

**TOWN OF RANCHO VIEJO, TEXAS**  
**REQUEST FOR PROPOSAL RFP# 2023-06-01**  
**EFFECTIVE, OCTOBER 1, 2023 RFP FOR FULLY INSURED MEDICAL, HRA, VISION,**  
**RX, DENTAL COBRA/HIPAA SERVICES, and BASIC LIFE INSURANCE (ACTIVE**  
**EMPLOYEES).**

The enclosed ***Request for Proposal (RFP)*** and accompanying documents are for your convenience in proposing the enclosed referenced products and/or services for the Town of Rancho Viejo, Texas. **Sealed proposals must be received no later than Monday, July 17, 2023, at 3:00 p.m.** at the following address:

Town of Rancho Viejo, Texas  
Attn: Fred Blanco, Town Administrator  
3301 Carmen Avenue  
Rancho Viejo, Texas 78575  
Phone: 956-350-4093

Please reference **RFP # 2023-06-01 for Effective, October 1, 2023 RFP for FULLY INSURED MEDICAL, HRA, VISION, RX, Dental, COBRA/HIPAA SERVICES, AND BASIC LIFE INSURANCE (ACTIVE EMPLOYEES)** in all correspondence pertaining to this proposal and affix this number to the outside front of the proposal envelope or box for identification. Please **submit one original, two hard copies and one electronic copy in USB.**

Proposals received after the deadline will be returned unopened and will be considered void and unacceptable.

To obtain results, or if you have any questions, please contact Fred Blanco at (956) 350-4093. **Questions and inquiries must be submitted in writing via e-mail [fblanco@ranchoviejotexas.com](mailto:fblanco@ranchoviejotexas.com) to the individual(s) identified above prior to 4:00 p.m. CST on Monday, July 10, 2023.**

## **TECHNICAL SPECIFICATIONS – ALL COVERAGES**

Vendors meeting the minimum standards will be considered to be responsible and will continue in the proposal process.

**MINIMUM STANDARDS FOR RESPONSIBLE PROSPECTIVE PARTICIPANTS:** A prospective Proposer must affirmatively demonstrate Proposer's responsibility. A prospective Proposer must meet the following requirements in order to proceed in the process:

1. Demonstrate adequate financial resources, or the ability to obtain such resources by providing the most recent fiscal year's statement.
2. Demonstrate an ability to comply with the required or proposed delivery schedule.
3. Demonstrate a satisfactory record of performance by providing at least 3 references where like products and/or services have been supplied by their firm; preferably municipalities of the same size and demographics. Please include name of the firm, address, telephone number and name of representative.
4. Demonstrate a satisfactory record of integrity and ethics in the profession by providing documentation supporting at least 5-7 years in the field.
5. Be otherwise qualified and eligible to receive an award by providing appropriate company licenses, certifications, key staff assigned to work with the Town and other pertinent resources.

Proposers must submit documentation supporting minimum standards as indicated above. Those failing to meet and/or provide documentation as requested will be considered non responsible. The information contained herein is believed to be accurate and up-to-date, but is not intended to be an express or implied warranty.

**SELECTION CRITERIA FOR RESPONSIBLE PROSPECTIVE PARTICIPANTS:** The Town will consider the following criteria during the evaluation process:

1. Scope of Services, Coverage, Professional Competence – 20%
2. Cost of Services, Administrative Tools, Consumer Tools – 40%
3. Reporting Capabilities, Financial Resources – 25%
4. References and Experience with Similar Clients, Qualifications – 15%

## INTRODUCTION

The Town of Rancho Viejo, Texas is seeking proposals for the following services for October 1, 2023 effective date:

### (ACTIVE EMPLOYEES)

- Fully Insured Medical and Rx Benefits (TML Health Benefits Pool is the current vendor.)
- COBRA/HIPAA Administration.
- Dental Fully Insured PPO Plan

The tentative schedule for this Request for Proposals is as follows:

