

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
ACTUARIAL SERVICES**

This Agreement (hereinafter referred to as Agreement) is entered into by and between the **CITY OF SAN ANTONIO** (hereinafter referred to as "City"), a Texas Municipal Corporation, acting by and through Debra Ojo, Director of Risk Management, and **PINNACLE ACTUARIAL RESOURCES INC.**, (hereinafter referred to as "Consultant") a corporation chartered under the laws of the State of Illinois, acting by and through its President, Joseph A. Herbers, both of which may be referred to herein collectively as "Parties", pursuant to Ordinance No. \_\_\_\_\_ passed and approved on \_\_\_\_\_.

Terms and conditions for performance and compensation for this Agreement are set forth in the following AGREEMENT documents, true and correct copies of which are attached and fully incorporated herein described, to which the Parties hereto severally and collectively agree, and by the execution hereof are bound to the mutual obligations herein contained:

**I. DEFINITIONS**

As used in this Agreement, the following terms shall have meanings as set out below:

- 1.1 "City" is defined in the Preamble of this Agreement and includes its successors and assigns.
- 1.2 "Consultant" is defined in the preamble of this Agreement and includes its successors.
- 1.3 "Director" shall mean the City's Director of Risk Management, or designee.

**II. PURPOSE**

- 2.1 The purpose of this Agreement is to state the terms and conditions under which the Consultant will provide actuarial services.

**III. TERM**

- 3.1 Unless sooner terminated in accordance with the provisions of this Agreement, the initial term of this Agreement shall commence on February 1, 2020 and terminate on January 31, 2023.
- 3.2 City shall the right to renew this Agreement under the same terms and conditions for up to two (2) additional one (1) year extensions. Renewals shall be in writing and signed by the City Manager, City Manager designee, or the Director of Risk Management, subject to and contingent upon appropriation of funds and expenditures due hereunder. Approval of the City Council of City shall not be required for renewal upon the same terms and conditions.
- 3.3 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of the City's

budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

#### **IV. SCOPE OF SERVICES**

- 4.1 Consultant agrees to provide the services described in this Article IV, entitled Scope of Services in exchange for the compensation described in Article VI, entitled Compensation.
- 4.2 Consultant shall conduct a comprehensive annual actuarial analysis of City's self-insured workers' compensation and liability programs. The actuarial analysis shall be conducted by a licensed Independent Consulting Actuarial who is a member of the Casualty Actuarial Society. The actuarial analysis shall commence during the month of October, with draft copies due to the city's Risk Manager by the third week of November, and separate final reports for Workers' Compensation, General Liability, and Automobile Liability provided to the City's Office of Risk Management Director no later than the first week of December of the same year. Consultant shall, at City's discretion, present the November draft report in person to City Staff in the offices of City's Risk Management Department, or such other location designated by the Director.
- 4.3 Consultant shall provide an estimate of the unpaid loss and allocated loss adjustment expense (ALAE) for City's Workers' Compensation, General Liability, and Auto Liability programs. This estimate will include a provision for known claims as of September 30, as well as claims which have been incurred but not yet reported (i.e., incurred but not reported or IBNR claims) to City.
- 4.4 Estimates shall be provided at expected 75%, and 90% probability, undiscounted, and at 1%, 2%, 3%, and 4% discounts, separated for auto liability, general liability, and workers' compensation, at specified retention levels for workers' compensation and general liability, and assuming no excess coverage for auto liability. Tables shall reflect these options for both Net Loss & ALAE Reserves and Net Loss & ALAE Funding.
- 4.5 Consultant shall provide a "roll-forward" of its estimates to December 31.
- 4.6 Consultant shall provide prospective year loss projections for workers' compensation, general liability, and auto liability coverage. The prospective period shall be from October 1 of the current year through September 30, of the following year.
- 4.7 Mid-Year Adjustment (Optional Additional Services)
  - 4.7.1 City may, at its option, require Consultant to perform a mid-year adjustment to the actuarial analysis for the fiscal year in which the option is exercised. City may utilize this option for the original term and all renewal periods of this agreement. If City exercises this option, City shall provide Consultant with updated claims data through the end of February 28. Consultant shall update its comprehensive actuarial analysis of City's self-insured workers compensation and liability programs using data for the period ending February 28, and shall project its findings forward through September

30 of that same fiscal year. Consultant shall provide an estimate of the unpaid loss and allocated loss adjustment expense for City's workers' compensation, general liability and auto liability programs. This estimate will include a provision for known claims as of February 28, as well as claims which have occurred, but not yet been reported to City. The analysis may be provided in a memorandum format.

