

**COOPERATIVE PROCUREMENT CONTRACT BETWEEN  
THE CITY OF SAN DIEGO  
AND  
ANTHEM BLUE CROSS  
FOR EMPLOYEE ASSISTANCE COUNSELING SERVICES**

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**I. RECITALS**

A. San Diego Municipal Code (SDMC) section 22.3208 authorizes the City of San Diego (City) to use a cooperative procurement contract awarded by another agency where the City's Purchasing Agent certifies in writing that the cooperative procurement contract is in the City's best interests, to the City's economic advantage, and the agency's contract was awarded using a process that complies with the policies, rules, and regulations developed and implemented by the City Manager.

B. The County of San Diego (County), a political subdivision of the State of California, issued a request for proposals for employee assistance counseling services by posting the solicitation on the internet site <https://buynet.sdcounty.ca.gov> on March 2, 2015 through March 27, 2015. Therefore, the request for proposal was advertised for more than ten (10) days prior to the proposal closing date in compliance with SDMC 22.3208 and A.R. 35.11.

C. On July 1, 2015, based on the results of the competitive process, the County awarded a contract with Contractor and executed a contract titled "Agreement with Anthem Blue Cross for Employee Assistance Counseling Services", identified as County Contract No. 551684, which was subsequently amended on February 1, 2016, July 1, 2016, June 26, 2017, and May 3, 2018, cumulatively referred to as the "Agency Agreement", attached as Exhibit 1; and

D. On August 26, 2019, the City's Purchasing Agent certified in writing that the Agency Agreement meets the requirements set forth in SDMC section 22.3208.

E. Contractor has agreed to provide to City the same pricing offered to the County for services consistent with the terms and conditions in the Agency Agreement except as modified herein.

**II. GENERAL PROVISIONS**

In consideration of the above recitals and mutual covenants and conditions set forth in this Contract, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, City and Contractor hereby agree to the terms and conditions as set forth in the Agency Agreement with the exception of the following modifications:

1. Incorporation. This Contract shall fully incorporate the Recitals which the parties agree are true and correct.

2. Effective Date. This Contract is effective on the last date that this Contract is signed by City and Contractor and approved by the City Attorney through June 30, 2020.

3. Early Termination. Contractor must provide written notice within ten (10) calendar days of the date in which the Agency Agreement is terminated to the Contract Administrator identified in Section III, below. Such written notice must explain the basis for termination and the date upon which the termination is effective. Early termination of the Agency Agreement by County or Contractor shall not in any way affect the existence of this Contract.

4. Compliance with Controlling Laws. Contractor shall comply with all applicable local, state, and federal laws and regulations. In addition, Contractor shall comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations.

5. Governing Law. The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

6. Jurisdiction and Venue. The venue for any suit concerning this Contract, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

7. Modifications. The modifications described in Exhibit 2, which is attached hereto and incorporated herein by reference, shall affect only the page(s) and section(s) and terms and conditions referred to herein. All other terms and conditions of the Agency Agreement shall be in full force and effect as to City and Contractor as incorporated in this Contract.

### **III. CONTRACT ADMINISTRATOR**

1. Contract Administrator. The City's Human Resources Department is the Contract Administrator for the purposes of this Contract.

2. Notices. Unless otherwise specified, in all cases where written notice is required under this Contract, service shall be deemed sufficient if the notice is personally delivered or deposited in the United States mail, with first class postage paid, attention to the Human Resources Department. Proper notice shall be effective on the date of personal delivery or five (5) days after deposit in the United States postal mailbox. Notices shall be sent to:

Attention: Maria Davis-Cherry  
City of San Diego, Human Resources Department  
1200 Third Avenue, Ste. 916 / MS 63  
MDavisCherry@sandiego.gov  
619-236-6385

### **IV. COMPENSATION**

1. City shall pay Contractor for the goods or services provided in accordance with this Contract in an amount not to exceed \$250,000. Contractor is not obligated to provide goods or services in excess of this amount, and does so at its own risk, unless this Contract is amended in writing duly executed by City and Contractor increasing this not-to-exceed amount.

Cooperative Procurement Contract  
Effective: May 1, 2015  
OCA Document No. 845112\_3

2. Annual Appropriation of Funds. Contractor agrees that work and compensation under this Contract is contingent on the San Diego City Council (City Council) appropriating funding for and authorizing such work and compensation for fiscal year 2020. City may terminate the Contract if sufficient funds are not duly appropriated and authorized for the fiscal year, or if funds appropriated and authorized for this Contract are exhausted before the fiscal year concludes. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by the City Council.