Release RFP to Vendors .....	June 16, 2023
Deadline for Questions and Inquiries.....	July 10, 2023 @ 4:00 p.m.
Proposal Submission Deadline.....	July 17, 2023 @ 3:00 p.m.
Earliest Award of Any Single Contract .....	August 8, 2023
Contract/Service Effective Date.....	October 1, 2023

**Note:** The Town reserves the right to change any of the plan designs before October 1, 2023. The Town is seeking proposal responses **for one year contract period**, with two additional annual renewal options if agreeable to both parties. Prefer a second year rate cap, if available. **If you are able to offer a multi-year rate guarantee for Dental, please do so in writing.**

Sealed proposals will be accepted until **3:00 P.M. C.S.T. on Monday, July 17, 2023 and should be addressed to:**

Town of Rancho Viejo, Texas  
Attn: Fred Blanco, Town Administrator  
RFP # 2023-06-01  
3301 Carmen Avenue  
Rancho Viejo, Texas 78575

**FULLY INSURED MEDICAL, DENTAL and COBRA/HIPAA SERVICES**

For all current Medical and Dental plan designs, please see the attached Summary Plan Descriptions. See attachment B and C.

**ACTIVE EMPLOYEE**

Classes	Enrollment by Tier			
	EE	EE + SP	EE + CH	EE + Fam
Medical Base	8	0	1	3
Dental	7	0	0	4
COBRA	0	0	0	0
Vison	3	0	3	1
Basic Life	12	0	0	0

Medical Waiver: 0

Dental Waiver: 1

**PRICING AND CONTRIBUTION**

**Medical – Current Rates**

<b>Medical HDHP - \$2,700</b>	
Employee Only	\$479.18
Employee + Spouse	\$972.72
Employee + Child(ren)	\$843.36
Employee + Family	\$1,413.54

**Dental – Current Rates**

<b>Dental</b>	<b>Four Tier</b>
Employee Only	\$37.64
Employee + Family	\$96.68

**FIVE YEAR CARRIER HISTORY**

	<b>Medical</b>	<b>Dental</b>
	TML / Fully insured	TML

**ATTACHMENTS**

**Attachment A – Census**

**Attachment B – Current Medical SBC**

**Attachment C – Current Dental Summary Plan Description**

**ANY QUESTIONS** concerning this Request for Proposal and Specifications should be directed in writing to the following individual: Town of Rancho Viejo, Texas, Attn: Fred Blanco, Town Administrator, (956) 350-4093, fblanco@ranchoviejotexas.com. To facilitate answering questions, all questions should be received in writing by 4 p.m., July 10, 2023.

**PROPOSED MEDICAL, DENTAL and COBRA/HIPAA SERVICES**

*(Plan Year Proposed 10/01/23 thru 09/30/24)*

The Town of Rancho Viejo, Texas is seeking proposals for the following services for a October 1, 2023 effective date:

1. At a minimum, match current fully insured Medical and Rx (PPO and HDHP) Benefits

**Medical – Proposed Rates**

Option 1: Current Triple Plan Design Rates

Base Plan	Four Tier
Employee Only	
Employee + Spouse	
Employee + Child(ren)	
Employee + Family	

Please check the following answers if applicable:

- We can offer this option
- We cannot offer this option. We are not quoting this Active only plan.
- Yes, we can offer a \$10,000 annual wellness credit
- No, we cannot offer a \$10,000 annual wellness credit

**Note:** the Town reserves the right to change any of the plan designs before October 1, 2023. The Town is seeking proposal responses for a one year contract period, with two additional annual renewal options if agreeable to both parties.



**Dental – Proposed Rates**

Actives	PPO with Ortho Included
Employee Only	
Employee + Family	
Rate Guarantee	

**Note:** the Town reserves the right to change any of the plan designs before October 1, 2023. The Town is seeking proposal responses **for multi-year contract period**, with two additional annual renewal options if agreeable to both parties.

**COMPANY REPRESENTATIVE**

NAME: \_\_\_\_\_

TELEPHONE #: \_\_\_\_\_

EMAIL: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

**GENERAL QUESTIONNAIRE (To be answered by all Proposers)**

**These questions will help us evaluate how your organization can help us maximize success.**

Describe Your Organization.