- 4.7.2 The mid-year adjustment analysis shall commence during the month of March, with draft copies due to the city's Risk Manager by the third week of March, and the final report provided to the City's Office of Risk Management Director no later than the second week of April of the same year. Consultant shall, at City's discretion, present the March draft report in person to City Staff in the offices of City's Risk Management Department, or such other location designated by the Director.

#### 4.8 Assessment Allocation Plan (Optional Additional Services)

- 4.8.1 The City, in its sole discretion, may require Consultant to perform the following optional additional services, related to the development of a methodology for, and preparation of, an assessment allocation plan. City shall notify Consultant in writing, if City wishes Consultant to provide these services.
- 4.8.2 Background: The City maintains Workers' Compensation and General Liability Internal Service Funds ("WC/GL Internal Service Funds") from which it pays workers' compensation and general liability claims. Assessments are charged against each individual City department's cost center within the City budget to finance the WC/GL Internal Service Funds. The City seeks Consultant's expertise, using its skills and identified industry best practices, to develop a methodology for applying appropriate assessments against each individual City department's cost centers to adequately finance the WC/GL Internal Service Funds. In addition, City wishes for Consultant to apply its methodology to ascertain the assessments that should be applied for the following City fiscal year.
- 4.8.3 If requested by City, Consultant shall develop a methodology for City-wide assessments, and apply the methodology to ascertain the appropriate assessments against each individual City department's cost center in order to finance the WC/GL Internal Service Funds. Consultant shall identify industry best practices to City, including how Consultant derived such practices, and provide a detailed explanation justifying its proposed methodology to City in a report, along with the proposed methodology and the actual assessments proposed. Consultant shall provide a draft of this report no later than 14 calendar days from the date City requests these services. City shall review the report and may request clarification or revision. If so, Consultant shall provide a revised report no later than 5 calendar days from City's request for clarification or revision. City shall notify Consultant in writing when City accepts Consultant's report as final.
- 4.8.4 The assessment and methodology may be used to charge both Federal and State of Texas grant funds.

- 4.8.5 Consultant represents and warrants to City that the Assessment Allocation Plan developed by Consultant and delivered to City in accordance with the terms and conditions of this Agreement shall be in full compliance with the then-current version of (a) all applicable Generally Accepted Accounting Principles (GAAP); (b) all applicable Federal and State statutes, rules, regulations, and circulars, including but not limited to (i) OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments; (ii) OMB Circular A-102 Common Rule for State, Local, and Indian Tribal Governments; (iii) OMB Circular A-133 for federal funding and the OMB Circular A-133 Compliance Supplement; and (iv) State of Texas Single Audit Circular for state funding.
- 4.8.6 Consultant acknowledges that City is relying up representation and warranty set forth in above in entering into this Agreement with Consultant.
- 4.8.7 In the event of a challenge by any Federal or State Agency, Commission, Department, or Office to any portion(s) of the Assessment Allocation Plan prepared by Consultant and delivered to City, Consultant shall, at no additional cost to City, if requested by City, take any and all action necessary to defend the Assessment Allocation Plan, including, but not limited to, taking the lead role, or actively participating in the defense, at City's discretion, attendance at all meetings or hearings, timely providing to City and/or such Federal or State Agency, Commission, Department, or Office all services, personnel, records, work papers, and other materials or information that are necessary to support and justify the challenged portions(s) of such an Assessment Allocation Plan.
- 4.8.8 A finding by a Federal or State Agency, Commission, Department , or Office that the Assessment Allocation Plan or any part(s) thereof developed by Consultant and delivered to City are not in compliance in any substantial manner with GAAP and/or any applicable Circular (whether or not specifically mentioned in above) shall constitute a breach by Consultant of its representation and warranty to City, and shall entitle City to recover all damages of any type and nature whatsoever resulting therefrom. The indemnity provisions of this Agreement shall apply to the recovery by City of all such damages.
- 4.9 The provisions of this Article and the indemnity provisions of this Agreement shall survive the completion or earlier of termination of this Agreement.
- 4.10 All work performed by Consultant hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article X, entitled Termination, in whole or in part, should Consultant's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

