

AGREEMENT FOR EMPLOYEE HEALTH CENTER ADMINISTRATION

THIS AGREEMENT, made this 4th day of April, 2023, is by and between the City of Fort Lauderdale, a Florida municipality, (“City”), whose address is 100 North Andrews Avenue, Fort Lauderdale, Florida, 33301, and Marathon Health, LLC, a Delaware limited liability company authorized to transact business in the State of Florida, (“Contractor” or “Marathon”), whose address is 10 W. Market Street, Suite 2900, Indianapolis, IN 46204, Phone: 1-866-500-4135, Email: legal@marathon-health.com, (collectively, “Parties”).

NOW THEREFORE, for and in consideration of the mutual promises and covenants set forth herein and other good and valuable consideration, the Contractor shall provide to the City Employee Health Center Administration services (the “Work”), and the City and the Contractor covenant and agree as follows:

WITNESSETH:

I. DOCUMENTS

The following documents (collectively “Contract Documents”) are hereby incorporated into and made part of this Agreement (Form P-0001):

- (1) The Contractor’s Scope of Services (“Exhibit A”).
- (2) The City’s General Conditions for Piggyback, Cooperative, and Bidding-Exempt Contracts (“Exhibit B”).
- (3) Client Requirements (“Exhibit C”).

All Contract Documents may also be collectively referred to as the “Documents.” In the event of any conflict between or among the Documents or any ambiguity or missing specifications or instruction, the following priority is established:

- A. First, this Agreement (Form P-0001) dated April 4, 2023, and any attachments.
- B. Second, Exhibit A
- C. Third, Exhibit B
- D. Fourth, Exhibit C
- E. Fifth, the Parties’ mutual agreement.

II. SCOPE

The Contractor shall perform the work under the general direction of the City as set forth in the Contract Documents. Notwithstanding anything to the contrary in this Agreement, any health services providers engaged by Marathon to provide services shall retain the authority to direct or control their medical decisions, acts or judgments, and no provider will be required to provide any service that such provider believes, in his or her medical judgment, should be provided by another healthcare provider or in another setting.

Unless otherwise specified herein, the Contractor shall perform all work identified in this Agreement. The parties agree that the scope of services is a description of Contractor’s obligations

and responsibilities, and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by Contractor impractical, illogical, or unconscionable.

Contractor acknowledges and agrees that the City's Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement.

By signing this Agreement, the Contractor represents that it thoroughly reviewed the documents incorporated into this Agreement by reference and that it accepts the description of the work and the conditions under which the Work is to be performed.

III. TERM OF AGREEMENT

The initial contract period shall commence on April 4, 2023, and shall end on April 3, 2026. The City reserves the right to extend the contract for three additional one-year terms, providing all terms, conditions, and specifications remain the same, both parties agree to the extension, and such extension is approved by the City. In the event the term of this Agreement extends beyond the end of any fiscal year of City, to wit, September 30th, the continuation of this Agreement beyond the end of such fiscal year shall be subject to both the appropriation and the availability of funds.

IV. COMPENSATION

The Contractor agrees to provide the services and/or materials as specified in the Contract Documents at the cost specified in Exhibit A. It is acknowledged and agreed by Contractor that this amount is the maximum payable and constitutes a limitation upon City's obligation to compensate Contractor for Contractor's services related to this Agreement. This maximum amount, however, does not constitute a limitation of any sort upon Contractor's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services. Except as otherwise provided in the solicitation, no amount shall be paid to Contractor to reimburse Contractor's expenses. Notwithstanding the foregoing, in addition to the amounts set forth below in Section V, Marathon may invoice, and the City will be responsible for paying for, the Contractor's cost of any pharmaceuticals or vaccines stocked by Contractor at the Health Center as part of the Health Center's approved formulary, and for any outside laboratory tests.

V. METHOD OF BILLING AND PAYMENT

Contractor may submit invoices for compensation no more often than monthly, but only after the services for which the invoices are submitted have been completed. An original invoice plus one copy are due within thirty (30) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed and/or the goods provided.

The City will pay the Contractor an annual service fee (the "Annual Fees"), payable in twelve equal monthly installments. The Annual Fees for the first year of the initial contract term shall be \$1,264,985. For each subsequent year during the initial contract term and each one-year option to renew, the then-current Annual Fee will be increased by a percentage equal to the average percentage increase in the CPI (defined herein) during the preceding calendar year; provided, however, that the annual increase to the Annual Fee will be subject to a minimum of 2% and a maximum of 6%.

As used herein, "CPI" means the Consumer Price Index, All Urban Consumers (CPI-U) US City Average for Medical Care as published by the United States Department of Labor, Bureau of Labor Statistics.¹

The following is an example of the manner in which the annual percentage increase is calculated:

- Assume that the contract's one-year anniversary is July 1, 2023
- Percentage increase is determined based on January 2022 – December 2022 data
- Increase in CPI during the 2022 calendar year was 4.05% -- above the minimum of 2% and below the maximum of 6%
- July invoice will reflect 4.05% increase in the Annual Fee

City shall pay Contractor within forty-five (45) days of receipt of Contractor's proper invoice, as provided in the Florida Local Government Prompt Payment Act.

To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by the City's Contract Administrator. Payment may be withheld for failure of Contractor to comply with a term, condition, or requirement of this Agreement.

Notwithstanding any provision of this Agreement to the contrary, City may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work that has not been remedied or resolved in a manner satisfactory to the City's Contract Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by City.

VI. GENERAL CONDITIONS

A. Indemnification

Contractor shall protect and defend at Contractor's expense, counsel being subject to the City's approval, and indemnify and hold harmless the City and the City's officers, employees, volunteers, and agents from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any negligent, reckless, or intentional act or omission by the Contractor or by any officer, employee, agent, invitee, subcontractor, or sublicensee of the Contractor. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the City Manager, any sums due Contractor under this Agreement may be retained by City until all of City's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by City.

B. Intellectual Property

Contractor shall protect and defend at Contractor's expense, counsel being subject to the City's approval, and indemnify and hold harmless the City from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, royalties, expenses, or liabilities, including any award of attorney fees and any award of costs, in

¹ Available at: https://data.bls.gov/timeseries/CUUR0000SAM&output_view=pct_12mths

connection with or arising directly or indirectly out of any infringement or allegation of infringement of any patent, copyright, or other intellectual property right in connection with the Contractor's or the City's use of any copyrighted, patented or un-patented invention, process, article, material, or device that is manufactured, provided, or used pursuant to this Agreement. If the Contractor uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.

C. Termination for Cause

The aggrieved party may terminate this Agreement for cause if the party in breach has not corrected the breach within thirty (30) days after written notice from the aggrieved party identifying the breach.

This Agreement may be terminated for cause for reasons including, but not limited to, Contractor's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to perform the Work to the City's satisfaction; or failure to continuously perform the Work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement.

D. Termination for Convenience

The City reserves the right, in its best interest as determined by the City, to cancel this contract for convenience by giving written notice to the Contractor at least ninety (90) days prior to the effective date of such cancellation. In the event this Agreement is terminated for convenience, Contractor shall be paid for any services performed to the City's satisfaction pursuant to the Agreement through the termination date specified in the written notice of termination. Contractor acknowledges and agrees that it has received good, valuable and sufficient consideration from City, the receipt and adequacy of which are hereby acknowledged by Contractor, for City's right to terminate this Agreement for convenience.

