by Contractor that are the subject of this Agreement.
- (p) Pay all claims and Allocated Loss Expenses in accordance within the authority granted by the City and applicable statutes and regulations.
- (q) Process each claim in accordance with rules, regulations, restrictions, and laws of each state or province involved.
- (r) Adjust, resist and/or settle claims in accordance with authority levels granted by the City.
- (s) Respond promptly to any inquiry, complaint or request received from an insurance department, other regulatory agency, the City, claimant, agent, broker, or other interested party.
- (t) Up to zero (0) days of Loss Prevention Service for the three-year service contract. If loss prevention service is desired, the cost will be \$1,200 per day. The per day charge includes survey, research and preparation time spent in conjunction with the written report. Any laboratory fees incurred will be billed at cost.
- (u) Marketing / renewing of Excess Workers Compensation insurance for a fee of 1% of the Annual Premium.
- (v) MIOSHA reporting.

3. The City's Obligations. The City agrees that during the term of this Agreement, The City will report all claims arising in the jurisdictions and lines of business as set forth in Exhibit B, including all incident reports, to Contractor. The City shall not administer any new claims or forward or assign notice of new claims to any third party for the purpose of claims administration other than Contractor. Contractor shall have the right to review the books and records of the City for the sole purpose of verifying the total number and type of claims. Any such review or audit shall be conducted by Contractor's personnel.

4. Loss Fund. The City shall at all times make adequate funds available for the payment of qualified claims or losses and any Allocated Loss Expenses. To facilitate the payment of claims and Allocated Loss Expenses, the parties shall establish a loss fund to be funded by the City ("Loss Fund"). It is expressly understood that Contractor shall not be required to advance its own funds or extend its own credit to pay losses or Allocated Loss Expenses for any claim administered hereunder, or to satisfy the City's legal, statutory or other obligations. Notwithstanding anything to the contrary contained herein, if the City fails to make adequate funds available for claims, losses or Allocated Loss Expenses, Contractor may, at its sole option, immediately cease performing administrative services, and terminate this Agreement.

5. Performance Standards. Contractor agrees to provide service in accordance with the following standards:
 - (a) Return all of the City's phone calls within 24 hours.
 - (b) Three points of contact within one (1) business day.
 - (c) Establish Reserves within five (5) business days.
 - (d) Notification to the City of Reserve Increases or Decreases of greater than \$25,000
6. Fees. In consideration of the Services provided, the City shall pay Contractor a fee for said Services in accordance with the schedule and terms attached hereto as Exhibit B and defined as Service Fees. The City shall pay the Service Fees monthly after services are rendered on a 'net 30' payment schedule. Contractor's fees do not include taxes or governmental charges, and the City will be responsible for the payment of any applicable sales, use, value added, or other tax or government or regulatory agency charge imposed based on Services provided hereunder, exclusive of net income or corporate franchise taxes. Late payments are subject to a service charge of 1½% per month (18% ANNUAL RATE). The City shall reimburse Contractor upon demand for all reasonable costs (including attorney's fees) incurred in collecting past due amounts owed by the City, and such costs shall accrue interest from the date first due.
7. Amended Fees. In the event that the business operations of the City expand or contract to such an extent that the need for Services are significantly affected, the Service Fees may be renegotiated at any time during the term of this Agreement based upon good faith shown by either party that the Service Fees are inequitable. In addition, after the conclusion of the initial term of the Agreement, Contractor may increase the Service Fees applicable to any subsequent twelve (12) month period of this Agreement by providing the City at least thirty (30) days prior written notice of such increase.
8. Payment of Claims and Discretionary Settlement Authority.
 - (a) No settlement authority is granted.
 - (b) Contractor shall have authority to make payments on any claim handled by it pursuant to the terms of this Agreement.
 - (c) Contractor shall have the authority to pay on behalf of the City any claims-related services as set forth in Exhibit A, including Allocated Loss Expenses.
 - (d) Contractor shall make no single payment in excess of the stated payment authority without the approval of the City.