## **V. GENERAL ASSURANCES**

- 5.1 Consultant covenants and agrees to perform all services described in this Agreement in a workmanlike and professional 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.
- 5.2 Consultant agrees to employ, at its own expense, all personnel required to perform the services described in this Agreement. 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 Agreement shall be fully qualified and shall be authorized or licensed to perform such work as required.

## **VI. COMPENSATION TO CONSULTANT**

- 6.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Consultant the amount(s) set forth below, and further evidenced in Attachment A, as total compensation:
  - 6.1.1 City shall pay Consultant \$37,091 for the actuarial services described in section 4.2 through 4.6 for the original contract term,
  - 6.1.2 City shall pay Consultant \$13,113 for the actuarial services described in sections 4.2 through 4.6 herein for the first renewal term, if renewed.
  - 6.1.3 City shall pay Consultant \$13,506 for the actuarial services described in sections 4.2 through 4.6 herein for the second renewal term, if renewed.
  - 6.1.4 City shall pay Consultant \$2,000 for the Mid-Year Adjustment services described in section 4.7 herein for the first year of the original contract term, if City exercises its option to require Consultant to perform these services.
  - 6.1.5 City shall pay Consultant \$2,060 for the Mid-Year Adjustment services described in section 4.7 herein for the second year of the original contract term, if City exercises its option to require Consultant to perform these services.
  - 6.1.6 City shall pay Consultant \$2,122 for the Mid-Year Adjustment services described in section 4.7 herein for the third year of the original contract term, if City exercises its option to require Consultant to perform these services.

- 6.1.7 City shall pay Consultant \$2,186 for the Mid-Year Adjustment services described in section 4.7 herein for the first renewal term, if renewed and if City exercises its option to require Consultant to perform these services.
- 6.1.8 City shall pay Consultant \$2,252 for the Mid-Year Adjustment services described in section 4.7 herein for the second renewal term, if renewed and if City exercises its option to require Consultant to perform these services.
- 6.1.9 City shall pay Consultant \$2,000 for the Assessment Allocation Plan services described in section 4.8 herein for the first year of the original contract term, if City exercises its option to require Consultant to perform these services.
- 6.1.10 City shall pay Consultant \$2,060 for the Assessment Allocation Plan services described in section 4.8 herein for the second year of the original contract term, if City exercises its option to require Consultant to perform these services.
- 6.1.11 City shall pay Consultant \$2,122 for the Assessment Allocation Plan services described in section 4.8 herein for the third year of the original contract term, if City exercises its option to require Consultant to perform these services.
- 6.1.12 City shall pay Consultant \$2,186 for the Assessment Allocation Plan services described in section 4.8 herein for the first renewal term, if renewed and if City exercises its option to require Consultant to perform these services.
- 6.1.13 City shall pay Consultant \$2,252 for the Assessment Allocation Plan services described in section 4.8 herein for the second renewal term, if renewed and if City exercises its option to require Consultant to perform these services.
- 6.2 Consultant shall invoice City for its services upon completion of said services and provision of final reports to City. Consultant shall submit all invoices to City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976. With a copy to City of San Antonio, Attn: Deborah Ojo, Director of the Office of Risk Management, P.O. Box P.O. Box 839966, San Antonio, Texas 78283-3966. City shall pay all invoices within 30 days of receipt thereof, pursuant to 6.4 below. Payment shall be deemed made upon posting of check.
- 6.3 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in Section 6.1 above. Total payments to Consultant cannot exceed that amount set forth in Section 6.1 above, without prior approval and agreement of all Parties, evidenced in writing and approved by City in accordance with Article XXII, entitled Amendments.
- 6.4 Final acceptance of work products and services require written approval by City, by and through Director. Payment will be made to Consultant following written approval of the final

work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provisions of any goods or services.