E. Cancellation for Unappropriated Funds

The City reserves the right, in its best interest as determined by the City, to cancel this contract for unappropriated funds or unavailability of funds by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such cancellation. The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise provided by law.

F. Insurance

As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement and during any renewal or extension term of this Agreement, the Contractor, at its sole expense, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of the Contractor. The Contractor shall provide the City a certificate of insurance evidencing such coverage. The Contractor's insurance coverage shall be primary insurance for all applicable policies, as respects to the City. The limits of coverage under each policy

maintained by Contractor shall not be interpreted as limiting the Contractor's liability and obligations under this Agreement. All insurance policies shall be through insurers authorized or eligible to write policies in the State of Florida and possess an A.M. Best rating of A-, VII or better, subject to approval by the City's Risk Manager.

The coverages, limits, and/or endorsements required herein protect the interests of the City, and these coverages, limits, and/or endorsements shall in no way be relied upon by the Contractor for assessing the extent or determining appropriate types and limits of coverage to protect the Contractor against any loss exposures, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the City's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under this Agreement.

The following insurance policies and coverages are required:

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$1,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$1,000,000 each occurrence and \$2,000,000 aggregate for Products and Completed Operations

Policy must include coverage for contractual liability and independent contractors.

The City, a Florida municipality, its officials, employees, and volunteers are to be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the Contractor. The coverage shall contain no special limitation on the scope of protection afforded to the City, its officials, employees, and volunteers.

Professional Liability/Medical Malpractice

Coverage must be afforded for Wrongful Acts in an amount not less than \$5,000,000 each claim and \$5,000,000 aggregate.

The Contractor must keep the professional liability insurance in force until the third anniversary of expiration or early termination of this Agreement or the third anniversary of acceptance of Work by the City, whichever is longer, which obligation shall survive expiration or early termination of this Agreement.

Cyber Liability

Coverage must be afforded in an amount not less than \$2,000,000 per claim for negligent retention of data as well as notification and related costs for cyber incidents.

Business Automobile Liability

Proof of coverage must be provided for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than the State of Florida required minimums unless a different amount is required by City Ordinance(s).

If the Contractor does not own vehicles, the Contractor shall maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Workers' Compensation and Employer's Liability

Coverage must be afforded per Chapter 440, Florida Statutes. Any person or entity performing work for or on behalf of the City must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida Statute.

The Contractor waives, and the Contractor shall ensure that the Contractor's insurance carrier waives, all subrogation rights against the City, its officials, employees, and volunteers for all losses or damages. The City requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

The Contractor must be in compliance with all applicable State and federal workers' compensation laws.

Insurance Certificate Requirements

- a. The Contractor shall provide the City with valid Certificates of Insurance (binders are unacceptable) no later than ten (10) days prior to the start of work contemplated in this Agreement.
- b. The Contractor shall provide to the City a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
- c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of the Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
- d. In the event the Agreement term or any surviving obligation of the Contractor following expiration or early termination of the Agreement goes beyond the expiration date of the insurance policy, the Contractor shall provide the City with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The City reserves the right to suspend the Agreement until this requirement is met.
- e. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.
- f. The City shall be covered as an Additional Insured on all liability policies, with the exception of Workers' Compensation and Medical Malpractice Liability.
- g. The City shall be granted a Waiver of Subrogation on the Contractor's Workers' Compensation insurance policy.
- h. The title of the Agreement, Contract number, or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

The Contractor has the sole responsibility for all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the application of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the City as an Additional Insured shall be at the Contractor's expense.

If the Contractor's primary insurance policy/policies do not meet the minimum requirements as set forth in this Agreement, the Contractor may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

The Contractor's insurance coverage shall be primary insurance as respects to the City, a Florida municipality, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, a Florida municipality, its officials, employees, or volunteers shall be non-contributory.

Any exclusion or provision in any insurance policy maintained by the Contractor that excludes coverage required in this Agreement shall be deemed unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained until this Agreement is terminated, except that the professional liability insurance must be maintained in force until the third anniversary of expiration or early termination of this Agreement or the third anniversary of acceptance of Work by the City, whichever is longer. Any lapse in coverage may be considered breach of contract. In addition, the Contractor must provide to the City confirmation of coverage renewal via an updated certificate of insurance should any policies expire prior to the expiration of this Agreement. The City reserves the right to review, at any time, coverage forms and limits of the Contractor's insurance policies.

The Contractor shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement to the Contractor's insurance company or companies and the City's Risk Management office as soon as practical.

It is the Contractor's responsibility to ensure that any and all of the Contractor's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of the Contractor. The City reserves the right to adjust insurance limits from time to time at its discretion with notice to the Contractor.

G. Environmental, Health and Safety

Contractor shall place the highest priority on health and safety and shall maintain a safe working environment during performance of the Work. Contractor shall comply, and shall secure compliance by its employees, agents, and subcontractors, with all applicable environmental, health, safety and security laws and regulations, and performance conditions

in this Agreement. Compliance with such requirements shall represent the minimum standard required of Contractor. Contractor shall be responsible for examining all requirements and determine whether additional or more stringent environmental, health, safety and security provisions are required for the Work. Contractor agrees to utilize protective devices as required by applicable laws, regulations, and any industry or Contractor's health and safety plans and regulations, and to pay the costs and expenses thereof, and warrants that all such persons shall be fit and qualified to carry out the Work.

H. Standard of Care

Contractor represents that it is qualified to perform the Work, that Contractor and its subcontractors possess current, valid state and/or local licenses to perform the Work, and that their services shall be performed in a manner consistent with that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar healthcare providers.

I. Rights in Documents and Work

Any and all reports, photographs, surveys, and other data and documents ("Materials") created in connection with this Agreement ("City Materials") are and shall remain the property of City; and Contractor disclaims any copyright in such Materials; provided, however, that: (i) Contractor retains all rights in Contractor's pre-existing Materials incorporated in the City Materials and grants an unlimited, perpetual, fully-paid, fully-transferrable license to the City for the use of Contractor's pre-existing Materials; and (ii) the City shall not have any rights in PHI (defined below) created in connection with this Agreement, except as expressly reserved to health plan sponsors under HIPAA (defined below). In the event of and upon termination of this Agreement, any Materials prepared by Contractor and required to be delivered hereunder, whether finished or unfinished, shall become the property of City (subject to the limitations of the foregoing sentence) and shall be delivered by Contractor to the City's Contract Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to Contractor shall be withheld until Contractor delivers all documents to the City as provided herein.

J. Audit Right and Retention of Records

City shall have the right to audit the books, records, and accounts of Contractor and Contractor's subcontractors that are related to this Agreement. Contractor shall keep, and Contractor shall cause Contractor's subcontractors to keep, such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. All books, records, and accounts of Contractor and Contractor's subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Contractor or Contractor's subcontractor, as applicable, shall make same available at no cost to City in written form.

Contractor and Contractor's subcontractors shall preserve and make available, at reasonable times for examination and audit by City in Broward County, Florida, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida public records law, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the Contractor shall

retain the books, records, and accounts until resolution of the audit findings. If the Florida public records law is determined by City to be applicable to Contractor and Contractor's subcontractors' records, Contractor and Contractor's subcontractors shall comply with all requirements thereof; however, Contractor and Contractor's subcontractors shall violate no confidentiality or non-disclosure requirement of either federal or state law. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.