- (e) Contractor shall have the full and sole discretion to adjust or settle any claim in an amount equal to or less than the settlement authority, without supervision or direction from the City, and such adjustment or settlement shall be binding upon the City.
- (f) Contractor reserves the right, on any particular claim, to disregard the authority granted in this Section 5 and require the City's approval prior to final disposition. The City reserves the right, on any particular claim, and upon prior written notice to Contractor, to revoke the authority granted in this Section 5 and require the City's approval prior to final disposition.

9. Confidentiality. Each party acknowledges that it may receive confidential or proprietary information or trade secrets (collectively "Confidential Information") of the other party. Each party acknowledges that information and documents regarding claims, including but not limited to personally identifiable health, financial, identity or other personal information shall constitute "Confidential Information." Each party agrees: (a) to hold such Confidential Information in confidence and to protect such Confidential Information with at least the same degree of care as it normally exercises to protect its own Confidential Information of a similar nature; (b) to use such Confidential Information solely for the purpose of performing its obligations under this Agreement; (c) to reproduce such Confidential Information only to the extent necessary for such purpose; and (d) to restrict disclosure of such Confidential Information to only those employees, officers, directors, consultants, subcontractors and agents with a need to know for the purposes of performing its obligations under this Agreement.

These restrictions on the use or disclosure of Confidential Information shall not apply to any Confidential Information (x) after it has become generally available to the public without breach of this Agreement; (y) which is disclosed by a party under legal process (with reasonable notice to the other party in order to permit such other party to exercise any rights it may have under applicable law to prevent or limit such disclosure); or (z) which a party agrees in writing is free of such restrictions. Notwithstanding the foregoing, the City agrees that Contractor shall have the right to use such data for the purpose of preparing and disseminating analytical reports inclusive of the collective data of the City, provided such use in no way specifically identifies the City, its operations or expenses.

10. Proprietary Interest.

- (a) Ownership of Systems: All systems created or utilized by Contractor in performance of activities under this Agreement shall belong to, and remain as property of, Contractor, the City having no ownership interest therein. Systems as used herein shall include, but are not limited to, computer programs, computer equipment, formats, procedures, documentation and internal reports of Contractor, but shall not include claim files.

- (b) Ownership of Files: Contractor shall be entitled to full and complete possession of all files and materials prepared by Contractor in the course of investigating or administering any claim under this Agreement until this Agreement is canceled and all outstanding sums due Contractor are paid by the City.
- (c) Protection of Data: Contractor shall make all reasonable efforts to ensure the availability of the computer loss data and the operation of the computer hardware. In the event of damage to or malfunction of the computer hardware, Contractor will use all reasonable efforts to obtain replacement alternative computer hardware to restore the service to an acceptable level in a timely manner. In the event that the computer risk data is not available for use by the computer system utilized by Contractor, Contractor will attempt to reconstruct or recover that data from computer data files stored at remote locations and from source records to restore the service to an acceptable level in a timely manner.

11. SCHIP Reporting. In accordance with the reporting requirements of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (“MMSEA”), Section 111, the City must register itself as a Responsible Reporting Entity (“RRE”) with the Centers for Medicare and Medicaid Services (“CMS”), and hereby agrees to complete in full the CMI Revised Notification Form for MMSEA Section 111 Reporting and update such Notification upon request. In the registration process, the City designated Contractor as its Account Designee for the workers’ compensation claims arising pursuant to the terms of this Agreement which are required to be reported pursuant to the MMSEA Section 111.

The City shall provide Contractor with any and all information needed to comply with the reporting requirements, including but not limited to the following: Coordination of Benefits Contractor (“COBC”) Reporter Identification Number(s); COBC-assigned Personal Identification Number (PIN) for COBC website; Assigned File Delivery Window; and Assigned COBC EDI Representative. In the event the City fails to provide information required by CMS or by Contractor as Account Designee, Contractor shall have no responsibility for not reporting Data required by MMSEA Section 111 until such time as the City provides the required information, and Contractor has had an opportunity to perform testing on behalf of the City. Notwithstanding anything to the contrary contained in this Agreement, the City hereby releases and holds Contractor, its affiliates, directors, officers, agents and employees harmless from liability for the payment of fines and/or penalties resulting from noncompliance with the reporting requirements of MMSEA Section 111.