## **VII. OWNERSHIP OF PRODUCT**

- 7.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement are the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.
- 7.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

## **VIII. RETENTION AND ACCESSIBILITY OF RECORDS**

- 8.1 Consultant, and its subcontractors if any, shall properly accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as “documents”), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of any by City and of its authorized representatives.
- 8.2 Consultant shall maintain at its principal administrative office adequate books and records of all transactions in which Consultant engages with City.
- 8.3 Consultant shall maintain the books and records for the term of this Agreement to which they relate and for the four (4) year period from the date of termination of the Agreement (hereinafter referred to as “retention period”). If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return the documents to City at Consultant’s expense prior to or at the conclusion of the retention period. In such event, Consultant may retain a copy of the documents.
- 8.4 Consultant shall maintain the books and records in accordance with prudent standards of insurance recordkeeping and all requirements of federal or state law.
- 8.5 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.

- 8.6 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.
- 8.7 City is entitled to continuing access to these books and records.
- 8.8 Consultant may, at City's option, fulfill the requirements of this Section of this Agreement 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.
- 8.9 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

## **IX. PUBLICATION**

- 9.1 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.

## **X. TERMINATION**

- 10.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article III, entitled Term, or earlier termination pursuant to any of the provisions hereof.
- 10.2 Termination Without Cause. This Agreement may be terminated by either party upon written notice in accordance with Article XI, entitled Notice, provided such notice specifies an effective date of termination, which shall be not less than 30 calendar days or 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.
- 10.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article XI. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:
- 10.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XIV. Assigning Interest; or
- 10.3.2 Any material breach of the terms of this Agreement, as determined solely by City.
- 10.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 10.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have thirty (30) calendar days after receipt of the written notice, in



accordance with Article XI. Notice, to cure such default. If Consultant fails to cure the default within such thirty (30) day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

- 10.4.1 Bankruptcy or selling substantially all of company's assets;
- 10.4.2 Failing to perform or failing to comply with any covenant herein required; or
- 10.4.3 Performing unsatisfactorily.

10.5 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 Agreement shall automatically terminate as of the effective date of such prohibition.

10.6 Effect of Termination. The period between notice of termination and the effective date of termination shall be used to affect 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, at no additional cost to City, all completed documents, papers, records, charts, reports, and other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VIII, entitled Retention and Accessibility of Records. Any records transfer shall be completed within fifteen (15) calendar days of termination date. Any such transfer of records or funds shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents.

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.

10.7 Within forty-five (45) calendar days of the effective date of completion, termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement 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. Failure by Consultant to submit its claims within said 45 calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

- 10.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.
- 10.9 Termination not Sole Remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law, or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

## **XI. NOTICE**

- 11.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:  
City of San Antonio  
Attn: Debra Ojo, Director of Risk Management

If Intended for Consultant, to:  
Joseph A. Herbers  
President

Mailing Address:  
P.O. Box 839966  
San Antonio, Texas 78283-3966

Mailing Address:  
3109 Cornelius Drive  
Bloomington, Illinois 61704

## **XII. NOTICE OF CONSULTANT'S CAPACITY**

- 12.1 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.

## **XIII. PROCUREMENT DOCUMENTS INCORPORATED**

- 13.1 City issued Request for Proposal No. RFP 019-090 ("RFP") on September 18, 2019. The RFP solicited proposals with regard to an Actuarial Services for Self-Funded Worker's Compensation and Liability.
- 13.2 On or about October 18, 2019, Consultant submitted its Proposal in response to the RFP.
- 13.3 To the extent there was no conflict between the provisions of the RFP and the Proposal, Consultant shall provide all of the services included in the Proposal. To the extent there is a

conflict between the provisions of the RFP and the Proposal, the provisions of the RFP shall control.