Contractor shall, by written contract, require Contractor's subcontractors to agree to the requirements and obligations of this Section.

The Contractor shall maintain during the term of the contract all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract.

Notwithstanding anything to the contrary in this Section J, nothing in this Section shall permit the City to inspect protected health information ("PHI") protected under the Health Insurance Portability and Accountability Act of 1996, as amended, ("HIPAA"), unless expressly permitted under HIPAA.

K. Public Entity Crime Act

Contractor represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases of real property to City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with City, and may not transact any business with City in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

L. Independent Contractor

Contractor is an independent contractor under this Agreement. Services provided by Contractor pursuant to this Agreement shall be subject to the supervision of the Contractor. In providing such services, neither Contractor nor Contractor's agents shall act as officers, employees, or agents of City. No partnership, joint venture, or other joint relationship is created hereby. City does not extend to Contractor or Contractor's agents any authority of any kind to bind City in any respect whatsoever.

M. Inspection and Non-Waiver

Contractor shall permit the City's representatives to inspect the Employee Health Center at which the Work will be performed. Except in the event of an emergency, any such inspection shall occur at a time mutually agreeable to the Parties and shall not disrupt the

ordinary operations of the Health Center. The City's representatives shall not attempt to enter or access any clinical space where a patient is actively being seen by a provider.

The failure of the City to insist upon strict performance of any other terms of this Agreement or to exercise any rights conferred by this Agreement shall not be construed by Contractor as a waiver of the City's right to assert or rely on any such terms or rights on any future occasion or as a waiver of any other terms or rights.

N. Assignment and Performance

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. City may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by Contractor of this Agreement or any right or interest herein without City's written consent.

Contractor represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

Contractor shall perform Contractor's duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of Contractor's performance and all interim and final product(s) provided to or on behalf of City shall be comparable to the best local and national standards.

In the event Contractor engages any subcontractor in the performance of this Agreement, Contractor shall ensure that all of Contractor's subcontractors perform in accordance with the terms and conditions of this Agreement. Contractor shall be fully responsible for all of Contractor's subcontractors' performance, and liable for any of Contractor's subcontractors' non-performance and all of Contractor's subcontractors' acts and omissions. Contractor shall defend at Contractor's expense, counsel being subject to City's approval or disapproval, and indemnify and hold City and City's officers, employees, and agents harmless from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, by or in favor of any of Contractor's subcontractors for payment for work performed for City by any of such subcontractors, and from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, occasioned by or arising out of any act or omission by any of Contractor's subcontractors or by any of Contractor's subcontractors' officers, agents, or employees.

O. Conflicts

Neither Contractor nor any of Contractor's employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment and care related to Contractor's performance under this Agreement.

Contractor further agrees that none of Contractor's officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he, she, or Contractor is not a party, unless compelled by court process. Further, Contractor agrees that such persons shall not give sworn testimony or issue a report

or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Contractor or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event Contractor is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Contractor agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Contractor.

P. Schedule and Delays

Time is of the essence in this Agreement. By signing, Contractor affirms that it believes the schedule to be reasonable; provided, however, the parties acknowledge that the schedule might be modified as the City directs.

Q. Materiality and Waiver of Breach

City and Contractor agree that each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the parties in exchange for *quid pro quo*, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

R. Compliance With Laws

Contractor shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing Contractor's duties, responsibilities, and obligations pursuant to this Agreement.

S. Severance

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the provisions not having been found by a court of competent jurisdiction to be invalid or unenforceable shall continue to be effective.

T. Limitation of Liability

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement other than the breach arising from the City's failure to pay any fees payable under this Agreement, so that its liability for any such breach never exceeds the sum of \$1,000. Contractor hereby expresses its willingness to enter into this Agreement with Contractor's recovery from the City for any action or claim arising from this Agreement, except for a claim by Contractor for the payment of fees payable hereunder, to be limited to a maximum amount of \$1,000 less the amount of all funds actually paid by the City to Contractor pursuant to this Agreement.

Accordingly, and notwithstanding any other term or condition of this Agreement, Contractor hereby agrees that the City shall not be liable to Contractor for damages in an amount in excess of \$1,000 which amount shall be reduced by the amount actually paid by the City to Contractor pursuant to this Agreement, for any action or claim arising out of this Agreement, except for a claim by Contractor for the payment of fees payable hereunder.

In addition, the City agrees that, notwithstanding anything to the contrary in this Agreement, the Contractor's maximum liability to the City for the payment of any damages, fees, costs, settlements, judgments, or other monetary liability as a result of any action or claim arising from this Agreement shall be eighteen (18) months of service fees prior to the first date on which the liability arose. In no event will either Party be liable to the other Party for indirect, incidental, consequential or punitive damages resulting from any breach of this Agreement, except as provided in Section VI.A. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the City's sovereign immunity or a waiver of the limitations placed upon the City's liability as set forth in Section 768.28, Florida Statutes.

U. Jurisdiction, Venue, Waiver, Waiver of Jury Trial

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in the Seventeenth Judicial Circuit in and for Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida, Fort Lauderdale Division. THE PARTIES EXPRESSLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY OF ANY ISSUES RELATED TO THIS AGREEMENT.

In the event Contractor is a corporation organized under the laws of any province of Canada or is a Canadian federal corporation, the City may enforce in the United States of America or in Canada or in both countries a judgment entered against the Contractor. The Contractor waives any and all defenses to the City's enforcement in Canada of a judgment entered by a court in the United States of America.

V. Amendments

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the City's Mayor and/or City Manager, as determined by the Charter and Ordinances of the City of Fort Lauderdale, Florida, and Contractor, or others delegated authority to or otherwise authorized to execute same on their behalf.

W. Prior Agreements

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

X. Payable Interest

Except as required and provided for by the Florida Local Government Prompt Payment Act, City shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Contractor waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

Y. Representation of Authority

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

Z. Uncontrollable Circumstances ("Force Majeure")

The City and Contractor will be excused from the performance of their respective obligations under this agreement when and to the extent that their performance is delayed or prevented by any circumstances beyond their control including, fire, flood, explosion, strikes or other labor disputes, act of God or public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility needed for their performance, provided that:

A. The non performing party gives the other party prompt written notice describing the particulars of the Force Majeure including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the Force Majeure;

B. The excuse of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

C. No obligations of either party that arose before the Force Majeure causing the excuse of performance are excused as a result of the Force Majeure; and

D. The non-performing party uses its best efforts to remedy its inability to perform. Notwithstanding the above, performance shall not be excused under this Section for a period in excess of two (2) months, provided that in extenuating circumstances, the City may excuse performance for a longer term. Economic hardship of the Contractor will not constitute Force Majeure. The term of the agreement shall be extended by a period equal to that during which either party's performance is suspended under this Section.

AA. Scrutinized Companies

Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), affirmed, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the "Cuba Amendment," the Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2022), that it is not engaged in a boycott of Israel, and that it does not have

business operations in Cuba or Syria, as provided in section 287.135, Florida Statutes (2022), as may be amended or revised. The City may terminate this Agreement at the City's option if the Contractor is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2022), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2022), or is engaged in a boycott of Israel or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2022), as may be amended or revised.