12. Compliance with Laws. The Services provided pursuant to this Agreement shall be in compliance with the laws, rules and regulations of the state in which the Services are provided, as well as any applicable federal laws, rules or regulations.

13. Independent Contractor Status. Contractor, at all times, shall be an independent contractor, and employees of Contractor shall in no event be considered employees of the City. Except as expressly provided for herein, no agency relationship between Contractor and the City shall exist as a result of the execution of this Agreement and the performance by Contractor hereunder.

Contractor reserves the right to assign performance of activities under this Agreement to any of its personnel and to subcontract to third parties any part or all of Contractor's duties, subject to the City's approval, provided, however, that any subcontracting by Contractor shall not relieve Contractor of its obligations to the City under this Agreement. Contractor pledges in its awarding of any services to a third-party vendor that all contracts are awarded based on need, price, quality, service and in a fair manner serving the best interest of the City.

14. Conditions and Limitations.
- (a) Contractor does not act as an insurer for the City, and this Agreement shall not be construed as an insurance policy or any contract or agreement of indemnity; it being specifically understood that Contractor is in no event financially responsible for payment of satisfaction of claims, lawsuits, or causes of action against the City. The establishment by Contractor of any claims account to pay claims shall not be considered an undertaking by Contractor to be financially responsible for payment of funds into any such account.
- (b) Contractor's responsibility for the performance of Services is conditioned upon the City's cooperation with Contractor in all reasonable manners with respect to the activities of Contractor, including but not limited to:
1. Responding to Contractor's requests for information promptly;
 2. Meeting with Contractor and/or third parties;
 3. Making decisions on matters which, as required by this Agreement, or in the professional opinion of Contractor, should be made by the City;
 4. Payment of funds into the Loss Fund; and
 5. Performance of all other obligations set forth in this Agreement.

- (c) The services provided by Contractor are not of a legal nature and shall not be considered the practice of law. Contractor shall in no event give, or be required to give any legal opinion or provide any legal representation to the City, nor may any communication prepared by Contractor be relied upon by the City as a legal opinion or interpretation. Contractor shall in no event be considered as engaged in the practice of law. Contractor may, but under no duty, recommend counsel to the City. The City, at all times, has full and sole discretion to select legal representative and counsel of its own choosing, and any selection of such representation of counsel shall be by separate agreement between the City and such counsel.
 - (d) Any reports provided by Contractor to the City pursuant to this Agreement may be relied upon only to the extent of the express purpose of such reports, as such purpose may be from time to time set forth in writing by Contractor.
 - (e) In no event shall Contractor be liable to the City for any consequential damages, punitive damages or damages of a similar nature that may be incurred by the City as a result of the Services provided herein by Contractor or its employees.
 - (f) This Agreement applies only to the activities expressly referred to herein and shall not include any other relationship Contractor may have with the City involving insured or self-insured programs.
 - (g) The City has the right to take over the handling of any claim and to direct the handling of any claim at any time during the life of this Agreement and the life of the claim. The City also retains the right to take over the handling of all claims at its discretion, but with no expense or reduction in claim service fees or Allocated Loss Expenses incurred by Contractor with respect to such claims.
15. Entire Agreement. This Agreement supersedes all previous contracts between Contractor and the City with regard to the subject matter hereof, written or oral, and constitutes the complete, exclusive and fully integrated understanding and agreement of the parties hereto. As such, this Agreement shall not be modified, amended or revoked except by the express written consent of the parties hereto. In the event of a conflict between this Agreement and the terms of any claim handling guidelines or special account instructions, the terms of this Agreement shall control.
16. Governing Law. Any and all matters of dispute between the parties to this Agreement, whether arising from the Agreement itself, or arising from alleged extra-contractual facts prior to, during or subsequent to the Agreement, shall be governed and construed in accordance with the laws of the State of Michigan.

17. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. For purposes of this Agreement, the parties agree that counterparts signed and transmitted by facsimile, email or similar electronic means shall be treated as an original document and shall have the same effect as an original signature on an original document for all purposes, including, but not limited to, execution of this Agreement and enforcement of the same.
18. Insolvency. In addition to all other rights and remedies available to the parties pursuant to this Agreement and applicable law, either party may terminate this Agreement, upon notice to the other, in the event a party is or becomes insolvent, or is the subject of or commences any regulatory or judicial proceeding for administrative oversight, dissolution, liquidation, bankruptcy, receivership or similar action.
19. Severability. If any provision of this Agreement is found to be unenforceable by a final order of a court of competent jurisdiction, the provision so affected shall be limited only to the extent necessary to permit compliance with the minimum legal requirement, and all such other provisions of this Agreement shall continue in full force and effect.
20. Contract Modification for Prospective Legal Events. In the event that any state or federal law(s) or regulation(s), now existing or promulgated after the effective date of this Agreement, is interpreted by judicial decision, regulatory agency or legal counsel for both parties in such a manner as to indicate that the structure of this Agreement or any term hereof may be in violation of such law(s) or regulation(s), the parties shall amend this Agreement as necessary. To the maximum extent possible, any such amendment shall preserve the underlying economic and financial arrangements between the parties.
21. Non-Waiver of Agreement Provisions. The failure of any of the parties to insist in any one or more instances upon a strict performance of any provision of this Agreement or to exercise any option contained herein shall not be construed as a future waiver or relinquishment of such provision, but the same shall continue and remain in full force and effect.
22. Miscellaneous.
 - (a) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.
 - (b) Contractor may use an affiliate in the performance of its obligations under this Agreement, and the rights of Contractor under this Agreement shall inure to the benefit of any such affiliate. Provided, however, that Contractor's use of an Affiliate shall not relieve Contractor of its obligations to the City under this Agreement.

- (c) Except with the other party's written consent, for the term of this Agreement and for a period of twelve (12) months thereafter, neither party may directly, indirectly, or through any other party:
1. Hire as an employee, consultant or independent contractor any employee of the other party;
 2. In the event that Contractor recruits any City TPA staff, the City reserves the right to re-hire those employees;
 3. Encourage a third party to hire as an employee, consultant or independent contractor any employee of the other party; or
 4. Otherwise solicit an employee of the other party to terminate his or her employment.
 5. For the purpose of this section an "employee of the other party" is any current employee or any employee who has terminated his or her employment within the preceding twelve (12) month period.
 6. In the event a party breaches this covenant of non-solicitation and nonemployment, the non-breaching party shall be entitled to recover the amount of one (1) times the annual salary per employee as liquidated damages. The parties further agree that in any action brought on account of any alleged breach of this covenant, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs.

Exhibit B – Fee Schedule

1. The Contractor shall be paid for Services performed pursuant to this Contract an estimated amount of Two million four hundred two thousand nine hundred eighteen and 00/100 Dollars (\$2,402,918.00), for the term of this Contract as set forth in Exhibit A, Scope of Services.
2. Payment for the proper performance of the Services shall be contingent upon receipt by the City of invoices for payment. Each invoice shall certify the total cost, itemizing costs when applicable. Each invoice must be received by the City not more than thirty (30) days after the close of the calendar month in which the services were rendered and must be signed by an authorized officer or designee of the Contractor.

LIFE OF CONTRACT: The City agrees to pay Contractor service fees as follows:

Administrative Fee:

2014-2015 Administrative Fee of \$101,250.00;

2015-2016 Administrative Fee of \$101,250.00;

2016-2017 Administrative Fee of \$101,250.00.

The three-year total Administrative Fee is \$303,750.00

Claims Fees Deposits are as follows:

2014-2015: \$688,390.00;

2015-2016: \$688,390.00;

2016-2017: \$722,388.00

The three-year total estimated Claims Fee deposit is: \$2,099,168.00.

For years one (2014-2015) and two (2015-2016), the Final Claims Fees will be determined at a rate of \$65 for each Record Only claim, \$165 for each Medical Only claim and \$1,005 for each Indemnity claim. For year three (2016-2017) the per claim rates are as follows: \$68 for Record Only claims, \$173 for each Medical Only claim and \$1,055 for each Indemnity claim.

