

PROFESSIONAL SERVICES CONTRACT

This CONTRACT is entered into by and between the **CITY OF SAN ANTONIO** (hereinafter referred to as "**CITY**"), a Texas municipal corporation, acting by and through its City Manager pursuant to Ordinance No. _____ passed and approved on March 3rd and **ARTHUR J. GALLAGHER & CO** (hereinafter referred to as "**CONSULTANT**").

I. PURPOSE

The purpose of this CONTRACT is to state the terms and conditions under which the **CONSULTANT** will provide comprehensive benefits consulting services including but not limited to plan design review, actuarial plan valuations, plan design recommendations cost savings analysis, and assistance preparing and evaluating requests for proposals for benefit plans.

II. SCOPE OF SERVICES

- 2.1 The **CONSULTANT** shall perform all the services as set forth in the **CITY'S** Request for Proposal (RFP) attached hereto as Exhibit "A" and incorporated by reference herein. The **CONSULTANT** understands and agrees that Exhibit A is a part of this CONTRACT, as though fully set out herein, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by the **CONSULTANT** as completely and fully as are the obligations, conditions, tasks, products and representations imposed by this CONTRACT.
- 2.2 The terms of this CONTRACT shall control where there is any conflict between the terms of the **CONSULTANT'S** Proposal and the terms of this CONTRACT.
- 2.3 The **CONSULTANT** shall work with the City's Assistant Director of Human Resources, or her designee, and with appropriate **CITY** officials to perform any and all related tasks required by the **CITY** in order to fulfill the purposes of this CONTRACT. The **CONSULTANT** agrees that Wanda Heard will be **CONSULTANT'S** point of contact for the services to be performed under this CONTRACT. The **CITY** is an Equal Opportunity Employer and does not discriminate. **CONSULTANT** shall conduct all activities in accordance with this and all other applicable federal, state and local requirements.
- 2.4 **CONSULTANT** shall provide the following benefit consulting services which will include the following:

Deliverable	Description/Scope
Strategic Planning	<ul style="list-style-type: none"> • Assist with short and long term employee benefits planning to include integration of wellness program activities and balancing of employer and employee needs around choice; • Provide information on trends and benchmarks in the benefits area to include local, regional, national and industry surveys; • Serve as a source of general expertise for benefit issues • Attend in person meetings during budget planning sessions and provide plan design iterations with associated premiums; • Make recommendations regarding benefit plans and programs to include benchmark data for plan design for all benefit programs; cost sharing for all benefit programs; and medical trend factors.
Actuarial Services	<ul style="list-style-type: none"> • Cost analysis to evaluate contribution strategy; • Modeling and reporting solutions for City's needs; • IBNR estimates; • GASB Standard 45 Valuation and Analysis.
Reporting	<ul style="list-style-type: none"> • Provide detailed monthly dashboard to include premium to claims loss ratio for each subgroup; analysis of actual claims expense to budget; monthly comparison of high cost claimants, and medical claims cost drivers.

**Administration/
Vendor
Management**

- Assist in development of Request for Proposal to identify a Third Party Administrator for CITY'S self-insured and fully insured programs and participate as an advisor in the evaluations process;
- Manage RFP development that tailors the RFP to the desires, needs and financial directions provided by CITY;
- Evaluate vendor RFP responses to track variations in coverage and costs as they are identified;
- Assist with the negotiation of contractual services and pricing for health and welfare programs;
- Assist in creation of performance guarantees for all insurance carriers providing services to CITY;
- Evaluation of benefit contracts and negotiation of TPA fees;
- Assist in making a determination for stop loss coverage and audit of TPA vendor claims management services;
- Review and evaluate carrier projections;
- Prepare "shadow" renewal projection;
- Coordinate carrier negotiations;
- Provide renewal alternatives with cost impact of benefit plan changes;
- Assist CITY to develop a strategy to identify goals, analyze program costs and review both current and alternative funding arrangements;
- Provide analysis of employee disruption report and preparation of geo-access report;
- Provide analysis of discounts offered by various carriers.

