

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Professional Services Agreement with BMI Audit Services, LLC for health care claims audit services for the City's self-insured medical benefits

_____ Briefing
 _____ Proposed Action
 _____ Consent
 10/19/16 _____ Action
 _____ First Reading
 _____ Second Reading
 _____ Third Reading
 _____ Public Hearing
 _____ Budget Advisory

COUNCIL BILL # _____
 Originating Department Finance
 Contact Person Susy Haugen
 Phone Number (425) 257-8612
 FOR AGENDA OF October 19, 2016

Initialed by:
 Department Head _____
 CAA _____
 Council President dl
jm

Location **Preceding Action** **Attachments** **Department(s) Approval**
 _____ _____ Professional Services Finance
 _____ _____ Agreement

Amount Budgeted	\$23,000	
Expenditure Required	\$23,000	Account Number(s): 508-5170000410
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

The City is required by WAC 200-110*120 to obtain a health care claims audit of claims reserving, adjusting, and payment procedures every three years at a minimum. The audit must be conducted by a qualified claims auditor who is not affiliated with the program, its broker of record, or its third-party administrator. The scope of the claims audit shall include filing procedures, internal financial control mechanism, and claim adjustment expense reports. The work performed through this agreement will satisfy that requirement.

RECOMMENDATION:

Authorize the Mayor to sign a Professional Services Agreement with BMI Audit Services, LLC for health care claims audit services for the City's self-insured medical benefits.

CITY OF EVERETT

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT made and entered into on this ____ day of September, 2016, by and between the **CITY OF EVERETT**, a municipal corporation under the laws of the State of Washington, hereinafter referred to as the "City," and BMI Audit Services, LLC, whose address 202 S. Michigan St., Suite 200, South Bend, IN 46601, hereinafter referred to as the "Service Provider."

WHEREAS, the City desires to engage Service Provider to provide health care claims audit services for the City of Everett; and

WHEREAS, Service Provider represented, and by entering into this Agreement now represents, that it is fully qualified to perform the work to be performed hereunder in a competent and professional manner;

NOW, THEREFORE, the parties herein do mutually agree as follows:

1. **Engagement of Service Provider.** In a competent and professional manner, Service Provider shall provide the services described in Attachment A (hereafter referred to as "Work"). Without a written directive of an authorized representative of the City, Service Provider shall not perform any services that are in addition to, or beyond the scope of, the Work between the City and Service Provider. If Service Provider's proposal is attached as an exhibit, and if such proposal contains or incorporates any conditions or terms in addition to or different from the terms of this Agreement, then Service Provider expressly agrees that such conditions or terms are neither incorporated nor included into this Agreement between the City and Service Provider.
2. **Intellectual Property Rights.** Unless otherwise expressly agreed in writing, all intellectual property rights in works created pursuant to this Agreement, or for the City of Everett, belong to the City of Everett. Service Provider retains any intellectual property rights in works created by Service Provider prior to engagement, or not for its performance of this Agreement. Service Provider expressly represents and warrants that the Work shall be original and shall not infringe on another's copyright, or rights in trade or service marks. Service Provider agrees to defend and indemnify City from any and all claims and damages arising out of this Agreement or the Work created hereunder.
3. **Time of Beginning and Completion of Performance.** This Agreement shall commence as of the date of execution of this Agreement and shall be completed by March 31, 2017 assuming a mid-October 2016 start date.
4. **Compensation.**
 - A. The City shall pay Service Provider only for completed Work and for services actually rendered which are described in Attachment A. Such payment shall be full compensation for Work performed or services rendered, including, but not limited to, all labor, materials, supplies, equipment, travel expenses, and incidentals necessary to complete the Work.
 - B. The City agrees to pay the Service Provider upon receipt of invoices from the Service Provider.

- C. Total compensation, including all services and expenses, shall not exceed a maximum of \$23,000.
- D. If Service Provider fails or refuses to accept direction or carry out the reasonable directions of the City in performance of its work, the City may, in addition to any other remedy, withhold from any payment otherwise due an amount that the City in good faith believes is equal to the cost to the City of correcting, re-procuring, or remedying any damage caused by Service Provider's conduct.