- a. Name: \_\_\_\_\_
- b. Complete Address: \_\_\_\_\_
- c. Contact Person: \_\_\_\_\_
- d. Telephone Number: \_\_\_\_\_
- e. Email Address \_\_\_\_\_
- f. Year Founded: \_\_\_\_\_

1. Please provide your most recent published financial statement and/or Best Insurance rating. (Please provide financial size category.)
2. Will there be an individual account manager dedicated to Town of Rancho Viejo, Texas, and if so, where will he/she be located?
3. Are you willing to propose and administer all services according to the specifications outlined in this RFP?
4. Have any lawsuits been filed against your organization, relative to your performance of any health services agreement, within the last 3 years? Please describe the nature of any lawsuits, dates, and final outcomes.
5. Will you be willing to have representatives available at initial employee educational and enrollment meetings as well as future open enrollments, health fairs, and other special requirements?
6. Provide three Texas client references (preferably public sector clients).

Name of Client	Contact Person	Telephone Number	Number of Employees

7. Provide three former Texas client references (preferably public sector clients).

<b>Name of Client</b>	<b>Contact Person</b>	<b>Telephone Number</b>	<b>Number of Employees</b>

## FULLY INSURED MEDICAL QUESTIONNAIRE

1. Is eligibility available online to Human Resources staff?
2. Contracted vendors will keep the Town supplied with needed enrollment materials. Please supply sample of material.
3. What is the average turnaround time for supplying ID cards directly to participants?
4. Please indicate your process for handling subrogation claims.
5. Describe process for appeal of a contested claim.
6. What innovative wellness programs have you created that will be available to the Town?
7. How is large case management handled? Where is it located?
8. What happens in if an employee needs to access care outside the network? Out of area? At a Center of Excellence, such as MD Anderson Medical Center? Have they earned URAC accreditation? Please describe the qualifications of the staff involved.
9. What is your voluntary and involuntary provider turnover rate?

	Voluntary	Involuntary
Primary Care Physician	_____	_____
OB/GYN's	_____	_____
Specialists (exclude OB/GYN)	_____	_____
10. Please explain your disease management programs. Are these programs provided at an added cost? Which diseases do you target? How do you determine which members are “at-risk”. Is this integrated with your claims system?
11. Do you provide on-line Health Risk Assessments at no additional cost? If so, does the assessment feed into your disease management program?
12. Do you have a biometric screening firm that you contract with? If so, who? Is there an additional cost for biometric screenings, and how much?

## DENTAL QUESTIONNAIRE

1. Are eligibility/billing/reports available online to Human Resources staff?
2. Will you provide a monthly premium to claims summary?
3. Do you have the ability to accept electronic transfer for eligibility? Please discuss your procedure and process for transferring existing claims.
4. Indicate the database that you utilize to determine reasonable and customary (R&C) allowances, including how often the data is updated. How are fees in excess of R&C handled? What percentile is used as your R&C?
5. Is your network a national network of providers? If so, how many total?
6. What is the average turnaround time for supplying ID cards directly to participants? How does an employee replace an ID card?
7. Describe how benefits will be handled for members who are traveling temporarily out of their service area or have covered, dependent children away at college, or dependent children who live outside of the state? (If, applicable.)

All information provided in a proposal must be clearly explained and any exception or deviation must be clearly identified and explained.

## **PUBLIC NOTICE STATEMENT FOR ADA COMPLIANCE**

The Town of Rancho Viejo, Texas acknowledges its responsibility to comply with the Americans with Disabilities Act of 1990. Thus, in order to assist individuals with disabilities who require special services (i.e. sign interpretative services, alternative audio/visual devices, and amanuenses) for participation in or access to Town of Rancho Viejo, Texas sponsored public programs, services and/or meetings, the Town requests that individuals make request for these services forty-eight (48) hours ahead of the scheduled program, service and/or meeting. To make arrangements, contact the Town of Rancho Viejo, Texas, Attn: Fred Blanco at (956) 350-4093.