## V. CONTRACT

1. Contract Documents. This Contract consists of this Contract and its Exhibits, the County's Request for Proposal No. 6793, the Contractor's response to RFP No. 6793, County Contract No. 551684, and County Contract No. 551684 Amendments No. 1, 2, 3, and 4, which are attached as Exhibits hereto and incorporated by reference (collectively, "Contract Documents"). These documents together contain all the terms and conditions of the Contract between City and Contractor.

2. Contract Interpretation. The Contract Documents completely describe the goods and/or services to be provided. Contractor shall provide any goods or services that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for or identified in the Contract Documents. Words or phrases which have a well-known technical or construction industry trade meaning and are used to describe goods or services will be interpreted in accordance with that meaning unless a different definition has been provided in the Contract Documents.

3. Precedence. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, City and Contractor will use the order of precedence as set forth below. The document in highest order of precedence controls. Inconsistent provisions in the Contract Documents that address the same subject, are consistent, and have different degrees of specificity, are not in conflict and the more specific language will control. The order of precedence from highest to lowest is as follows:

- 1<sup>st</sup> This Contract
- 2<sup>nd</sup> Agency Agreement
- 3<sup>rd</sup> Contractor's response to RFP No. 6793
- 4<sup>th</sup> County's Request for Proposal No. 6793 and any Addenda.

4. Counterparts. This Contract may be executed in counterparts which, when taken together, shall constitute a single signed original as though all parties executed the same page.

5. Public Agencies. Other public agencies as defined by California Government Code section 6500 may choose to use the terms of this Contract, subject to Contractor's acceptance. City is not liable or responsible for any obligations related to a subsequent agreement between Contractor and another public agency.

IN WITNESS WHEREOF, this Contract is executed by City and Contractor acting by and through their authorized officers.

ANTHEM BLUE CROSS

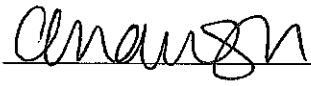
By: 

Name: Jeff Spahr

Title: VP, Specialty Business Dev.

Date: 09/13/2019

THE CITY OF SAN DIEGO

By: 

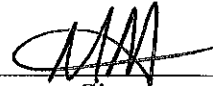
Name: CHRISTIANA GAUGER

Title: DEPUTY DIRECTOR

Date: 9/23/2019

Approved as to form this 24 day of September, 2019

MARA W. ELLIOTT, City Attorney

By: 

Deputy City Attorney

Print Name: Miguel Merrell

**EXHIBIT 2: MODIFICATIONS TO THE AGENCY AGREEMENT**

1. References. All references to “County of San Diego” or “County” in the Agency Agreement shall mean and be understood to be “City of San Diego (City)”.

2. Deleted or Modified Provisions.

2.1 Section 1.1 of Exhibit C (Pricing / Payment Schedule) of County Contract No. 551684 is amended by replacing the following language “Option Year 4 July 1, 2020 through June 30, 2020” with “Option Year 4 July 1, 2019 through June 30, 2020.”

2.2 The provisions of County Contract No. 551684 Amendment No. 1 do not apply because the City does not have a Sheriff’s Department.

2.3 Section 10.1 (Indemnity) of County Contract No. 551684 is deleted and replaced with the following language, “Indemnification. To the fullest extent permitted by law, Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any goods provided or performance of services under this Contract by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. Contractor’s duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.”

3. City Mandated Clauses and Requirements. By signing this Contract, Contractor certifies that Contractor is aware of, and will comply with, these City mandated clauses and requirements throughout the duration of the Contract.

3.1 Drug-Free Workplace Certification. Contractor shall comply with City’s Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into this Contract by reference.

3.2 ADA Certification: Contractor shall comply with the City’s Americans with Disabilities Act Compliance/City Contracts requirements as set forth in Council Policy 100-04, which is incorporated into this Contract by reference.

3.3 Non-Discrimination Requirements.

3.3.1 Compliance with the City’s Equal Employment Opportunity Outreach Program (EOCP): Contractor shall comply with the City’s EOCP requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall

ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a prime Contractor liable for any discriminatory practice of its subcontractors.

3.3.2 Non-Discrimination Ordinance: Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors, or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. Contracts between Contractor and any subcontractors or suppliers shall contain this language.

3.3.3 Compliance Investigations: Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in remedies being ordered against Contractor up to and including contract termination, debarment, and other sanctions.

3.4 Business Tax Certificate (BTC). Any company doing business with the City of San Diego is required to obtain a Business Tax Certificate and to provide a copy of its BTC to the City before a Contract is executed.

3.5 Product Endorsement. Contractor shall comply with Council Policy 000-41 concerning product endorsement which requires that any advertisement referring to City as a user of a good or service will require the prior written approval of the Mayor.