- 13.4 To the extent there is no conflict between the provisions of the Proposal and this Agreement, Consultant shall provide all of the services included in the Proposal. To the extent there is a conflict between the provisions of the Proposal and this Agreement, the provisions of this Agreement shall control.

#### **XIV. ASSIGNING INTEREST**

- 14.1 Consultant shall supply qualified personal as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees, or its subcontractors shall perform all necessary work.
- 14.2 It is City's understanding and this Agreement is made in reliance thereon, that Consultant intends to use the following subcontractors in the performance of this Agreement: None. Any deviation from this subcontractor list, whether in the form of deletions, additions, or substitutions shall be approved by Director, prior to the provision of any services by said subcontractor.
- 14.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by Director.
- 14.4 Except as otherwise stated herein, Consultant shall not assign, sell, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or 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. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee, or subcontractor.
- 14.5 Any such attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void *ab initio*, 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 Agreement, the City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City which City sustains as a result of such violation.

- 14.6 If approved, Consultant's subcontractors may not voluntarily assign, transfer, subcontract or pledge, in whole or in part, any Agreement with Consultant arising from or in relation to this Agreement, nor shall any involuntary transfer or assignment result in a transfer of any rights conferred by this Agreement. Consultant shall indicate this limitation in all Agreements with approved subcontractors.
- 14.7 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 Agreement, any such change of ownership interest or control of its business entity may be grounds for termination of this Agreement at the sole discretion of the City.
- 14.8 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 Agreement.

## **XV. INDEPENDENT CONTRACTOR**

- 15.1 Consultant covenants and agrees that it is an independent contractor 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, contractors and subcontractors; that the doctrine of *Consultant superior* shall not apply as between City and Consultant, its officers, agents, employees, contractors and subcontractors, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that Consultant has no authority to bind the City.
- 15.2 Any and all of the employees of the Consultant, wherever located, while engaged in the performance of any work under this AGREEMENT 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.
- 15.3 No Third Party Beneficiaries: For purposes of this Agreement, including its intended operation and effect, the Parties specifically agree and contract that (1) this Agreement only affects matters/disputes between the Parties to this Agreement 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 Agreement; and (2) the terms of this Agreement are not intended to release, either by Agreement or operation of law, any third person or entity from obligations owing by them to either City or Consultant.

## **XVI. INSURANCE AND BONDING**

- 16.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish an original completed Certificate(s) of Insurance, including all required endorsements, to City's Office of Risk Management, which shall be clearly labeled "Actuarial Services for the City's Self-Funded Worker's Compensation and Liability" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The city will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature, including the signer's company affiliation, title and telephone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or to perform under this Agreement until such certificate has been delivered to City's Office of Risk Management. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 16.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.
- 16.3 A Consultant's financial integrity is of interest to City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized and to do business in the State of Texas and with an A.M. Best rating of no less than A-(VII), in the following types and for an amount not less than the amount listed below:

| <b><i>INSURANCE TYPE</i></b>   | <b><i>LIMITS</i></b>   |
|--|--|
| 1. Workers' Compensation   | Statutory  |
| 2. Employers' Liability  | \$1,000,000/\$1,000,000/\$1,000,000  |
| 3. Commercial General Liability Insurance to include coverage for the following:<br>a. Premises/Operations<br>b. Products/Completed Operations<br>c. Personal/Advertising Injury<br>d. Contractual Liability | For Bodily Injury and Property Damage<br>\$1,000,000 per occurrence;<br>\$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage. |

|  |   |
|--|---|
| 4. Professional Liability (Claims-made Coverage) | <p>\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.</p> <p>Coverage to be maintained and in effect for no less than two years subsequent to the completion of the professional service.</p> |
|--|---|

- 16.4 Consultant agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Consultant herein, and provide a certificate of insurance and endorsement that names the Consultant and the CITY as additional insureds. Consultant shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by 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.
- 16.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Consultant shall pay any costs incurred resulting from provision of said documents.