### **IMPORTANT DISCLOSURE NOTICE** **Disclosure of Certain Relationships:**

Effective January 1, 2006, H.B. No. 914 of the 79<sup>th</sup> Texas Legislature requires a vendor that wishes to conduct business or be considered for business with The Town of Rancho Viejo, Texas to file a conflict of interest questionnaire. The Disclosure Act applies to all persons or businesses who conduct business with the Town, including those who submit Proposals on Town contracts, make purchases of surplus Town property, or participate in any other purchase or sales transactions with a Town.

Pursuant to the requirements of Section 176.002(a) of the Texas Local Government Code, vendors or respondents who meet the following criteria must fill out a conflict of interest questionnaire no later than the 7<sup>th</sup> day after the person begins contract discussions or negotiations' with the Town or submits to the Town 'an application, response to a request for Proposals or Proposals, correspondence, or another writing related to a potential agreement with the Town:

A vendor or respondent that-

- (1) contracts or seeks to contract for the sale or purchase of property, goods, or services with a local governmental entity;
- or
- (2) is an agent of a person described in Subdivision (1) in the person's business with a local governmental entity.' Any person who meets the criteria, as for enforcement to ensure the veraTown of the vendors, the statute makes it a Class C Misdemeanor to violate the vendor disclosure provisions."

The forms required to comply with the above Government Code are available on the Ethics Commission website at <http://www.ethics.state.tx.us/forms/CIS.pdf> .

Town Employees are prohibited from proposing on this solicitation in accordance with Town Policy.

OFFICIAL PROPOSAL FORM and CERTIFICATION  
FOR THE TOWN OF RANCHO VIEJO, TEXAS

**This certification must be submitted with the proposal.**

Honorable Mayor and Board of Aldermen:

The undersigned hereby proposes to furnish and deliver FOB destination point as listed on individual Purchase Orders:

*The line items* listed in accordance with the Net Prices and other conditions shown herein, and in accordance with the Town's Specifications and General Terms and Condition Specifications. When issued, Letters of Clarification shall automatically become part of this Proposal document and shall supersede any previous specifications or provisions in conflict with the Letters of Clarification. It is the responsibility of the Proposer to ensure that it has obtained such letters. By submitting a Proposal on this project, Proposer shall be deemed to have received all Letters of Clarification and to have incorporated them into its Proposal. THE MANUFACTURER'S NAME, PRODUCT NAME AND PRODUCT NUMBER SHOULD BE DESIGNATED IN OFFERER'S NOTES, EVEN IF PROPOSALDING AS SPECIFIED.

The Town may accept this Proposal offer by issuance of a Notice of Award Letter and/or a Purchase Order covering award of said Proposal to this Proposer at any time on or before the 120th day following the day this Official Proposal Form is opened by the Town. This offer shall be irrevocable for 120 days after Proposal opening or for 90 days after Town Council awards the Proposal, whichever comes last, but this period may be extended by written agreement of the parties.

THIS PROPOSER IS AND REPRESENTS THAT IT IS AN EQUAL OPPORTUNITY EMPLOYER

The undersigned hereby offers to furnish and deliver the goods and/or services as specified at the prices and terms herein stated and in accordance with the Invitation to Proposal, Clarification Letters, and General Terms and Condition Specifications, all of which are made a part of this offer.

All pages of the Town of Rancho Viejo's form, including but not limited to the General Terms and Conditions, Specifications and page one of this Proposal invitation are incorporated by reference into this Proposal for all purposes.

**PROPOSERS CERTIFICATION:**

I, the undersigned, by signing the following statement agree that I have read and understand all of the terms and conditions, specifications, and requirements contained on each page of this Invitation to Proposal. I also understand that if this proposal is accepted by the Town of Rancho Viejo, Texas that all of the terms and conditions, specifications, and requirements submitted in my proposal and any additions, changes, or deletions made during negotiations will be made a part of this proposal under a binding contract between my company and the Town of Rancho Viejo, Texas. I also certify that this proposal is made without previous understanding, agreement, or connection with any person, firm, or corporation making a proposal for the same materials, and is in all fair and without collusion or fraud:

**OUR company is a (Check One):**

- Corporation            \_\_\_(The Proposal MUST be signed by an Officer of the company)
- Partnership           \_\_\_(The Proposal MUST be signed by a General Partner)
- Joint Venture        \_\_\_(The Proposal MUST be signed by an Officer of the company)
- Sole Proprietor      \_\_\_(The Proposal MUST be signed by the Owner)

Is the company a small, minority, or woman-owned business enterprise?

