

AN ORDINANCE 2010-11-04-0962

AUTHORIZING A RISK MANAGEMENT CONSULTING AND INSURANCE BROKER OF RECORD SERVICES CONTRACT FOR THE CITY OF SAN ANTONIO WITH MARSH USA, INC., FOR A PERIOD OF THREE YEARS BEGINNING DECEMBER 1, 2010 AT AN ANNUAL COST OF \$110,000.00 FUNDED FROM THE FY 2011 BUDGET AND ALLOCATED TO THE LIABILITY SELF-INSURANCE FUND.

* * * * *

WHEREAS, the City of San Antonio developed and issued a Request for Proposals ("RFP") for Risk Management Consulting and Insurance Broker of Record Services; and

WHEREAS, consulting services supported by this contract include assessment and advice to the City concerning its comprehensive risk management strategy and continuing evaluation of the City's efforts to minimize necessary risks and to maximize appropriate transfer of risks where possible; and

WHEREAS, this contract will also provide for claims audits of the City's third party administrator and medical cost containment contractors, and for assistance in soliciting and evaluating insurance coverage; and

WHEREAS, three proposals were submitted and evaluated by a selection committee in conformance with the criteria contained in the RFP; and

WHEREAS, the City now recommends Marsh USA, Inc. to provide said services; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Marsh USA, Inc. is hereby selected to provide risk management consulting and insurance broker of record services, as described in the attached contract for an annual fee of \$110,000.00 for the first two years of the contract and \$115,000.00 for the third year of the contract, and to provide claims audit services, if requested by City, for an annual fee of \$15,000.00. The term of the contract shall be for a three year period, beginning December 1, 2010. The City Manager or her designee, or the Director of the Human Resources Department, is hereby authorized to execute the contract for said services, a copy of which is attached hereto and incorporated herein as Exhibit I. The terms of said contract are hereby approved. This contract may be renewed and extended for two additional, successive one-year renewal periods, and for the monthly extensions described therein, on the same terms and conditions, subject to funding by the City Council. The cost for risk management consulting and insurance broker of record services is \$115,000.00 for the first renewal period, and \$120,000.00 for the second renewal period. So long as funding is provided for in the budget, no further City Council action shall be required to effect the renewals, which may be executed by the City Manager, her designee, or the Director of the Human Resources Department.

SECTION 2. Funding in the amount of \$91,667.00 for this ordinance is available in Fund 75001000, Cost Center 1009020008, General Ledger 5201040, as part of the Fiscal Year 2011 Budget. Future funding is contingent upon City Council approval of future fiscal year budgets. Payment not to exceed the budgeted amount is authorized and should be encumbered with a purchase order.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer (CFO), City of San Antonio. The CFO may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

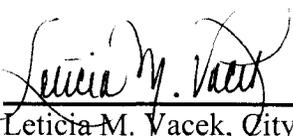
SECTION 4. This ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise it shall be effective on the tenth day after passage hereof.

PASSED and APPROVED this 4th day of November, 2010.


M A Y O R
Julián Castro

ATTEST:

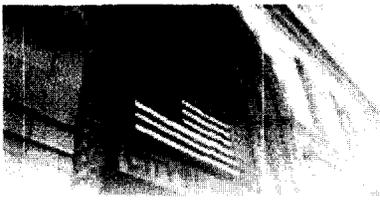
APPROVED AS TO FORM:



Leticia M. Vacek, City Clerk

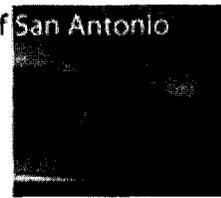


Michael D. Bernard, City Attorney



Request for
**COUNCIL
ACTION**

City of San Antonio



Agenda Voting Results - 34

Name:	6, 7, 8, 9, 10, 12, 14, 15, 16, 17, 18, 19, 20, 23, 24, 25A, 25B, 25C, 25D, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36						
Date:	11/04/2010						
Time:	10:17:14 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a Risk Management Consulting and Insurance Broker of Record Services contract for the City of San Antonio with Marsh USA, Inc., for a period of three years beginning December 1, 2010 at an annual cost of \$110,000.00 funded from the FY 2011 budget and allocated to the Liability Self-Insurance Fund. [A.J. Rodriguez, Deputy City Manager; Elizabeth Braune, Director, Human Resources]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				x
Elisa Chan	District 9	x					
John G. Clamp	District 10		x			x	

Exhibit I

AGREEMENT FOR RISK MANAGEMENT CONSULTING SERVICES & INSURANCE BROKER OF RECORD

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (“City”) acting by and through its Director of Human Resources, pursuant to Ordinance No. 2010-__-__-__ passed and approved on the ____ day of _____, 2010 and Marsh USA Inc. by and through its _____ (“Consultant” or “Marsh”), both of which may be referred to herein collectively as the “Parties”.