BB. Public Records

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY CLERK'S OFFICE, 100 N. ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA, 33301, PHONE: 954-828-5002, EMAIL: PRRCONTRACT@FORTLAUDERDALE.GOV.

Contractor shall comply with public records laws, and Contractor shall:

1. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
2. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2022), as may be amended or revised, or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of this contract if the Contractor does not transfer the records to the City.
4. Upon completion of the Contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of this Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of this Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

CC. Non-Discrimination

The Contractor shall not discriminate against its employees based on the employee's race, color, religion, gender, gender identity, gender expression, marital status, sexual orientation, national origin, age, disability, or any other protected classification as defined by applicable law.

1. The Contractor certifies and represents that the Contractor offers the same health benefits to the domestic partners of its employees as are offered its employees' spouses or offers its employees the cash equivalent of such health benefits because it is unable to provide health benefits to its employees' domestic partners, and that the Contractor will comply with Section 2-187, Code of Ordinances of the City of Fort Lauderdale, Florida, (2023), as may be amended or revised, ("Section 2-187"), during the entire term of this Agreement.
2. The failure of the Contractor to comply with Section 2-187 shall be deemed to be a material breach of this Agreement, entitling the City to pursue any remedy stated below or any remedy provided under applicable law.
3. The City may terminate this Agreement if the Contractor fails to comply with Section 2-187.
4. The City may retain all monies due or to become due until the Contractor complies with Section 2-187.
5. The Contractor may be subject to debarment or suspension proceedings. Such proceedings will be consistent with the procedures in Section 2-183 of the Code of Ordinances of the City of Fort Lauderdale, Florida.

DD. E-Verify

As a condition precedent to the effectiveness of this Agreement, pursuant to Section 448.095, Florida Statutes (2022), as may be amended or revised, the Contractor and its subcontractors shall register with and use the E-Verify system to electronically verify the employment eligibility of newly hired employees.

1. The Contractor shall require each of its subcontractors, if any, to provide the Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Contractor shall maintain a copy of the subcontractor's affidavit for the duration of this Agreement and in accordance with the public records requirements of this Agreement.
2. The City, the Contractor, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Florida Statutes (2022), as may be amended or revised, shall terminate the Agreement with the person or entity.
3. The City, upon good faith belief that a subcontractor knowingly violated the provisions of Section 448.095(2), Florida Statutes (2022), as may be amended or revised, but that the Contractor otherwise complied with Section 448.095(2), Florida Statutes (2022), as may be amended or revised, shall promptly notify Contractor and order the Contractor to

immediately terminate the contract with the subcontractor, and the Contractor shall comply with such order.

4. An Agreement terminated under Sections 448.095(2)(c)1. or 2., Florida Statutes (2022), as may be amended or revised, is not a breach of contract and may not be considered as such. If the City terminates this Agreement under Section 448.095(2)(c), Florida Statutes (2022), as may be amended or revised, the Contractor may not be awarded a public contract for at least one year after the date on which the Agreement was terminated. The Contractor is liable for any additional costs incurred by the City as a result of termination of this Agreement.

5. Contractor shall include in each of its subcontracts, if any, the requirements set forth in this Section VI. DD., including this subparagraph, requiring any and all subcontractors, as defined in Section 448.095(1)(j), Florida Statutes (2022), as may be amended or revised, to include all of the requirements of this Section VI. DD. in their subcontracts. Contractor shall be responsible for compliance by any and all subcontractors, as defined in Section 448.095(1)(j), Florida Statutes (2022), as may be amended or revised, with the requirements of Section 448.095, Florida Statutes (2022), as may be amended or revised.

IN WITNESS WHEREOF, the City and the Contractor execute this Contract as follows:

CITY OF FORT LAUDERDALE

By: _____
Greg Chavarria, City Manager

Approved as to form:

Assistant City Attorney

WITNESSES:

MARATHON HEALTH, LLC

Print Name:

By: _____
Jeff Wells, Chief Executive Officer

Print Name:

ATTEST:

(SEAL)

Patrick Murphy, CFO

STATE OF _____ :
COUNTY OF _____ :

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2023, by Jeff

Wells as Chief Executive Officer for Marathon Health, LLC, a Delaware limited liability company authorized to transact business in the State of Florida.

(SEAL)

(Signature of Notary Public)

Notary Public, State of _____

(Print, Type, or Stamp Commissioned Name of
Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

EXHIBIT A

Marathon Health

City of Fort Lauderdale

2023 Scope of Services

Primary & Urgent Care	Description
Acute Care Adults 12+	Treatment of Members 12+ with minor acute illnesses, including respiratory infections, urinary tract infections, skin infections, wounds or similar illnesses that are episodic in nature and short in duration. Adult acute care is available via telephonic and video channels, in addition to in-person care. The health services do not include emergency medical services and the Care Providers will follow Marathon's Emergency Response Care Policy attached as Exhibit F.
Medical Procedures	Various medical procedures that can be done at a provider visit in a health center, including pap smear, shave biopsy, simple laceration repair - dermabond/adhesive strips, ear irrigation, skin tag removal, and cryotherapy - warts cryoprobe.
Pediatric Acute Care 2+	Pediatric acute care for children 2+ with episodic medical issues (cough, cold, fever, rash etc.) and does not include well child. Pediatric acute care is available via telephonic and video channels, in addition to in-person care.
Annual Preventive Visits/Physical Exams 12+	Annual preventive physical examinations including well child checks (12+) with the ordering (or referral) of age-appropriate screenings, labs and immunizations. Age -appropriate screenings include mammography, colonoscopy, bone density and other screening tests. Includes sports/camp physicals for age 5+ without well child exams.
Workplace Injury Triage	<p>OSHA first aid care for minor work injuries. When necessary, Members will be redirected to an appropriate facility for continued treatment.</p> <p>OSHA first aid treatment includes:</p> <ul style="list-style-type: none"> • Using a non-prescription medication at nonprescription strength • Administering tetanus immunizations • Cleaning, flushing or soaking wounds on the surface of the skin • Using wound coverings such as bandages, Band-Aids™, gauze pads, etc.; or using butterfly bandages or Steri-Strips™ • Using hot or cold therapy • Using any non-rigid means of support, such as elastic bandages, wraps, non-rigid back belts, etc. • Drilling of a fingernail or toenail to relieve pressure, or draining fluid from a blister • Removing foreign bodies from the eye using only irrigation or a cotton swab • Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs or other simple means • Providing fluids to drink for relief of heat stress
Patient Support: FMLA, OSHA and disability forms	Care Providers can complete FMLA, Occupational Health (first treatment of injury), and disability forms on behalf of patients when such provider is the medically appropriate resource to fill out the form.
Depression & Anxiety Screening	Screening services for depression and anxiety at annual visits or when deemed necessary by the Care Provider. If necessary, follow up care and services will be provided to the patient as needed.

Large Medical Equipment	Large medical equipment that is necessary to provide the Services which may include spirometry, cryophobe, oxygen tanks, AED, EKG, Cholestech, exam tables and phlebotomy chairs.
Medical Supplies and Small Medical Equipment	Marathon will provide its standard package of disposable medical supplies and small equipment necessary to for provide the Services at the health center. Non-standard supplies and equipment requested by Client will be provided at an additional cost.
Collaborating Physician	Collaborating physician to mentor the NP and PA providers in the health centers.