MBE \_\_\_ WBE \_\_\_ SBE \_\_\_

Has the company been certified as a SMWBE by any governmental agency?

Yes \_\_\_ No \_\_\_

If yes, specify the governmental agency: \_\_\_\_\_

Date of certification: \_\_\_\_\_

**ADDENDUMS:**

The Proposer acknowledges receipt of the following Addenda: (If you have not received any Addenda then write NONE across the blanks). If you have received Addenda then write beside the appropriate Addenda number the date received. ALL ADDENDA RECEIVED SHOULD BE ATTACHED TO THE PROPOSAL.

ADDENDUM # 1 \_\_\_\_\_

ADDENDUM # 2 \_\_\_\_\_

ADDENDUM # 3 \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

COMPANY ADDRESS: \_\_\_\_\_

TOWN/STATE/ZIP: \_\_\_\_\_

COMPANY REPRESENTATIVE

NAME: \_\_\_\_\_

TELEPHONE #: \_\_\_\_\_ FAX#: \_\_\_\_\_

EMAIL: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_



## APPENDIX "A"

### TOWN OF RANCHO VIEJO, TEXAS GENERAL TERMS AND CONDITIONS

The Town of Rancho Viejo, Texas is accepting quotations for the goods and/or services listed in the attached quotation document. The following terms and conditions will apply to this quotation. Please read the terms and conditions carefully. By submitting a quotation for the goods and/or services listed in the quotation document, you will agree to the following terms and conditions.

1. **CONTRACTOR'S OBLIGATIONS.** The Contractor shall fully and timely provide all deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
2. **EFFECTIVE DATE/TERM.** Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the Town, and shall continue in effect until all obligations are performed in accordance with the Contract.
3. **PLACE AND CONDITION OF WORK.** The Town shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner. The Contractor acknowledges that it has satisfied itself as to the nature of the Town's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the Town harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.
4. **WORKFORCE.**
  - A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
  - B. The Contractor, its employees, subcontractors, and subcontractor's employees may not use or possess any firearms, alcoholic or other intoxicating beverages, illegal drugs or controlled substances while on the job or on the Town's property, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
  - C. If the Town or the Town's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the Town's prior written consent.

5. **COMPLIANCE WITH SAFETY REGULATIONS.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local safety and health laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the Town and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the Town harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.
6. **INVOICES.**
- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the Town, a separate invoice must be sent for each shipment or delivery made.
  - B. Invoices shall indicate the purchase order or purchase release number and the supply agreement number if applicable. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. Unless otherwise instructed in writing, the Town may rely on the remittance address specified on the Contractor's invoice.
  - C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
  - D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
  - E. Federal excise taxes, State taxes, or Town sales taxes must not be included in the invoiced amount. The Town will furnish a tax exemption certificate upon request.
7. **PAYMENT.**
- A. All proper invoices received by the Town will be paid within 30 days of the Town's receipt of the deliverables or of the invoice, whichever is later. If payment is not timely made, interest shall accrue on the unpaid balance at the lesser of one percent per month or the maximum lawful rate; except, if payment is not timely made for a reason for which the Town may withhold payment hereunder, interest shall not accrue until ten days after the grounds for withholding payment have been resolved.
  - B. If partial shipments or deliveries are authorized by the Town, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
  - C. The Town may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
    - i. delivery of defective or non-conforming deliverables by the Contractor;
    - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
    - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
    - iv. damage to the property of the Town or the Town's agents, employees or contractors, which is not covered by insurance required to be provided by the

Contractor;