If at six (6) months (March 1) following each annual contract period the Claims Fees earned are less than the deposit, any excess will be returned to the City. If the Claims Fees earned exceed the deposit at any time, the City may be charged the per claim fees as additional claims occur. Subsequent audits of each contract term's claims counts will be conducted semi-annually until all claims are closed for that particular contract term. These audit true-ups will also include changes to a particular claim's status (such as a Medical Only claim changing to an Indemnity Claim) and the applicable charge for the change in that particular claims status.

The total estimated service fee for September 1, 2014 to September 1, 2017 is \$2,402,918. The annual minimum service fee is \$101,250 (the annual administrative fee.)

Summary of annual contract term fees:

Year	Admin Fee	Claim Fee Deposit	Total
2014-15:	\$101,250	\$688,390	\$789,640
2015-16:	\$101,250	\$688,390	\$789,640
2016-17:	\$101,250	\$722,388	\$823,638
Total:	\$303,750	\$2,099,168	\$2,402,918

Payment of the Administration Fee and Claim Fee Deposit is due to the Contractor on the last day of each month, in 12 equal monthly payments for each annual term.

3. Claims Transfer Agreement: Workers' Compensation claims with dates of incident preceding the effective date of this contract may be transferred to Contractor upon execution of a Self- Insurer's Claim Transfer Agreement as required by the State of Michigan. The Client agrees to pay Contractor claim takeover fees as follows:
 - Document Only claim and Medical Only claim: \$150.00 each, and
 - Indemnity / Litigated claim: \$400.00 each.

Billing and Payment schedule for Transferred Claims to be mutually agreed.

BILL REVIEW SERVICES PRICING

4. Bill Review Services, PPO Network Access and Enhanced Savings:
 - (a) City agrees to pay Contractor a fee of \$7.50 per bill processed in years one (2014-2015) and two (2015-2016), \$7.75 per bill processed in year three (2016-2017). Bill review includes review and reduction of medical charges to state fee schedule levels and review for duplicate charges.
 - (b) City further agrees to participate in Contractor's nationwide PPO network offering including pharmacy network and out of network negotiation services with any savings/reductions below state fee schedules or other enhanced savings subject to a fee rate of twenty five percent (25%) of any such savings.
 - (c) Contractor, at its sole discretion, may review bills for enhanced savings to include reductions for unbundling, fragmentation, up-coding, correct coding initiatives, and/or may refer bills for physician or nurse review and audit. All enhanced reductions achieved are subject to a fee rate of twenty five percent (25%) of the net savings below state fee schedule.

5. Managed Care: Subject to the City's selection or approval of any subcontractors or vendors, managed care services will be provided.
- (a) The Annual Fee(s) as determined in Item 2 include the following services:
1. All settlement issues;
 2. Preparation of 1099 Forms;
 3. Preparation for claim audits and attendance at claim audits;
 4. All litigated issues and attendance at administrative hearings where appropriate or required;
 5. Management of catastrophic claims;
 6. Claim reviews as required;
 7. Account Executive duties including, but not limited to, coordination of claim meetings, general account coordination and coordination of periodic educational/training seminars for managers;
 8. Bank Account Management, including, but not limited to, deposit/check coordination, balancing and reconciliation, stop payments and refunds.
 9. All standard reports provided electronically, including monthly check register and claim activity reports that are accessed through the Internet using Contractor's Claim System.
 10. Assistance in and data collection for jurisdictional renewals;
 11. Web/Internet reporting of claims;
 12. Costs and expenses related to the pursuit of subrogation and recovery rights;
 13. ISO Claims Indexing;
 14. MIOSHA reporting
- (b) The following represents services that may be obtained on behalf of the City and will result in an additional fee, to be billed and paid for through each individual claim as an Allocated Loss Expense (Expense Column). Contractor shall not proceed with these services without prior discussion with and authorization from the City.
1. Fees to attorneys for litigated and potentially litigated claims and for attorney representation at hearings, pretrial conferences or similar proceedings;
 2. Fees to court reporters;
 3. All court costs, court fees and court expenses;
 4. Pre-and post-judgment interest paid as a result of judgments;
 5. Fees for service of process;
 6. Costs of undercover operative and detective services;
 7. Costs for employing experts for the preparation of maps, professional photographs, accounting services or records, chemical or physical analysis, diagrams, appraisals, or similar documents;
 8. Costs for employing experts for their advice, opinions or testimony concerning claims under investigation or in litigation or for which a declaratory judgment is sought;