5. **Termination of Contract.** City reserves the right to terminate this Agreement at any time by sending written notice of termination to Service Provider ("Notice"). The Notice shall specify a termination date ("Termination Date") at least fourteen (14) days after the date the Notice is issued. The Notice shall be effective ("Notice Date") upon the earlier of either actual receipt by Service Provider (whether by fax, mail, delivery or other method reasonably calculated to be received by Service Provider in a reasonably prompt manner) or three calendar days after issuance of the Notice. Upon the Notice Date, Service Provider shall immediately commence to end the Work in a reasonable and orderly manner. Unless terminated for Service Provider's material breach, Service Provider shall be paid or reimbursed for: (a) all hours worked and Eligible Expenses incurred up to the Notice Date, less all payments previously made; and (b) those hours worked and Eligible Expenses incurred after the Notice Date, but prior to the Termination Date, that were reasonably necessary to terminate the Work in an orderly manner. The Notice shall be sent by the United States Mail to Service Provider's address provided herein, postage prepaid, certified or registered mail, return receipt requested, or by delivery. In addition, the Notice may also be sent by any other method reasonably believed to provide Service Provider actual notice in a timely manner, such as fax. The City does not by this section waive, release, or forego any legal remedy for any violation, breach, or non-performance of any of the provision of this Agreement. At its sole option, City may deduct from the final payment due Service Provider (a) any damages, expenses or costs arising out of any such violations, breaches, or non-performance and (b) any other backcharges or credits. The City shall not pay Service Provider for any expenses incurred or work done following the effective date of termination unless authorized in writing by the City before the expenses are incurred or the work is done.

6. **Confidentiality.** Each party hereto ("Such Party") shall hold in trust for the other party hereto ("Such Other Party"), and shall not disclose to any non-party to the Agreement, any confidential information of Such Other Party. Confidential information is information which relates to Such Other Party's research, development, trade secrets or business affairs, but does not include information which is generally known or easily ascertainable by non-parties of ordinary skill in computer systems design and programming.

Service Provider hereby acknowledges that during the performance of this contract, the Service Provider may learn or receive confidential Client information and therefore Service Provider hereby confirms that all such information relating to the Client's business will be kept confidential by the Service Provider, except to the extent that such information is required to be divulged to the consultant's clerical or support staff or associates in order to enable Service Provider to perform Service Provider's contract obligation.

Service Provider will retain from Administrator the claims data in its original format, and any electronic product produced there from, for a period not to exceed three (3) years from date of receipt, unless otherwise instructed by the City.

7. **Changes.** The City may, from time to time, unilaterally decrease the scope of the services of Service Provider to be performed hereunder. Such decrease in the scope of work (and resulting decrease

in compensation), shall: (a) be made only in writing and signed by an authorized City representative, (b) be explicitly identified as such and (c) become a part of this Agreement.

8. **Subletting/Assignment of Contracts.** Service Provider shall not sublet or assign any of the Work without the express, prior written consent of the City.

9. **Indemnification.**

A. **General.** To the extent of its fault only, Service Provider will defend and indemnify the City from any and all Claims relating to, or arising out of, Service Provider's performance of this Agreement. Service Provider will defend and indemnify the City whether a Claim is asserted directly against the City, or whether a Claim is asserted indirectly against the City, e.g., a Claim is asserted against someone else who then seeks contribution or indemnity from the City. The amount of insurance obtained by, obtainable by, or required of Service Provider does not in any way limit Service Provider's duty to defend and indemnify the City. The City retains the right to approve Claims investigation and counsel assigned to said Claim and all investigation and legal work regarding said Claim shall be performed under a fiduciary relationship to the City.

B. **Waiver of Workmen's Compensation Immunity.** Solely and expressly for the purpose of its duties to indemnify and defend the City, Service Provider specifically waives any immunity it may have under the State Industrial Insurance Law, Title 51 RCW. Service Provider recognizes that this waiver of immunity under Title 51 RCW was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation.