<p>Utilization</p>	<p><u>Monthly Plan Financial Reports To Include:</u></p> <ul style="list-style-type: none"> • Summary of plan costs; • Analysis of actual vs. budget; • Employee contributions (loss ratio); • Large claim tracking; • Identification of costs for specific line of coverage; • Comparison to prior claim period; • Plan trends. <p><u>Biannual and Annual Plan Performance Reports To Include:</u></p> <ul style="list-style-type: none"> • Executive summary of program expenses; • Incurred But Not Reported (IBNR) claims analysis; • Future plan costs projections; • Dollars saved by contract negotiation; • Percent of benefit dollars paid by employee; • Claims by size; • Benefits paid by type of service; • Plan funding/budget comparison.
<p>Medical and Dental Rate Setting</p>	<ul style="list-style-type: none"> • Calculate utilization and cost trends; • Calculate and recommend appropriate premium rates and provide CITY with back-up working documentation; • Calculate annual COBRA rates; • Project cost growth for next five years; • Prepare rate setting options; • Provide annual budget projections when budget work sessions begin in early May through budget adoption in September.

Compliance	<ul style="list-style-type: none"> • Provide legislative updates, including Technical Bulletins and Directions newsletters; • Evaluate plan design to assist with compliance with state and federal regulations; • Review benefit plan documents, including summary plan descriptions, contracts, employee summaries, and policies/procedures to ensure compliance with legal requirements; • Conduct periodic seminars on regulatory issues; • Provide general information and guidance to assist with compliance with FMLA, USERRA, Medicare Part D and other Federal legislation that directly affects the administration of plan benefits including PPACA; • Provide template or sample compliance notices, certificates of creditable coverage and enrollment forms as requested by CITY.
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III. PERFORMANCE STANDARDS

3.1 **CONSULTANT** acknowledges and agrees that **CONSULTANT** shall provide services under this **CONTRACT** at a certain level with a certain degree of accuracy and timeliness. Therefore, as part of this administrative services agreement with **CITY**, **CONSULTANT** agrees to the following performance standards and administrative fee adjustments: Fifty percent (50%) of annual fee at risk as a performance guarantee based solely on City's opinion of how **CONSULTANT** performed.

Performance compliance audits may be conducted at the discretion of **CITY**, but are limited to one (1) per Experience Period and to claims processed in the experience period as defined herein regardless of incurred date. If **CITY** conducts a performance audit, either party to this **CONTRACT** may conduct a second audit, at its own expense, by the same or another independent auditor using a different claim sample of at least equal size. Performance-related fee adjustments will then be based on the combined results. The definition of an error in these audits is subject to a good faith review by the parties to this **CONTRACT**. The cost of the first audit conducted by the **CITY** in any Experience Period will be paid by **CITY**. Should **CONSULTANT** fail to meet any performance expectation, **CONSULTANT** will pay the cost for all subsequent audits until **CONSULTANT** is meeting expected performance levels.

IV. GENERAL ASSURANCES

- 4.1 **CONSULTANT** covenants and agrees to perform all services described in this **CONTRACT** in a workmanlike manner with a high degree of care to ensure accuracy and timeliness. **CONSULTANT** shall perform its services in accordance with the ordinary, reasonable standard of care and diligence normally practiced by recognized professional firms in performing services of a similar nature, in the San Antonio, Texas area, under similar circumstances. This includes the knowledge and experience ordinarily required of a member of that profession, and includes performing the skills necessary to adequately cope with problems that arise in performing its services, which skills are not possessed by ordinary laymen.
- 4.2 **CONSULTANT** agrees to assign a dedicated unit including, but not limited to, a Supervisor/Manager who shall be responsible for the task administration and work performance for this **CONTRACT**.
- 4.3 **CONSULTANT** agrees to employ, at its own expense, all personnel required to perform the services described in this **CONTRACT**. Personnel employed by **CONSULTANT** shall neither be employees of nor have any contractual relationship with **CITY**. All **CONSULTANT** personnel engaged in providing services under this **CONTRACT** shall be fully qualified and shall be authorized or licensed to perform such work as required.

V. CONSIDERATION & BILLING

- 5.1 In consideration of **CONSULTANT'S** performance hereunder, **CITY** shall pay to **CONSULTANT** an annual amount not to exceed \$395,000.
- 5.2 Payments to **CONSULTANT** shall be in the amount shown by Consultant's monthly billings in twelve (12) equal installments and shall include documentation to support billing statements subject to City's approval. All services shall be performed to City's satisfaction, and **CITY** shall not be liable for any payment under this **CONTRACT** for services which are unsatisfactory and which have not been approved by **CITY**. The final payment due herein will not be paid until the reports, data, and documents required under this **CONTRACT** and all included items contained in Section II, Scope of Services have been received, completed and approved by the **CITY**. No additional fee or charge will be assessed against the **CITY** for late payment of any amount due to the **CONSULTANT** under this **CONTRACT**.
- 5.3 **CITY** shall not be liable to **CONSULTANT** for costs incurred or performances rendered by **CONSULTANT** prior to the commencement of this **CONTRACT** or after its termination.