Lab & Pharmacy	Description
Diagnostic Tests	Diagnostic tests ordered by Care Providers at their discretion for patients at a health center visit.
Immunizations	Immunizations including: influenza, Tdap, Hep A - pediatrics & adult, Hep B, PCV13/15, Pneumovax 23, Meningococcal conjugate/Men-ACWY, HPV-9 (age 12+), recombinant zoster vaccine (age 50+) (the standard set). Marathon will invoice Client for the cost of immunizations.
Injections	Injections ordered by a Care Provider during a patient visit from Marathon's standard set can be administered in the Health Center. Testosterone injections are not part of the standard set and are not included. Marathon will pass on the costs of injections to Client as administered.
Labs	Labs ordered by Care Providers within Marathon health centers. There are over 200 approved labs on the Marathon formulary that will be used to guide the providers in the most needed and cost effective lab orders. Lab costs are billed to clients by Marathon as pass through expenses.
External Lab Requests	Lab draws at the health center for labs ordered by external providers. The labs must be on the Marathon formulary list and with the consent of the patient. Marathon will ONLY perform the service as a collection site and will not give the patient results or additional information. Results and additional information will be provided by the external provider requesting the labs. Marathon will keep a copy of the lab results in the patient EMR for any future reference.
Medication Dispensing	Medications are available at point-of-care and over the counter via the onsite health dispensary or home delivery where legally permitted. All medications (including Over The Counter) medications will only be dispensed in connection with a patient visit. The health centers will stock starter medications (antibiotics, chronic condition meds etc.) and meds used most often at a provider visit onsite at the health centers based on the Marathon formulary. The cost for medical dispensing will passed through to the employer at the time of order. HomeMed will be billed upon dispense. Medication pricing will fluctuate according to the formulary costs.
Purified Protein Derivative (PPD) Test	Administration of the purified protein derivative (PPD) skin test to determine if a patient has tuberculosis.
Travel Medicine	Care Provider will meet with patient and follow guidance of CDC on what immunizations or care would be needed for planned destinations. Immunizations include polio, typhoid, varicella and MMR. Yellow fever immunization is not available and patient would need to be referred outside of the center. Cost of vaccines administered and any medications dispensed will be invoiced to Client.

Integrated Wellness	Description
Health Coaching	General coaching for all patients embedded in all visits where appropriate, especially when the patient is in a chronic disease management program or needs assistance with an ongoing health condition. Care Providers are trained on how to determine if coaching is needed and when/where it should be done.
Self- Assessment Tools	Access to a Health Risk Assessment (HRA) as well as other tools made available via the online portal. Patients can log into the portal to complete the HRA which will give them a health summary which is then pushed to the EMR. Client can choose to turn the HRA on or off depending on their needs.
Wellness Programs	Includes 8 week tobacco cessation program, mindfulness program and 6-12 week weight loss program. These are typically standardized, in person group programs delivered by health center providers. Client may choose to have wellness programs as part of the participation rules for incentives. Custom requests requiring additional coordination, staffing or supplies may be provided at an additional cost.
Wellness Webinar Library	A library of various wellness webinars that are available throughout the calendar year and made available to Client upon request.
Incentive Programs	Marathon provides consulting and management services for Client's incentive program. Marathon will assist Client with developing an incentive plan that aligns with its benefits and health management strategy. Marathon manages the incentives through the Member portal with the ability to track wellness activities defined by Client (participation and outcomes-based). If Client requests additional services that require additional coordination, staffing or supplies they can be provided at an additional cost. Compliance with applicable laws, including the Americans with Disabilities Act, is the responsibility of Client.
Transparency Tools	Hyperlink to third party transparency tools that offer online resources sharing quality, cost, and other data about providers. A hyperlink to a tool from the Marathon Member portal is available as a standard offering. Any technical integration beyond the hyperlink will be provided at an additional cost.

Optional Integrated Wellness	Description
Challenge Programs	Marathon will manage Client's challenge programs including the tracking of wellness activities and steps challenges along with communications and administration.
Annual Biometric Screening Events - Outside health centers	At the request of Client and for an additional cost, Marathon will arrange for mass biometric screening events or individual nurse visits. If applicable, Marathon will contract and help coordinate these events with a third party vendor to provide these services at any location specified by Client. These annual screenings are designed to assess the following metrics: height, weight, BMI, waist circumference, blood pressure, lipid assessment, tobacco use (patient attestation or blood draw), blood sugar (A1c test, non-fasting glucose). Individual nurse-visits are also available. Terms to be mutually agreed in a service order.
Flu Shot Events	At the request of Client and for an additional cost, Marathon will arrange for mass flu shot events. If requested by Client, Marathon will help coordinate the administering of flu-shots with a third party vendor for onsite events,

	multiple employer locations or where Marathon does not have a physical location. Terms to be mutually agreed in a service order.
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Condition Management	Description
Condition Management 12+	Treatment of adults and children 12+ for chronic disease management inclusive of diagnosis, periodic evaluation, ongoing management and coaching, lifestyle management/education, prescription medications and laboratory monitoring.
Diabetes Durable Medical Equipment	Durable medical equipment used for diabetic patients (strips, lancets and meters) kept in stock and provided at the health center.
Spirometry Testing	Spirometry testing which measures the amount of air inhaled and exhaled, and how quickly air is exhaled to diagnose asthma, chronic obstructive pulmonary disease (COPD) and other conditions that affect breathing.

Ignite Technology Platform	Description
Health Engagement System Technology Platform (for up to 110% of the employees and spouses eligible to participate)	<ul style="list-style-type: none"> Marathon Member Portal with Personal Health Record (PHR), risk profile, interactivity trackers, incentives management and secure messaging with health center staff Online scheduling system and secure messaging Ability to conduct acute care and health coaching telephonically and over video interface, accessible from the Member portal and mobile (subject to applicable state laws) Electronic Medical Record Ability to import encounter data from carrier to provide historical patient encounter information Integrated technologies supporting patient education and clinical workflow (e.g., clinical decision support, medication dispensing) Export up to three (3) types of data feeds (encounter, lab, or HRA) in Marathon standard format
Medical Claims Submission	Marathon will submit medical provider claims via Marathon's standard format to the designated payer of Client through Marathon's EMR system upon request. Submission will be made to one health insurance plan designated by Client. Requests to submit claims to additional plans requiring build-out of additional payer profiles in the EMR will be evaluated on a case-by-case basis and may be subject to an additional charge.

Account Management and Advisory Services	Description
One Point of Contact	As assigned Client Advocate provides one point of contact for triaging issues that may be handled by Marathon's team of analysts, Care Providers, communications resources and others to ensure any issues are identified and addressed quickly.
Clinical Coverage Plan	Marathon will establish and provide a coverage plan for clinical staff absences due to illness, vacation or continuing medical education (CME) time off.
Monthly Reviews	Client Advocate will hold monthly calls with the client to deliver and discuss the reports described below to ensure that the client has data on health center activity and progress toward goals.