C. **Definitions.** As used in this section: (1) "City" includes the City's officers, employees, agents, and representatives; (2) "Claims" include all losses, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damage, whether threatened, asserted or filed against the City, whether such Claims sound in tort, contract, or any other legal theory, whether such Claims have been reduced to judgment or arbitration award, irrespective of the type of relief sought or demanded (such as money or injunctive relief), and irrespective of the type of damage alleged (such as bodily injury, damage to property, economic loss, general damages, special damages, or punitive damages); and (3) "Service Provider" includes Service Provider, its employees, agents, representatives and subcontractors. If, and to the extent, Service Provider employs or engages subcontractors, then Service Provider shall ensure that each such subcontractor (and subsequent tiers of subcontractors) shall expressly agree to defend and indemnify the City to the extent and on the same terms and conditions as Service Provider pursuant to this section.

10. **Insurance.** Service Provider shall procure and keep in force during the term of this Agreement, at Service Provider's own cost and expense, automobile liability insurance on all vehicles used by Service Provider in the performance of its duties under this Agreement. Proof of such insurance shall be provided to the City prior to performing any services hereunder. A statement certifying that no vehicle will be used in fulfilling this Agreement may be substituted for this insurance requirement.

11. **Independent Contractor.**

A. The parties agree that this Agreement neither constitutes nor creates an employer-employee relationship. As an independent contractor, Service Provider shall be responsible for all obligations relating to federal income tax, self-employment FICA taxes and contributions, and all other so called employer taxes and contributions, including, but not limited to, industrial insurance (Workmen's Compensation). Service Provider agrees to indemnify, defend and hold the City harmless from any claims, valid or otherwise, made against the City because of these obligations.

B. Any and all employees of Service Provider, while engaged in the performance of any Work, shall be considered employees of Service Provider only and not of the City, and any and all claims that may or might arise under the Worker's Compensation Act on behalf of said employees or Service Provider, while so engaged in any and all claims made by a third party as a consequence of any negligent act or omission on the part of Service Provider's employees, while so engaged on any of the Work, shall be the sole obligation and responsibility of Service Provider.

C. Service Provider shall comply with all applicable provisions of the Fair Labor Standards Act and other legislation affecting its employees and the rules and regulations issued thereunder insofar as applicable to its employees and shall at all times save the City free, clear and harmless from all actions, claims, demands and expenses arising out of said act, and rules and regulations that are or may be promulgated in connection therewith.

D. Service Provider assumes full responsibility for the payment of all payroll taxes, use, sales, income, or other form of taxes (such as state and, city business and occupation taxes), fees, licenses, excises or payments required by any city, federal or state legislation which are now or may during the term of the Agreement be enacted as to all persons employed by Service Provider and as to all duties, activities and requirements by Service Provider in performance of the Work and Service Provider shall assume exclusive liability therefore, and meet all requirements thereunder pursuant to any rules or regulations that are now or may be promulgated in connection therewith.

12. **Employment.** Service Provider warrants that it had not employed or retained any company or person, other than a bona fide employee working solely for Service Provider, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Service Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

13. **Audits and Inspections.** At any time during normal business hours and as often as the City may deem necessary, Service Provider shall make available to the City for the City's examination all of Service Provider's books, records and documents with respect to all matters covered by this Agreement and, furthermore, Service Provider will permit the City to audit, examine and make copies, excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

14. **City of Everett Business License.** Service Provider shall obtain a City of Everett business license prior to performing any work pursuant to this Agreement.

15. **State of Washington Requirements.** Service Provider shall register and obtain any State of Washington business licenses, Department of Revenue account and/or unified business identifier number as required by RCW 50.04.140 and 51.08.195 prior to performing any work pursuant to this Agreement.

16. **Compliance with Federal, State, and Local Laws.** Service Provider shall comply with and obey all federal, state, and local laws, regulations, and ordinances applicable to the operation of its business and to its performance of work hereunder.

17. **Compliance with Grant Terms and Conditions.** Service Provider shall comply with any and all conditions, terms and requirements of any federal, state or other grant that wholly or partially funds Service Provider's work hereunder.