- 5.4 **CITY** shall not be obligated or liable under this **CONTRACT** to any party, other than **CONSULTANT**, for payment of any monies or provision for any goods or services.

VI. TERM

- 6.1 This **CONTRACT** is for a period of three (3) years commencing March 3, 2016, through March 3, 2019. **CITY** shall have the right to renew for two (2) additional one (1) year terms. However, **CITY** may terminate this **CONTRACT** at any time if funds are restricted, withdrawn, not approved or service is unsatisfactory; it being understood that funds for each calendar year covered by any resulting contract will be requested and, if approved, will be provided, as part of **CITY'S** budget for each fiscal year.

VII. OWNERSHIP OF PRODUCT

- 7.1 **CONSULTANT** recognizes that **CITY** shall own exclusively any and all information in whatsoever form and character produced and/or maintained in accordance with this **CONTRACT** and shall be used as **CITY** desires without restriction. **CONSULTANT** may utilize the information produced as a result of this **CONTRACT** for statistical purposes only as allowed by federal or state law.

VIII. RETENTION AND ACCESSIBILITY OF RECORDS

- 8.1 **CONSULTANT** shall maintain at its principal administrative office adequate books and records of all transactions in which **CONSULTANT** engages with **CITY**.
- 8.2 The books and records must be maintained for the term of this **CONTRACT** to which they relate and for the five (5) year period following the end of this **CONTRACT'S** term.
- 8.3 **CONSULTANT** shall maintain the books and records in accordance with prudent standards of insurance recordkeeping and all requirements of federal or state law.
- 8.4 **CITY**, the Texas Department of Insurance (TDI) Commissioner, the United States Department of Health and Human Services, and their designated agents shall be given access to those books and records for the purpose of either examination, audit, or inspection as permitted by federal or state law.
- 8.5 Trade secrets, including the identity and address of policyholders and certificate holders, are confidential, except that the TDI Commissioner may use such information in proceedings instituted against the **CONSULTANT**.
- 8.6 **CITY** is entitled to continuing access to these books and records.

- 8.7 **CONSULTANT** may, at **CITY'S** option, fulfill the requirements of this Section of this **CONTRACT** by delivering to **CITY**, the books and records and by giving written notice to the TDI Commissioner of the location of the books and records.

IX. HIPAA COMPLIANCE

- 9.1 **CONSULTANT** will maintain the confidentiality of all medical, dental, prescription and other patient-identifiable health information specifically relating to Plan Participants ("Protected Health Information") in accordance with all applicable federal and state laws and regulations, including the Privacy Rule and the HIPAA Security Rule of the Health Insurance Portability and Accountability Act of 1996("HIPAA"), as may be amended from time to time.
- 9.2 **CONSULTANT** shall comply with the electronic transmission standards, and with all other regulations as might be adopted by HIPAA.
- 9.3 The parties acknowledge that they are "Business Associates" as defined in Title 45, Section 160.103, of the Code of Federal Regulations. **CONSULTANT** shall abide by the terms of the Business Associate Agreement executed by the parties, attached hereto as Exhibit D and incorporated herein by reference.

X. PUBLICATION

- 10.1 In order to use any advertising relating to business underwritten and/or developed for **CITY**, **CONSULTANT** must obtain approval by **CITY** at least ten (10) business days prior to such use.

XI. NOTICE OF CONSULTANT'S CAPACITY

- 11.1 **CONSULTANT** shall give notice to Plan Participants of the identity of **CONSULTANT** and the relationship between **CONSULTANT** and **CITY** and the plan participant. The notice must be approved by **CITY** at least ten (10) business days prior to such distribution.