Annual Reviews	Client Advocate will provide face-to-face annual reviews of the health center business, incorporating the Client-specific key performance metrics from the previous year, as well as a strategic plan for the next year.
Ongoing Health Promotions	Client Advocate will work together with the Client to manage ongoing communications for the promotion of health center services and operations
Strategic Planning	Client Advocate will work to understand and support client's unique business objectives and goals for the health center. The Client Advocate will work collaboratively with the Client's broker/consultant, as well as other health related vendors (EAP, DM, etc.) as needed to ensure that employee health resources are fully leveraged.

EXHIBIT B

CITY OF FORT LAUDERDALE GENERAL CONDITIONS FOR PIGGYBACK, COOPERATIVE, AND BIDDING-EXEMPT CONTRACTS

These conditions are standard for all piggyback, local, state, or national cooperative procurement organization, federal General Services Administration, State of Florida contracts, and bidding-exempt contracts for the purchase of goods or services by the City of Fort Lauderdale.

PART I CONDITIONS:

1.01 DELIVERY: Time will be of the essence for any orders placed as a result of this Contract. The City reserves the right to cancel any orders, or part thereof, without obligation if delivery is not made in accordance with the schedule specified in this Contract.

1.02 PACKING SLIPS: It will be the responsibility of the Contractor to attach all packing slips to the OUTSIDE of each shipment. Packing slips must provide a detailed description of what is to be received and reference the City of Fort Lauderdale purchase order number that is associated with the shipment. Failure to provide a detailed packing slip attached to the outside of shipment may result in refusal of shipment at Contractor's expense.

1.03 PAYMENT TERMS AND CASH DISCOUNTS: Payment terms will be net 45 days after the date of satisfactory delivery at the place of acceptance and receipt of correct invoice at the office specified, whichever occurs last.

1.04 SCRUTINIZED COMPANIES

As a condition precedent to the effectiveness of this Agreement, subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), *affirmed*, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the "Cuba Amendment," the Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and that it does not have business operations in Cuba or Syria, as provided in section 287.135, Florida Statutes (2022), as may be amended or revised. As a condition precedent to any contract for goods or services of any amount and as a condition precedent to the renewal of any contract for goods or services of any amount, the Contractor certifies that it is not on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2022), as may be amended or revised, and that it is not engaged in a boycott of Israel. The City may terminate this Agreement at the City's option if the Contractor is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2022), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2022), as may be amended or revised, or is engaged in a boycott of Israel, or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2022), as may be amended or revised.

1.05 DEBARRED OR SUSPENDED CONTRACTORS

The Contractor certifies that neither it nor any of its principals or subcontractors are presently debarred or suspended by any federal department or agency.

Part II TAXES:

2.01 TAXES: The City of Fort Lauderdale is exempt from Federal Excise and Florida Sales taxes on direct purchase of tangible property. Exemption number for EIN is 59-6000319, and State Sales tax exemption number is 85-8013875578C-1.

PART III BONDS AND INSURANCE

3.01 PERFORMANCE BOND: If a performance bond is required by the Contract, as a condition precedent to the effectiveness of the Agreement, the Contractor shall within fifteen (15) working days after the commencement date of the Contract, furnish to the City a Performance Bond, payable to the City of Fort Lauderdale, Florida, in the face amount specified in the Contract as surety for faithful performance under the terms and conditions of the Contract. If the bond is on an annual coverage basis, renewal for each succeeding year shall be submitted to the City thirty (30) days prior to the termination date of the existing Performance Bond. The Performance Bond must be executed by a surety company of recognized standing, authorized to do business in the State of Florida and having a resident agent.

Acknowledgement and agreement is given by both parties that the amount herein set for the Performance Bond is not intended to be nor shall be deemed to be in the nature of liquidated damages nor is it intended to limit the liability of the Contractor to the City in the event of a material breach of this Agreement by the Contractor.

3.02 INSURANCE: The Contractor shall assume full responsibility and expense to obtain all necessary insurance as required by City or specified in the Contract.

The Contractor shall provide to the Procurement Services Division original certificates of coverage and receive notification of approval of those certificates by the City's Risk Manager prior to engaging in any activities under this contract. The Contractor's insurance is subject to the approval of the City's Risk Manager. The certificates must list the City as an ADDITIONAL INSURED for General Liability Insurance, and shall have no less than thirty (30) days written notice of cancellation or material change. Further modification of the insurance requirements may be made at the sole discretion of the City's Risk Manager if circumstances change or adequate protection of the City is not presented. The Contractor agrees to abide by such modifications.

PART IV PURCHASE ORDER AND CONTRACT TERMS:

4.01 COMPLIANCE WITH SPECIFICATIONS, LATE DELIVERIES/PENALTIES: Items offered may be tested for compliance with contract specifications. Items delivered which do not conform to Contract specifications may be rejected and returned at Contractor's expense. Any violation resulting in contract termination for cause or delivery of items not conforming to specifications, or late delivery may also result in:

- Contractor's name being removed from the City's bidder's mailing list for a specified period and Contractor will not be recommended for any contract during that period.
- All City Departments being advised to refrain from doing business with the Contractor.
- All other remedies in law or equity.

4.02 ACCEPTANCE, CONDITION, AND PACKAGING: The material delivered pursuant to the Contract shall remain the property of the Seller until a physical inspection is made and the material accepted to the satisfaction of the City. The material must comply fully with the terms of the Contract, be of the required quality, new, and the latest model. All containers shall be suitable for storage and shipment by common carrier, and all prices shall include standard commercial packaging. The City will not accept substitutes of any kind. Any substitutes or material not meeting specifications will be returned at the Contractor's expense. Payment will be made only after City receipt and acceptance of materials or services.

4.03 SAFETY STANDARDS: All manufactured items and fabricated assemblies shall comply with applicable requirements of the Occupation Safety and Health Act of 1970 as amended.

4.04 ASBESTOS STATEMENT: All material supplied must be 100% asbestos free. Contractor certifies that Contractor will supply only material or equipment that is 100% asbestos free.

4.05 VERBAL INSTRUCTIONS PROCEDURE: No negotiations, decisions, or actions shall be initiated or executed by the Contractor as a result of any discussions with any City employee. Only those communications which are in writing from an authorized City representative may be considered. Only written communications from Contractors, which are assigned by a person designated as authorized to bind the Contractor, will be recognized by the City as duly authorized expressions on behalf of Contractors.

4.06 INDEPENDENT CONTRACTOR: The Contractor is an independent contractor under this Agreement. Personal services provided by the Proposer shall be by employees of the Contractor and subject to supervision by the Contractor, and not as officers, employees, or agents of the City. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, procurement policies unless otherwise stated in the Contract, and other similar administrative procedures applicable to services rendered under this contract shall be those of the Contractor.

4.07 INDEMNITY/HOLD HARMLESS AGREEMENT: Contractor shall protect and defend at Contractor's expense, counsel being subject to the City's approval, and indemnify and hold harmless the City and the City's officers, employees, volunteers, and agents from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any act or omission by the Contractor or by any officer,

employee, agent, invitee, subcontractor, or sublicensee of the Contractor. Without limiting the foregoing, any and all such claims, suits, or other actions relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged violations of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court shall be included in the indemnity hereunder.