City of San Antonio  
Attn: **Office of Risk Management**  
P.O. Box 839966  
San Antonio, Texas 78283-3966

- 16.6 Consultant agrees that with respect to the above-required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
  - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the 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 the City.
  - Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 16.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall 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 Agreement.
- 16.8 In addition to any other remedies the City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the 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.
- 16.9 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 Agreement.
- 16.10 It is agreed that 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 for liability arising out of operations under this contract.
- 16.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.
- 16.12 Consultant and any Subcontractors are responsible for all damage to their own equipment and/or property.

## XVII. INDEMNITY

- 17.1 **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, 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 Agreement, 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 the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, 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.

- 17.2 The provisions of this INDEMNITY 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. Consultant shall advise the City in writing within twenty-four (24) hours of any claim or demand against the City or Consultant known to Consultant related to or arising out of Consultant's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Consultant's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Consultant of any of its obligations under this paragraph.
- 17.3 Defense Counsel. City shall have the right to select or to approve defense counsel to be retained by Consultant in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Consultant shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If Consultant fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Consultant shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 17.4 Employee Litigation. In any and all claims against any party indemnified hereunder by any employee of Consultant, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant or any subcontractor under worker's compensation or other employee benefit acts.

## **XVIII. NON-WAIVER OF PERFORMANCE**

- 18.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of



either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XXII. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

## **XIX. CONFLICT OF INTEREST**

- 19.1 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 Part B, Section 10 of the Ethics Code, from having a financial interest in any contract or agreement 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/agreement 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/agreement, a partner or a parent or subsidiary business entity.
- 19.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement 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.

## **XX. FRAUD AND ABUSE PREVENTION**

- 20.1 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 Agreement. 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.
- 20.2 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.

## **XXI. INTELLECTUAL PROPERTY**

21.1 Intellectual Property. Consultant agrees to abide by the following regarding intellectual property rights:

21.1.1 Consultant shall pay all royalties and licensing fees. Consultant shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the performance of services. It shall defend all suits for infringement of any Intellectual Property rights. Further, if Consultant has reason to believe that the design, service, process, or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the City.

21.1.2 Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, Consultant will immediately:

- a. obtain, at Consultant's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, or both the programs and hardware, as the case may be, or,
- b. alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and
- c. reimburse the City for any expenses incurred by the City to implement emergency backup measures if the City is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

21.1.3 Consultant further agrees to:

- a. assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this Contract,
- b. assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and indemnify the City against any monetary damages and/or costs awarded in such suit;

Provided that:

- a. Consultant is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Consultant agrees to consult with the City

Attorney of the City during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the City,

- b. the Software or the equipment is used by the City in the form, state, or condition as delivered by Consultant or as modified without the permission of Consultant, so long as such modification is not the source of the infringement claim,
- c. the liability claimed shall not have arisen out of the City's negligent act or omission, and the City promptly provide Consultant with written notice within 15 days following the formal assertion of any claim with respect to which the City asserts that Consultant assumes responsibility under this section.

- 21.2 Ownership and Licenses. In accordance with Texas law, Consultant acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on the behalf of Consultant pursuant to the resulting contract shall be the subject of any copyright or proprietary claim by Consultant.
- 21.3 The term “local government record” as used in this document means any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.
- 21.4 Consultant acknowledges and agrees that all local government records, as described in this document, produced in the course of the work pursuant to this Agreement, will belong to and be the property of City. Consultant will be required to turn over to City, all such records as required by said contract. Consultant shall not, under any circumstances, release any records created during the course of performance of the contract to any entity without City’s written permission, unless required to do so by a Court of competent jurisdiction.
- 21.5 Consultant agrees to comply with all applicable federal, state, and local laws, rules, and regulations governing documents and ownership, access and retention.

## **XXII. AMENDMENTS**

- 22.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant. Any amendment that does not cause this Agreement to exceed \$50,000 shall be executed by an Assistant City Manager, his/her designee, or

Deputy City Manager. Any amendment that causes this Agreement to exceed \$50,000 requires approval of the San Antonio City Council. All amendments are subject to and contingent upon appropriation of funds for any expenditure.