XII. AMENDMENT

- 12.1 This **CONTRACT**, together with its authorizing ordinance and its exhibits, constitutes the entire agreement between the parties. No amendment, modification or alteration of the terms of this **CONTRACT** shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

XIII. ASSIGNING INTEREST

- 13.1 **CONSULTANT** shall not assign, sell, pledge, transfer or convey any interest in this **CONTRACT**, nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or by any other means, to any other party without prior written consent of **CITY**, evidenced by passage of an ordinance to that effect by the San Antonio City Council. Any such attempt at an assignment will be void *ab inito*, and shall confer no rights on the purported assignee. Should **CONSULTANT** assign, transfer, convey, delegate or otherwise dispose of any part of, or all of, its right, title or interest in this **CONTRACT**, the **CITY** may, at its option, cancel this contract and all rights, titles and interest of **CONSULTANT** shall thereupon cease and terminate, notwithstanding any other remedy available to **CITY** under this **CONTRACT**. The violation of this provision by **CONSULTANT** shall in no event release **CONSULTANT** from any obligation under the terms of this **CONTRACT**, nor shall it relieve or release **CONSULTANT** from the payment of any damages to **CITY** which **CITY** sustains as a result of such violation.
- 13.2 If approved, **CONSULTANT'S** subcontractors may not voluntarily assign, transfer, subcontract or pledge, in whole or in part, any contract with **CONSULTANT** arising from or in relation to this **CONTRACT**, nor shall any involuntary transfer or assignment result in a transfer of any rights conferred by this **CONTRACT**. **CONSULTANT** shall indicate this limitation in all contracts with approved subcontractors.
- 13.3 **CONSULTANT** agrees to notify **CITY** of any changes in **CONSULTANT'S** ownership interest greater than 10%, or control of its business entity, not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to **CITY** under this **CONTRACT**, any such change of ownership interest or control of its business entity may be grounds for termination of this **CONTRACT** at the sole discretion of the **CITY**.
- 13.4 In no event shall such written consent for a change of subcontractor if obtained, relieve **CONSULTANT** from any and all obligations hereunder or change the terms of this **CONTRACT**.
- 13.5 **CITY** must approve all substitutions of subcontractors to determine if the disadvantaged business enterprise goal will be decreased by substitution of a disadvantaged subcontractor with a non-disadvantaged subcontractor.

XIV. INSURANCE AND BONDING

- 14.1 Prior to the commencement of any work under this **CONTRACT**, **CONSULTANT** shall furnish an original completed Certificate(s) of Insurance, including endorsements, to City's Human Resources Department, which shall be

completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s), and endorsements, or form must have the agent's original signature, including the signer's company affiliation, title and telephone number, and be mailed directly from the agent to CITY. CITY shall have no duty to pay or to perform under this CONTRACT until such certificate has been delivered to City's Human Resources Department and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

- 14.2 CITY reserves the right to review the insurance requirements of this section during the effective period of this CONTRACT and any extension or renewal hereof and to reasonably modify insurance coverages and its limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this CONTRACT, but in no instance will CITY allow modification whereupon CITY may incur increased risk.

CONSULTANT'S financial integrity is of interest to CITY. Therefore, CONSULTANT shall obtain and maintain in full force and effect for the duration of this CONTRACT, and any extension hereof, at CONSULTANT'S sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- (VII) or better by A.M. Best Company and/or otherwise acceptable to CITY, in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation or Texas Non-Subscription 2. Employers' Liability	Statutory Limits \$500,000/\$500,000/\$500,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractor c. Products/completed operations d. Personal Injury	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased Vehicles b. Non-owned Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence

c. Hired Vehicles	
5. Professional Liability – Claims Made Basis	\$2,000,000 per claim, \$5,000,000 aggregate
6. Commercial Crime Coverage (Policy shall be endorsed to name City as a joint loss payee).	\$500,000 per claim

14.3 If **CITY** requests to view an electronic copy (ies) of any insurance policy, the **CONSULTANT** may prominently mark those portions of the policy it regards as confidential. In the event a third party makes an open records request under the Texas Freedom of Information Act, or other public information law, asking to view or copy the policy, the City shall submit the material to the Texas Attorney General (“AG”) for an opinion regarding the release of said policy. **CONSULTANT** and **CITY** agree that the **CITY** will be bound by the AG opinion. Similarly, the **CITY** would respond to provide the material under a court order or a litigation discovery rule which may require or direct disclosure of the information.