4.08 TERMINATION FOR CAUSE: If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor shall violate any of the provisions of this Agreement, the City may upon written notice to the Contractor terminate the right of the Contractor to proceed under this Agreement, or with such part or parts of the Agreement as to which there has been default, and may hold the Contractor liable for any damages caused to the City by reason of such default and termination. In the event of such termination, any completed services performed by the Contractor under this Agreement shall, at the option of the City, become the City's property and the Contractor shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. The Contractor, however, shall not be relieved of liability to the City for damages sustained by the City by reason of any breach of the Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purpose of setoff until such time as the amount of damages due to the City from the Contractor can be determined.

4.09 TERMINATION FOR CONVENIENCE: The City reserves the right, in the City's best interest as determined by the City, to cancel the contract by giving written notice to the Contractor thirty (30) days prior to the effective date of such cancellation.

4.10 CANCELLATION FOR UNAPPROPRIATED FUNDS: The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.

4.11 RECORDS/AUDIT: The Contractor shall maintain during the term of the contract all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract. The Contractor agrees to make available to the City Auditor or the City Auditor's designee, during normal business hours and in Broward, Miami-Dade or Palm Beach Counties, all books of account, reports, and records relating to this contract. The Contractor shall retain all books of account, reports, and records relating to this contract for the duration of the contract and for three years after the final payment under this Agreement, until all pending audits, investigations or litigation matters relating to the contract are closed, or until expiration of the records retention period prescribed by Florida law or the records retention schedules adopted by the Division of Library and Information Services of the Florida Department of State, whichever is later.

4.12 PERMITS, TAXES, LICENSES: The successful Contractor shall, at Contractor's own expense, obtain all necessary permits, pay all licenses, fees and taxes, required to comply with all local ordinances, state and federal laws, rules and regulations applicable to business to be carried out under this contract.

4.13 LAWS/ORDINANCES: The Contractor shall observe and comply with all Federal, state, local and municipal laws, ordinances rules and regulations that would apply to this contract.

NON-DISCRIMINATION: The Contractor shall not discriminate against its employees based on the employee's race, color, religion, gender, gender identity, gender expression, marital status, sexual orientation, national origin, age, disability, or any other protected classification as defined by applicable law.

1. The Contractor certifies and represents that the Contractor offers the same health benefits to the domestic partners of its employees as are offered its employees' spouses or offers its employees the cash equivalent of such health benefits because it is unable to provide health benefits to its employees' domestic partners, and that the Contractor will comply with Section 2-187, Code of Ordinances of the City of Fort Lauderdale, Florida, (2022), as may be amended or revised, ("Section 2-187"), during the entire term of this Agreement.

2. The failure of the Contractor to comply with Section 2-187 shall be deemed to be a material breach of this Agreement, entitling the City to pursue any remedy stated below or any remedy provided under applicable law.

3. The City may terminate this Agreement if the Contractor fails to comply with Section 2-187.

4. The City may retain all monies due or to become due until the Contractor complies with Section 2-187.

5. The Contractor may be subject to debarment or suspension proceedings. Such proceedings will be consistent with the procedures in section 2-183 of the Code of Ordinances of the City of Fort Lauderdale, Florida.

4.14 UNUSUAL CIRCUMSTANCES: If during a contract term where costs to the City are to remain firm or adjustments are restricted by a percentage or CPI cap, unusual circumstances that could not have been foreseen by either party of the contract occur, and those circumstances significantly affect the Contractor's cost in providing the required prior items or services, then the Contractor may request adjustments to the costs to the City to reflect the changed circumstances. The circumstances must be beyond the control of the Contractor, and the requested adjustments must be fully documented. The City may, after examination, refuse to accept the adjusted costs if they are not properly documented, increases are considered to be excessive, or decreases are considered to be insufficient. In the event the City does not wish to accept the adjusted costs and the matter cannot be resolved to the satisfaction of the City, the City will reserve the following options:

1. The contract can be canceled by the City upon giving thirty (30) days written notice to the Contractor with no penalty to the City or Contractor. The Contractor shall fill all City requirements submitted to the Contractor until the termination date contained in the notice.
2. The City requires the Contractor to continue to provide the items and services at the firm fixed (non-adjusted) cost until the termination of the contract term then in effect.
3. If the City, in its interest and in its sole opinion, determines that the Contractor in a capricious manner attempted to use this section of the contract to relieve Contractor of a legitimate obligation under the contract, and no unusual circumstances had occurred, the City reserves the right to take any and all action under law or equity. Such action shall include, but not be limited to, declaring the Contractor in default and disqualifying Contractor from receiving any business from the City for a stated period of time.

If the City does agree to adjusted costs, these adjusted costs shall not be invoiced to the City until the Contractor receives notice in writing signed by a person authorized to bind the City in such matters.

4.15 ELIGIBILITY: If applicable, the Contractor must first register with the Florida Department of State in accordance with Florida Statutes, prior to entering into a contract with the City.

4.16 PATENTS AND ROYALTIES: The Contractor, without exception, shall defend, indemnify, and hold harmless the City and the City's employees, officers, employees, volunteers, and agents from and against liability of any nature and kind, including cost and expenses for or on account of any copyrighted, patented or un-patented invention, process, or article manufactured or used in the performance of the contract, including their use by the City. If the Contractor uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that prices shall include any and all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.

4.17 ASSIGNMENT: Contractor shall not transfer or assign the performance required by the Contract without the prior written consent of the City. The Contract and the monies which may become due hereunder are not assignable except with the prior written approval of the City Commission or the City Manager or City Manager's designee, depending on original approval.

4.18 GOVERNING LAW; VENUE: The Contract shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of the Contract, and for any other legal proceeding, shall be in the courts in and for Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida.

4.19 PUBLIC RECORDS

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC

RECORDS AT CITY CLERK'S OFFICE, PHONE: 954-828-5002, EMAIL: PRRCONTRACT@FORTLAUDERDALE.GOV, 100 NORTH ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA 33301.

Contractor shall comply with public records laws, and Contractor shall:

1. Keep and maintain public records required by the City to perform the service.
2. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2022), as may be amended or revised, or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City.
4. Upon completion of the Contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

4.20 **WARRANTIES OF USAGE:** Any quantities listed in this Contract are estimates. No warranty or guarantee of quantities is given or implied. It is understood that the Contractor will furnish the City's needs as they arise.

4.21 **E-VERIFY:**

As a condition precedent to the effectiveness of this Agreement, pursuant to Section 448.095, Florida Statutes (2022), as may be amended or revised, the Contractor and its subcontractors shall register with and use the E-Verify system to electronically verify the employment eligibility of newly hired employees.

1. The Contractor shall require each of its subcontractors, if any, to provide the Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Contractor shall maintain a copy of the subcontractor's affidavit for the duration of this Agreement and in accordance with the public records requirements of this Agreement.

2. The City, the Contractor, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Subsection 448.09(1), Florida Statutes (2022), as may be amended or revised, shall terminate the contract with the person or entity.

3. The City, upon good faith belief that a subcontractor knowingly violated the provisions of Subsection 448.095(2), Florida Statutes (2022), as may be amended or revised, but that the Contractor otherwise complied with Subsection 448.095(2), as may be amended or revised, shall promptly notify Contractor and order the Contractor to immediately terminate the contract with the subcontractor, and the Contractor shall comply with such order.