### **XXIII. SEVERABILITY**

- 23.1 If any clause or provision of this Agreement is held invalid, illegal 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 Agreement 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 hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

### **XXIV. LICENSES/CERTIFICATIONS**

- 24.1 Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder (1) is and at all times during the term of this Agreement will be a member in good standing of the Casual Actuarial Society and (2) has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein. Consultant specifically represents, warrants and certifies to the City, with knowledge that City is relying thereon, that each person designated to provide services hereunder has the credentials required for an actuary under §802.101(d) Texas Government Code, as required by the state statute.

### **XXV. COMPLIANCE WITH LAWS**

- 25.1 Consultant hereby agrees to provide and perform all services required under this Agreement in compliance with all applicable Federal, State and local laws, regulations, policies and procedures.

### **XXVI. PARTIES BOUND**

- 26.1 This Agreement 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.

### **XXVII. LEGAL AUTHORITY**

- 27.1 The signer of this Agreement for Consultant represents, warrants, assures and guarantees that he/she has full legal authority to execute this Agreement on behalf of Consultant and

to bind Consultant to all of the terms, conditions, provisions and obligations herein contained.

#### **XXVIII. LAW APPLICABLE & LEGAL FEES**

- 28.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**
- 28.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.
- 28.3 The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

#### **XXIX. NON-DISCRIMINATION**

- 29.1 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.

#### **XXX. CAPTIONS**

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

#### **XXXI. INCORPORATION OF ATTACHMENTS**

- 31.1 Each of the attachments listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all attachments:

A. Price Schedule

#### **XXXII. RESERVED**

#### **XXXIII. ENTIRE AGREEMENT**

- 33.1 This Agreement, its exhibits, if any, 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 Agreement and contain all of the terms and conditions agreed upon. No other

Agreements, oral or otherwise, regarding the matters of this Agreement shall be deemed to exist or to bind the parties hereto unless same is in writing, dated subsequent to the date hereto, and duly executed by the parties hereto, in accordance with Article XXII, entitled Amendments.

#### **XXXIV. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL**

- 34.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:
- (1) does not boycott Israel; and
  - (2) will not boycott Israel during the term of the contract.
- 34.2 "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
- 34.3 "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.
- 34.4 By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

#### **XXXV. PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION**

- 35.1 Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Consultant hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Consultant's certification. If found to be false, or if Consultant is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

**XXXVI. ACKNOWLEDGMENT**

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


EXECUTED this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**CITY OF SAN ANTONIO**

**CONSULTANT**

*Joseph A. Herbers,  
Pinnacle Actuarial Resources Inc.*

\_\_\_\_\_  
(Signature)

  
(Signature)

Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Printed Name: **Joseph A. Herbers**  
Title: **President**  
Date: **December 10, 2019**

Approved as to Form:

\_\_\_\_\_  
Assistant City Attorney

**ATTACHMENT A:**  
**PINNACLE ACTUARIAL RESOURCES, INC**  
**PRICE SCHEDULE**

| <b>1. PROPOSED ANNUAL PRICE, ACTUARIAL SERVICES</b>         |                       |
|---|-----------------------|
|   | Proposed Annual Price |
| Year 1  | \$ 12,000             |
| Year 2  | \$ 12,360             |
| Year 3  | \$ 12,731             |
| Year 4  | \$ 13,113             |
| Year 5  | \$ 13,506             |
| <b>2. PROPOSED PRICE, MID-YEAR ACTUARIAL ADJUSTMENT</b>     |                       |
|   | Proposed Annual Price |
| Year 1  | \$ 2,000              |
| Year 2  | \$ 2,060              |
| Year 3  | \$ 2,122              |
| Year 4  | \$ 2,186              |
| Year 5  | \$ 2,252              |
| <b>3. PROPOSED ANNUAL PRICE, ASSESSMENT ALLOCATION PLAN</b> |                       |
|   | Proposed Annual Price |
| Year 1  | \$ 2,000              |
| Year 2  | \$ 2,060              |
| Year 3  | \$ 2,122              |
| Year 4  | \$ 2,186              |
| Year 5  | \$2,252               |