14.4 **CONSULTANT** agrees that, with respect to the above-required insurance, all insurance policies are to contain or where a blanket endorsement is unavailable be endorsed to contain the following required provisions:

- Name the **CITY** and its officers, employees, and elected representatives as additional insureds, for claims caused by the negligent acts or omissions of **CONSULTANT** by endorsement, as respects operations and activities of, or on behalf of, the named insured and performed under this **CONTRACT** with the **CITY**, with the exception of the workers’ compensation and professional liability policies;
- **CONSULTANT’S** insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio where **CITY** is an additional insured shown on the policy;
- Workers’ compensation, employers’ liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of **CITY**.
- **CONSULTANT** agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverage required of **CONSULTANT** herein, and provide a Certificate of Insurance and endorsement that includes the **CONSULTANT** and the **CITY** as additional

insured for claims caused by the negligent acts or omissions of **CONSULTANT**. **CONSULTANT** shall provide the **CITY** with said certificate and blanket endorsement prior to the commencement of any work by the subcontractor. This provision may be reasonably modified by the City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this **CONTRACT**. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the **CONTRACT** for all purposes.

- 14.5 **CONSULTANT** will endeavor to provide advance written notice directly to **CITY** in the event of any suspension, notice of cancellation, or non-renewal in coverage, and not less than (10) calendar days notice for non-payment of premiums. Within (5) business days of a suspension, cancellation or non-renewal in coverage, **CONSULTANT** shall endeavor to provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend **CONSULTANT'S** performance should there be a lapse in coverage at any time during this **CONTRACT**. Failure to provide and to maintain the required insurance shall constitute a material breach of this **CONTRACT**. All notices shall be given to **CITY** at the following addresses:

City of San Antonio
Human Resources Department
Employee Benefits Division
P.O. Box 839966
San Antonio, Texas 78283-3966

- 14.6 In addition to any other remedies **CITY** may have upon **CONSULTANT'S** failure to provide and maintain any insurance to the extent and within the time herein required, **CITY** shall have the right to order **CONSULTANT** to stop work hereunder, and/or withhold any payment(s) which become due, to **CONSULTANT** hereunder until **CONSULTANT** demonstrates compliance with the requirements hereof.
- 14.7 Nothing herein contained shall be construed as limiting in any way the extent to which **CONSULTANT** may be held responsible for payments of damages to persons or property resulting from **CONSULTANT'S** or its subcontractors' performance of the work covered under this **CONTRACT**.
- 14.8 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

XV. INDEMNITY

- 15.1 **CONSULTANT** covenants and agrees to **FULLY INDEMNIFY, DEFEND and HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually and collectively, from and against any and all costs, third party claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **CONSULTANT'S** activities under this **CONTRACT**, including any acts or omissions of **CONSULTANT**, any agent, officer, director, representative, employee, **CONSULTANT** or subcontractor of **CONSULTANT**, and their respective officers, agents employees, directors and representatives while in the exercise of performance of the rights or duties under this **CONTRACT**. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of **CITY** arising out of or related to its activities under this **CONTRACT**, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 15.2 The **CITY** shall not assert or seek, and **CONSULTANT** shall not be liable to **CITY** for, any damages or other monetary claim or claims on any legal or equitable theory of liability or recovery exceeding, in the aggregate, ten times the amount to be paid to **CONSULTANT** under this **CONTRACT** or Two Million Five Hundred Sixty-two Thousand dollars (\$2,562,000.00) in addition to any contingent additional services up to \$25,000. It is understood that any contingent additional services paid for will be added. **CITY** hereby waives and agrees not to assert any claims for lost profits, indirect damages, consequential damages, special damages, incidental damages, exemplary damages, and punitive damages, regardless of whether such claims arise pursuant to this **CONTRACT** or pursuant to another legal or equitable claim or relationship between the parties. The provisions of the Section shall apply regardless of whether any such claim or claims arise by statute, contract indemnity, this **CONTRACT**, or otherwise arising in law or equity in any jurisdictions. The statute of limitations with respect to the assertion of any claims against **CONSULTANT** shall expire four years following the earliest date when the alleged error or omission or other event giving rise to the alleged claim first occurred, and, if not timely asserted by **CITY** by initiation of a claim in a court of competent jurisdiction, shall be forever barred. No act of

CONSULTANT other than the execution of an express waiver of the provision of this Section shall be effective to toll or extend the aforesaid four years limitation period or otherwise increase **CONSULTANT'S** liability with respect to any claims asserted against **CONSULTANT**.