18. **Waiver**. Any waiver by Service Provider or the City or the breach of any provision of this Agreement by the other party will not operate, or be construed, as a waiver of any subsequent breach by either party or prevent either party from thereafter enforcing any such provisions.

19. **Complete Agreement**. This Agreement contains the complete and integrated understanding and Agreement between the parties and supersedes any understanding, Agreement or negotiation whether oral or written not set forth herein.

20. **Equal Employment Opportunity**. Service Provider shall not discriminate against any employee, applicant for employment, independent Service Provider, or proposed independent Service Provider, on the basis of race, color, religion, sex, age, disability, marital state, or national origin.

21. **Modification of Agreement**. This Agreement may be modified as provided in paragraph 6, or by a writing explicitly identified as a modification of this Agreement that is signed by authorized representatives of the City and Service Provider.

22. **Severability**. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void, insofar as it is in conflict with said laws, the remainder of the Agreement shall remain in full force and effect.

23. **Notices**.

A. Notices to the City of Everett shall be sent to the following address:

City of Everett
Attn: Susy Haugen
2930 Wetmore Ave
Everett, WA 98201

B. Notices to Service Provider shall be sent to the following address:

Service Provider
Attn.: Robert Temples
BMI Audit Services
202 S. Michigan St., Suite 200
South Bend, IN 46601

24. **Venue**. It is agreed that venue for any lawsuit arising out of this Agreement shall be Snohomish County.

IN WITNESS WHEREOF, the City and Service Provider have executed this Agreement as of the date first above written.

CONTRACTOR: Please fill in the spaces and sign in the box appropriate for your business entity.

**CITY OF EVERETT
WASHINGTON**

*Limited
Liability
Company*

BMI Audit Services, LLC

By: _____

Ray Stephanson, Mayor

By _____
Typed/Printed Name: Robert Temples
Chief Operating Officer

Date: _____

Date

ATTEST:

Sharon Fuller, City Clerk

Date: _____

APPROVED AS TO FORM:

Jim Iles
City Attorney

Date: _____

ATTACHMENT A

1. Scope of Services. Specific to this Agreement, Service Provider will provide the following Services for the City relative to medical claims administered by Healthcare Management (“Administrator”).

- Service Provider will contact Administrator to review audit process and data needs.
- Service Provider will review the City enrollment records versus Administrator eligibility records for the audit period to confirm that only those truly eligible for the plan were covered.
- Service Provider will review all pertinent plan design documents in order to customize its electronic auditing tools.
- Service Provider will electronically audit 100% of medical claims paid by Administrator from January 1, 2014, through December 31, 2015.
- Service Provider will produce exception reports identifying and organizing all claims potentially paid in error into error categories.
- Upon review of all error categories, Service Provider will then judgmentally select up to 100 total claims that will provide the necessary information to support all claims within each error category.
- Service Provider will then perform an on-site audit of those judgmentally selected claims at Administrator’s claims payment location. Each on-site audited claim will be logged onto a worksheet detailing the reason for which Service Provider considers the claim was paid in error.
- Administrator will be provided copies of all worksheets in order for them to reply to Service Provider’s findings. Administrator will then return their responses back to Service Provider within a reasonable amount of time and all responses will be published in the Final Report.
- Based upon the on-site findings and Administrator’s responses, Service Provider will re-examine the full electronic file to determine if additional claims (those related by same patient and/or services) are to be included in the Final Report.
- Service Provider will prepare and deliver the Final Report using detailed spreadsheets, narrative findings, and recommendations based on the electronic analysis, on-site audit reviews, and Administrator’s responses.

- Service Provider will not initiate recovery efforts, but can provide guidance to the City as to the advantages and consequences of recovery action and the potential impact on plan participants.

2. Professional Fees. For Services stated in above Scope of Services, the City will pay the Service Provider professional fees as follows:

a) Due within 10 days of execution of Agreement	\$11,500.00
b) Due within 10 days of receipt of the Final Report	\$11,500.00

3. Travel Expenses. All reasonable travel related expenses, including airfare, lodging, food and transportation will be billed in addition to those Professional Fees. Service Provider will assume responsibility for any travel related expenses exceeding \$2,000.