- v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
  - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
  - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- D. The Town's payment obligations are payable only and solely from funds Appropriated and available for the purpose of this purchase. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The Town shall provide the Contractor written notice of the failure of the Town to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the Town to pay its obligations under the Contract.
8. **WARRANTY-PRICE.**
- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
  - B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
  - C. In addition to any other remedy available, the Town may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
9. **WARRANTY - TITLE.** The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the Town harmless from and against all adverse title claims to the deliverables.
10. **WARRANTY - SERVICES.** The Contractor warrants and represents that all services to be provided the Town under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
  - B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from acceptance of the services. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the Town. All costs incidental to such additional performance shall be borne by the Contractor. The Town shall endeavor to give the Contractor written notice of the breach of warranty within

thirty (30) days of discovery of the breach warranty, but failure to give timely notice shall not impair the Town's rights under this section.

- C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the Town, then in addition to any other available remedy, the Town may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the Town upon demand the increased cost, if any, incurred by the Town to procure such services from another source.
11. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES.** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the Town prefers to accept it, the Town may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the Town's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the Town may deduct such amounts as are necessary to compensate the Town for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the Town by the Contractor.
12. **RIGHT TO ASSURANCE.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
13. **STOP WORK NOTICE.** The Town may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the Town to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the Town that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the Town as a result of the issuance of such Stop Work Notice.
14. **DEFAULT.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 21, or (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States.

**TERMINATION FOR CAUSE.** In the event of a default by the Contractor, the Town shall have the right to terminate the Contract for cause, by written notice effective ten (10) days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the Town's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the Town shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the Town as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the Town may remove the Contractor from the Town's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

15. **TERMINATION WITHOUT CAUSE.** The Town shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The Town shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
16. **FRAUD.** Fraudulent statements by the Contractor on any Offer shall be grounds for the termination of the Contract for cause by the Town and may result in legal action.
17. **DELAYS.** The Town may delay scheduled delivery or other due dates by written notice to the Contractor if the Town deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the Town and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
18. **CLAIMS.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the Town within ten days after receipt of notice by the Contractor. Such notice to the Town shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the Town and to the Town Attorney.
19. **NOTICES.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, fax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the Town shall be addressed to the Town at 3301 Carmen Avenue, Rancho Viejo, Texas 78575 and marked to the attention of the Contract Administrator.
20. **RIGHTS TO PROPOSAL, PROPOSAL AND CONTRACTUAL MATERIAL.** All material submitted by the Contractor to the Town shall become property of the Town upon receipt. Any

portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Open Records Act, Chapter 552, Texas Government Code.

21. **NO WARRANTY BY TOWN AGAINST INFRINGEMENTS**. The Contractor represents and warrants to the Town that: (i) the Contractor shall provide the Town good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or in any contributory manner, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the Town harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the Town's exercise anywhere in the world of the rights associated with the Town's ownership, and if applicable, license rights, and its use of the deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the Town shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the Town's behalf. Further, Contractor agrees that the Town's specifications regarding the deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the Town makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Contractor.
22. **CONFIDENTIALITY**. In order to provide the deliverables to the Town, Contractor may require access to certain of the Town's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the Town or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the Town and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the Town and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the Town or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, including a written decision from the Texas Attorney General, provided the Contractor promptly notifies the Town before disclosing such information so as to permit the Town reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

23. **NO CONTINGENT FEES.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Town shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
24. **GRATUITIES.** The Town may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the Town that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of The Town of Rancho Viejo, Texas with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the Town pursuant to this provision, the Town shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
25. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS.** No officer, employee, independent consultant, or elected official of the Town who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract void by the Town.
26. **INDEPENDENT CONTRACTOR.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the Town.
27. **ASSIGNMENT-DELEGATION.** The Contract shall be binding upon and endure to the benefit of the Town and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the Town. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

28. **WAIVER.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the Town of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
29. **MODIFICATIONS.** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
30. **INTERPRETATION.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.
31. **JURISDICTION AND VENUE.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Cameron County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the Town to seek and secure injunctive relief from any competent authority as contemplated herein.
32. **INVALIDITY.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.