- 15.3 **The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.**
- 15.4 **CONSULTANT shall advise the CITY in writing within 10 days of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT'S activities under this contract.**

XVI. INDEPENDENT CONSULTANT

- 16.1 **CONSULTANT** covenants and agrees that it is an independent **CONSULTANT** and not an officer, agent, servant or employee of **CITY**; that **CONSULTANT** shall have exclusive right to control the details of the work performed hereunder and all person performing the same, and shall be responsible for the acts and omissions of its officers, agents, employees, **CONSULTANTS** and subcontractors; that the doctrine of *respondeat superior* shall not apply as between **CITY** and **CONSULTANT**, its officers, agents, employees, consultants and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between **CITY** and **CONSULTANT**.
- 16.2 Any and all of the employees of the **CONSULTANT**, wherever located, while engaged in the performance of any work under this **CONTRACT** shall be considered employees of the **CONSULTANT** only, and not of the **CITY**, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the **CONSULTANT**.
- 16.3 **No Third Party Beneficiaries:** For purposes of this **CONTRACT**, including its intended operation and effect, the Parties specifically agree and contract that (1) this **CONTRACT** only affects matters/disputes between the Parties to this **CONTRACT** and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entity may benefit incidentally by this **CONTRACT**; and (2) the terms of this **CONTRACT** are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either **CITY** or **CONSULTANT**.

**XVII. COMPLIANCE WITH SMALL, MINORITY AND WOMAN-OWNED
BUSINESS ENTERPRISES POLICY, NON-DISCRIMINATION AND EQUAL
EMPLOYMENT OPPORTUNITY POLICY**

- 17.1 **CONSULTANT** is hereby advised that it is the policy of the City of San Antonio that Small, Minority or Woman-owned Business Enterprises (SMWBE) shall have the maximum practical opportunity to participate in the performance of public contracts (per Ordinance #2007-04-12-0396, as amended; the "SBEDA Policy", incorporated for all purposes as if set out herein). Per Ordinance #69403, **CONSULTANT** agrees that **CONSULTANT** will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. **CONSULTANT** further agrees that **CONSULTANT** will abide by all applicable terms and provisions of **CITY'S** Non-Discrimination Policy and SBEDA Policy. These policies are available in **CITY'S** Human Resources Department, Economic Development Department and the City Clerk's Office.
- 17.2 The **CONSULTANT** agrees that if material deficiencies in any aspect of its SMWBE utilization plan as set out in its proposal are found or if **CONSULTANT** does not meet the SMWBE goals as specified by the **CITY'S** Human Resources Department, as a result of a review or investigation conducted by **CITY'S** Human Resources or Economic Development Departments, **CONSULTANT** will be required to submit a written report to the **CITY'S** Human Resources Department. The **CONSULTANT** will also be required to submit a supplemental Good Faith Effort Plan (GFEP) indicating efforts to resolve any deficiencies. If the **CITY'S** Human Resources Department and City Attorney's Office find that material deficiencies exist, then the supplemental GFEP shall be denied and will constitute **CONSULTANT'S** failure to resolve any deficiencies. Failure to obtain an approved GFEP within ninety (90) days of initial denial shall constitute a default and result in penalties prescribed within the SBEDA Policy as outlined in the attached SBEDA Exhibit.

XVIII. NON-WAIVER

- 18.1 The granting or acceptance of extensions of time to complete the work or furnish the materials or reports required hereunder will not operate as a release to **CONSULTANT** from any other covenants and conditions required in this **CONTRACT**.

XIX. FRAUD AND ABUSE PREVENTION

- 19.1 **CONSULTANT** shall establish, maintain and utilize internal management procedures sufficient to protect against fraud, abuse or misappropriation of funds while in performance of obligations and duties under this **CONTRACT**. Any suspected fraud, abuse or misappropriation of funds shall be investigated promptly at the sole expense of **CONSULTANT**. Any funds that are found to be misappropriated shall be repaid to **CITY** by **CONSULTANT** within thirty (30) days of such finding.
- 19.2 **CONSULTANT** agrees to repay **CITY** for overpayments to service providers resulting from **CONSULTANT'S** claims system's or processors' errors within 30 days of verification of overpayments.