4. A contract terminated under Subparagraph 448.095(2)(c)1. or 2., Florida Statutes (2022), as may be amended or revised, is not a breach of contract and may not be considered as such. If the City terminates this contract under Paragraph 448.095(2)(c), Florida Statutes (2022), as may be amended or revised, the Contractor may not be awarded a public contract for at least one year after the date on which the contract was terminated. The Contractor is liable for any additional costs incurred by the City as a result of termination of this Agreement.

5. Contractor shall include in each of its subcontracts, if any, the requirements set forth in this section 4.21, including this subparagraph, requiring any and all subcontractors, as defined in Subsection 448.095(1)(j), Florida Statutes (2022),

as may be amended or revised, to include all of the requirements of this section 4.21 in their subcontracts. Contractor shall be responsible for compliance by any and all subcontractors, as defined in Subsection 448.095(1)(j), Florida Statutes (2022), as may be amended or revised, with the requirements of Section 448.095, Florida Statutes (2022), as may be amended or revised.

Exhibit C

Client Requirements

In addition to the obligations of the City enumerated in the Agreement and Exhibits A and B attached thereto, the following obligations must be undertaken by the City in order to ensure member engagement and client success:

1. **Provision of Health Center Space.** The City shall, at its sole cost and expense, provide or arrange for the provision of such space needed by Marathon for the performance of its obligations under this Agreement at the Health Center, including the payment of rent (if applicable) and fit-up of the space with basic infrastructure consistent with Marathon's specifications, including but not limited to, utilities, ventilating, heating and air conditioning, security and non-medical furnishings. Marathon will have the right, subject to reasonable rules and regulations adopted by City and subject to the provisions of any applicable lease agreement, to the use of the common areas located around the Health Center, including but not limited to any common walkways, sidewalks, parking spaces and driveways necessary for access to the Health Center. The City shall keep and maintain the non-medical furniture and premises in good working order and make, or cause to be made, all necessary repairs and replacements to the non-medical furniture and premises and its systems as may be reasonably required to keep the same in good order and state of repair. The City is responsible for the routine cleaning of the Health Center space, including vacuuming, trash removal and bathroom cleaning, if applicable, on a daily basis.
2. **Availability of Internet Services.** The City will ensure that wired internet services are available to the Health Center that are independent of the City's network. The cost of any internet services paid for by Marathon (if applicable) shall be invoiced by Marathon to the City as a pass-through expense. Ethernet handoff is to be implemented into a Marathon owned and operated firewall/router. The City is responsible for premise wiring to facilitate connectivity from the Marathon firewall to the desktops. Two jacks are required for each employee station.
3. **Infrastructure; Wiring.** The City will facilitate and provide all physical wiring needed for telephone connectivity at the Health Center. Wiring must be at least Cat5e terminated at both ends with RJ45 sockets. All wiring shall be terminated in a central location at one end and at each workstation at the other. Marathon will provide telephones and associated services for all of its employees and for the main line to the health center.
4. **Staffing.** The Health Center shall be staffed as follows:

Role	FTE
Physician	1.0
Nurse Practitioner/Physician Assistant	1.5
Medical Assistants	2.5

The Health Center's hours of operation shall be mutually agreed upon between the Parties' contract administrators. The Parties agree that this staffing level is adequate to meet the Parties' expectations regarding the utilization of the Health Center as of the Effective Date by the members shown on the City's eligibility file (the "Members"). In the event that Member utilization exceeds Marathon's ability to arrange Health Services during the number of hours per week set forth in Marathon's proposal, the Parties may mutually agree via written amendment to modify the staffing and/or hours of operation.

5. Promotion of Health Services. The City shall support Member outreach by providing Marathon with contact information of all Members appearing on the Eligibility File, including but not limited to the following (if available): email address, phone number, work address, home address. The City acknowledges that Marathon may contact Members via printed mail, e-mail, telephone or text message (to the extent permitted under applicable law).

The City will publicize and provide descriptive information about the Marathon Services, including standard marketing materials provided by Marathon, subject to the City's approval, to all potential Members who are eligible to receive Health Services. City will provide Marathon with copies of other documents and materials prepared independently by City describing or publicizing the Health Services prior to the distribution of such materials. Marathon shall review and comment on such materials within a reasonable time after receipt. City shall use reasonable efforts to seek Marathon's input prior to providing such information to potential Members, which input shall not be unreasonably delayed.

6. Eligibility Files. The City will provide to Marathon a list of Members eligible to receive Health Services at the Health Center (the "Eligibility File") on a frequency to be mutually agreed upon by the Parties. The Eligibility File will contain the entire population of Members eligible to receive services and will conform to the content and format specifications previously agreed upon by the Parties. In the event the City desires to use an alternative format to transmit the Eligibility File, Marathon will evaluate using such alternative format, including whether additional costs shall apply. Members will be entitled to use the Health Services as of the "eligible on date" indicated in the Eligibility File. If a Member becomes ineligible for Health Center use, City must provide Marathon with an updated Eligibility File from which the ineligible Member has been removed.

7. Medical Claims Data. To assist in the identification and treatment of Members with chronic conditions such as diabetes, asthma, heart disease, pulmonary disease, and hypertension, and subject to applicable law and any confidentiality and business associate agreements, the City will direct its carrier, third party administrator, or third party vendor for claims data mining (each, a "Claim Processor") to provide to Marathon medical claims data and pharmaceutical claims data via SFTP for the Members enrolled in the City's health plan(s) for the 24 months prior to the initiation of the Health Services, where applicable, and minimally at monthly intervals thereafter through the Term. In the event such claims data is not provided to Marathon as scheduled, the Parties shall agree to adjust any performance guarantees made by Marathon as appropriate. In the event the City desires to use an alternative format to transmit the claims data, Marathon will evaluate using such alternative format, including whether additional costs shall apply. The delivery of Marathon's standard reports is contingent upon the City's delivery to Marathon of the medical claims data described in this Section.

8. Claims Submission. City shall direct and obtain agreement from its Claims Processor to receive shadow claims for patient visits from Marathon, outside of its provider network. For the avoidance of doubt, Marathon shall not be required to be credentialed as part of a Claim Processor's provider network for the purpose of transmitting claims data to the Claim Processor. Marathon will submit claims in accordance with Marathon's standard format to a single City health insurance plan administered by the Claims Processor. In the event City desires to use an alternative format for the transmission of Claims to a Claim Processor or City requests that Marathon submit claims to be processed under multiple City health insurance plans, Marathon will evaluate the feasibility of using such alternative format and/or submitting claims under multiple plans. Marathon shall advise City of any additional costs required to satisfy such requests.

9. Business Operations/Legal Compliance. The City will be solely responsible for (a) determining the impact, if any, of offering the service to Members upon the City's business operations, including but not limited to any impact based upon the City's other benefit plans and (b) ensuring the City's compliance with all laws applicable to the City, including but not limited to benefit, reporting, disclosure and other requirements under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), the Americans with Disabilities Act of 1990, as amended and the Internal Revenue Code of 1986, as amended ("IRC"). In the event the Marathon Services become part of a City employee benefit plan or program, neither Marathon nor any third party contractors it may engage shall be considered to be in a fiduciary, trustee or sponsor relationship with respect to such plan.

10. Publicity. The City expressly permits Marathon to use City's name in advertisements to recruit care providers or other personnel providing the Services. The City agrees to allow Marathon to use Marathon branded signage to improve Member awareness about services available at the Health Center.