9. Costs for obtaining independent medical examination and/or evaluation for rehabilitation and/or to determine the extent of Client liability;
10. Costs of legal transcripts of testimony taken at coroner's inquests, criminal or civil proceedings;
11. Costs for legal transcripts or copies of public and/or medical records;
12. Costs of depositions and court reported and/or recorded statements;
13. Costs of engineers, handwriting experts and/or any other type of expert used in the preparation of litigation and/or used on a one time basis to resolve disputes;

(c) Managed Care Services including the following services:

1. Utilization Review Services
2. Light Duty and Return-to-Work Programs (workers' compensation)
3. Medical and Hospital Bill Audit Services
4. Pharmacy Benefit Services (workers' compensation)
5. Medical Case Management and Vocational Case Management Services, including Nurse Case Management (workers' compensation)
6. Any other similar cost, fee or expense reasonably chargeable to the investigation, negotiation, settlement or defense of a claim or loss to protect or perfect the subrogation rights of Client.

6. Definitions: For the purpose of this Agreement, the following definitions apply to the type of claims processed and fee structure options:

Workers' Compensation Medical Only Claim: A Medical Only Claim is defined as any claim resulting from an accident with minor injury that requires routine medical treatment and no claim for payments of indemnity (disability) benefits are made.

Workers' Compensation Indemnity Claim: An Indemnity Claim is defined as any claim meeting the criteria for payment of compensation (any type of disability) benefits according to the applicable State's Workers' Compensation Act.

Workers' Compensation Record Only Claim: A Record Only Claim is defined as any claim resulting from an accident with no apparent injury and no medical treatment, excluding first aid. There are no billings for payment of medical services by a physician, hospital, or any other provider that submits medical bills for treatment.

Life of Contract: Refers to the management of any new Indemnity Claim processed during the term of the Agreement. Any such Indemnity Claim processed during the term of the Agreement managed at the rate set forth above for as long the City renews this Agreement. If the Agreement is terminated or cancelled, all claims remaining open shall be managed at either an agreed annual fee rate per claim or returned to the City, as mutually agreed upon by the parties.

Takeover Claims: Refers to all Indemnity and Medical Only Claims open prior to the claims management obligations of this Agreement have been initiated. The claims shall be managed at the agreed fee rate per claim and subject to Life of Contract.

Tail Claims: Refers to all Indemnity and Medical Only claims remaining open after the claims management obligations have been satisfied. The claims shall be managed at either an agreed annual fee rate per claim, at time and expense, or returned to the City, as mutually agreed upon by the parties.

7. Allocated Loss Expense: Shall mean, in addition to the fees to be paid in accordance with this Agreement, all reasonable costs or expenses incurred on behalf of the City as a result of Contractor's right to engage the service of firms or persons outside our organization for work in connection with the investigation, adjustment, settlement or defense of a particular claim.

Allocated Loss Expense includes, but is not limited to, subrogation; rehabilitation; automobile appraisal; all court costs, fees and expenses; fees for services of process; fees to attorneys; the cost of services of undercover operations and detectives; fees of independent adjusters or attorneys for investigation or adjustment of claims in areas removed from reasonable access to Contractor's salaried employees; the cost employing experts for the purpose of preparing maps, photographs, diagrams, chemical or physical analysis, or giving of expert advice or opinion; the cost of copies of transcripts of testimony at coroner's inquests or criminal or civil proceedings; the cost of obtaining copies of any public records; and the costs of depositions and court reporter or recorded statements.

Allocated Loss Expense is not included in the Minimum Contract Fee, the Administrative Fee, nor the Claims Service Fees. Allocated Loss Expense is not subject to the Settlement Authority Limit. Penalties assessed against the City for the late reporting of a claim are not included in Allocated Loss Expense nor in the Service Fee. If such penalty arises out of a failure by Contractor, such penalty will be borne by Contractor. Such penalties are to be borne by the responsible party outside this contract.