XX. CONFLICT OF INTEREST

- 20.1 **CONSULTANT** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the **CITY** or any City agency such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.
- 20.2 **CONSULTANT** warrants and certifies, and this **CONTRACT** is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the **CITY**. **CONSULTANT** further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.
- 20.3 **CONSULTANT** warrants that no person or selling agency has been employed or retained to solicit or secure this **CONTRACT** upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by **CONSULTANT** for the purpose of securing business. For breach or violation of this warranty, **CITY** shall have the right to rescind this **CONTRACT** without liability or, at its discretion, to deduct from the **CONTRACT** price or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

- 20.4 If at any time it shall be found that the person, firm or corporation to whom a CONTRACT has been awarded has, in presenting any proposal, colluded with any other party or parties, then the contract so awarded shall be voidable at CITY's option, and CONSULTANT shall be liable to CITY for all loss or damage that CITY may suffer thereby.

XXI. TERMINATION

- 21.1 For purposes of this CONTRACT, "termination" of this CONTRACT shall mean termination by expiration of the CONTRACT term or earlier termination pursuant to any of the provisions hereof.
- 21.2 Termination by Notice. This CONTRACT may be canceled by either party upon written notice, provided such notice specifies an effective date of termination, which shall be not less than 30 calendar days nor more than 90 calendar days after the date of receipt of the notice by the other party. If the notice does not specify a date of termination, the effective date of termination shall be 30 calendar days after receipt of the notice by the other party.
- 21.3 Termination for Cause. Should either party default in the performance of any of the terms or conditions of this CONTRACT, the other party shall deliver to the defaulting party written notice thereof specifying the matters in default. The defaulting party shall have ten (10) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such ten (10) day period, this CONTRACT shall terminate at 11:59:59 p.m., Central Standard Time, on the tenth (10th) day after the receipt of the notice by the defaulting party.
- 21.4 Termination by Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein or, if any law is interpreted to prohibit such performance, this CONTRACT shall automatically terminate as of the effective date of such prohibition.
- 21.5 Effect of Termination. The period between notice of termination and the effective date of termination shall be used to effect an orderly transfer of records and funds, if any, from CONSULTANT to CITY or to such person(s) or firm(s) as the CITY may designate. Any records transfer shall be completed within 15 calendar days of the termination date. Any such transfer of records or funds shall be completed at CONSULTANT'S sole cost and expense. All files are the property of the CITY and, at the CITY'S request, will be delivered at no cost to the CITY or its designated recipient on the effective date of termination. Any CITY funds held in any escrow account(s) shall be returned to the CITY within 30 calendar days after the effective termination date.

- 21.6 Upon termination or cancellation of this CONTRACT, **CITY** may immediately commence audit of **CONSULTANT'S** books, accounts, and records. Within 30 calendar days after being notified by **CITY** of the results of said audit, **CONSULTANT** shall pay **CITY** any amount shown by said audit to be owed **CITY** or its employees. No waiver of existing default shall be deemed to waive any subsequent default.
- 21.7 If **CITY** conducts an audit, either party to this CONTRACT may conduct a second audit, at their own expense, by the same or another independent auditor. If the results from the second audit are different, a third audit may be conducted with the costs of said audit to be shared equally between **CONSULTANT** and **CITY**. The results from said third audit shall be final.
- 21.8 Upon termination of this CONTRACT, in whole or in part, and/or its non-renewal, in entirety or of any major operating subsidiary, entity or portion thereof, **CITY** shall have the option to:
- 21.8.1 Assume all open claims pending for the terminated or non-renewed portion of the CONTRACT, as of the effective date of termination or non-renewal, provided however, that **CONSULTANT** shall be entitled to receive its full fee for all claims processed to completion into its data files prior to the effective date of termination or non-renewal; or,
 - 21.8.2 Upon agreement of a rate of compensation by both parties, **CITY** requires **CONSULTANT** to continue administration, to conclusion, all incurred claims associated with that portion of the services terminated or non-renewed.
 - 21.8.3 In the event **CITY** requests **CONSULTANT** to provide post-termination or non-renewal claims administration, upon agreement of a rate of compensation by both parties, **CITY** may continue to purchase on-line data services. Such rate of compensation shall thereafter be reviewed by the parties on an annual basis and continued on-line data services shall be the subject of a written agreement between the parties, subject to funding and approval of the City Council.
- 21.9 Within 30 calendar days of the effective date of termination or cancellation, **CONSULTANT** shall submit to **CITY** its claims, in detail, for the monies owed by **CITY** for services performed under this CONTRACT through the effective date of termination, except for monies owed for processing of claims incurred prior to the termination date and submitted for processing after the termination date.

XXII. COMPLIANCE WITH LAWS

- 22.1 **CONSULTANT** hereby agrees to provide services hereunder in compliance with all applicable Federal, State and local laws, regulations, policies and procedures.
- 22.2 Non-Discrimination. As a party to this contract, **CONSULTANT** understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

XXIII. SUCCESSORS AND ASSIGNS

- 23.1 This **CONTRACT** shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided for herein.

XXIV. NOTICES

- 24.1 Any notice required or permitted to be given under this **CONTRACT** shall be sufficient if given in writing and sent by certified mail, return receipt requested, postage prepaid to **CITY**, or to **CONSULTANT** at the addresses set forth below or to any other address of which written notice of change is given:

CITY

City of San Antonio
Human Resources Department
Employee Benefits Division
111 Soledad
San Antonio, TX 78205

CONSULTANT

Arthur J. Gallagher
601 NW Loop 410 Suite 325
San Antonio, TX 78216

XXV. EXHIBITS

- 25.1 **CONSULTANT** understands and agrees that all exhibits referred to in this **CONTRACT** are intended to be and hereby are, specifically made a part of this **CONTRACT**. Said exhibits are as follows:

CITY's Request for Proposal	Exhibit A
CONSULTANT'S Proposal	Exhibit B
HIPAA Business Associate Agreement	Exhibit C
SBEDA Provisions	Exhibit D

- 25.2 **CONSULTANT** understands and agrees that Exhibits A, B and C are a part of this **CONTRACT**, as though fully set out herein, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by **CONSULTANT** as completely and fully as are the obligations, conditions, tasks, products and representations imposed by this **CONTRACT**.
- 25.3 The terms of this **CONTRACT** shall be final and binding where there is any conflict between the terms of **CITY'S** Request for Proposal, **CONSULTANT'S** Proposal and the terms of this **CONTRACT**; **CITY'S** Request for Proposal shall control where it conflicts with **CONSULTANT'S** Proposal.

XXVI. LEGAL AUTHORITY

- 26.1 The signer of this **CONTRACT** for **CONSULTANT** represents, warrants, assures and guarantees full legal authority to execute this **CONTRACT** on behalf of **CONSULTANT** and to bind **CONSULTANT** to all of the terms, conditions, provisions and obligations herein contained.

XXVII. VENUE AND GOVERNING LAW

- 27.1 Venue of any court action brought directly or indirectly by reason of this **CONTRACT** shall be in Bexar County, Texas. This **CONTRACT** shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties created hereunder are to be performed in Bexar County, Texas.

XXVIII. GENDER

- 28.1 Words of any gender used in this **CONTRACT** shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXIX. CAPTIONS

- 29.1 The captions contained in this **CONTRACT** are for convenience or reference purposes only and shall in no way limit, enlarge or alter the terms and/or conditions of this **CONTRACT**.

XXX. ENTIRE AGREEMENT

30.1 This CONTRACT, its exhibits and the authorizing ordinance constitute the final and entire agreement between the parties hereto, superseding all verbal or written agreements, previous and/or contemporaneous agreements between the parties and relating to matters in this CONTRACT. No other agreements, oral or otherwise, regarding the matters of this CONTRACT shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties hereto.

XXXI. SEVERABILITY

31.1 If any clause or provision of this CONTRACT is illegal, invalid or unenforceable under present or future federal, state or local laws, including, but not limited to the City Charter, City Code or Ordinances of the City of San Antonio, Texas, then, and in that event, it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this CONTRACT shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein. It is also the intention of the parties to this CONTRACT that, in lieu of each clause or provision of this CONTRACT that is illegal, invalid or unenforceable, there be added as part of this CONTRACT a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

XXXII. ACKNOWLEDGMENT


32.1 Each of the parties acknowledges that it has read this CONTRACT, understands its contents and executes this CONTRACT voluntarily.

EXECUTED this the _____ day of _____, 2016.

CITY OF SAN ANTONIO

ARTHUR J. GALLAGHER & CO.

Sheryl Sculley
City Manager



Nick Long
Area Vice President

APPROVED AS TO FORM:

Krista Cover
Assistant City Attorney