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

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 and permitted assigns.
- 1.3 “Director” shall mean the director of City’s Human Resources Department.
- 1.4 “Enhanced Commissions” are compensation to Marsh for the market consulting services provided to participating insurers and for the distribution and associated efficiencies inherent in Marsh’s placement hubs. Enhanced commissions are not contingent, are fixed in advance and are unrelated to carrier volume, losses or profitability. Marsh’s market consulting services to insurers will increase competition among insurers for the benefit of clients.
- 1.5 “Wholesale Commissions” are commissions received by wholesale insurance brokers.

II. TERM

- 2.1 The term of this Agreement shall be for a period of three (3) years beginning December 1, 2010 and ending on November 30, 2013, unless renewal and extension or earlier termination occurs pursuant to any other provision contained in this Agreement.
- 2.2 At City’s option, this Agreement may be renewed and extended beyond the date stated above under the same terms and conditions for two (2) additional one (1) year periods. City shall also have the right to extend the contract under the same terms and conditions beyond the term or any renewal thereof, on a month-to-month basis, not to exceed a total of 180 days. All renewals and/or extensions shall be in writing, signed by the City

Manager, or her designee, or the Director of the Human Resources Department, and shall not require additional action by the City Council. All renewals shall be subject to appropriation of funds by the City Council.

- 2.3 If funding for the entire Contract is not appropriated at the time this Contract is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

- 3.1 Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV Compensation.
- 3.2 Broker of Record. Consultant shall provide the following Broker of Record services:
- 3.2.1 Assist City in the analysis and design of optimal insurance coverage and keep City informed of significant market conditions that may affect its insurance programs by providing information regarding potential problems involving pending rate, coverage or renewal, including significant changes in the financial status of insurers; keep City apprised of market forecasts prior to each renewal; advise City about pricing, service trends, availability of markets and the longer term direction of the market and particular insurers.
 - 3.2.2 Work closely with City to develop Market Requests to secure excess workers' compensation and liability insurance, as well as other excess and primary policies as requested by City.
 - 3.2.3 Assist in the preparation of detailed underwriting submission data, statements of values, specifications, loss summaries, and other information required by underwriters. Marketing shall include, but not be limited to, development of insurance specifications and underwriting criteria, development of Requests for Quotes (in accordance with Chapter 252 of the Texas Local Government Code) from insurance companies, canvassing insurance markets, reviewing suitable manuscript policies, and conducting negotiations on behalf of City with the goal of securing the broadest coverage at the best available cost.
 - 3.2.4 Provide unbiased information regarding the most advantageous insurance markets and insurance coverage options for selection by City.
 - 3.2.5 Assist City in the analysis and design of insurance policy wording, and work with City to structure insurance programs to eliminate gaps and overlaps in coverage and recommend limits and coverages designed to provide City with the greatest amount of protection. Provide City with a copy of submissions for presentation to markets prior to their release.
 - 3.2.6 Review responses along with City and assist in the selection of excess and primary insurance providers, and provide City with a written explanation of the basic structure of each policy, including coverage, exclusions, terms, analysis of coverage scope, cost, services, and other information requested by City in a format suitable for use as a high level executive summary document.

- 3.2.7 Begin renewal process at least 200 days prior to renewal. Present insurance submission to City at least 125 days prior to renewal for review. Present all insurance proposals to City at least 45 days prior to renewal, including, but not limited to, quotes, sample policy forms and/or endorsements. Provide a marketing summary of all markets approached, quotes and indications requested and received from insurers in response to underwriting proposals. Tender to City a recommendation for review no later than thirty (30) days prior to policy renewal. Any resulting product cannot be accepted or bound until approved by the San Antonio City Council by passage of an ordinance therefore, except in those cases where authority is delegated to an administrative official. All procurement of insurance shall be conducted in accordance with the requirements contained in the Texas Local Government Code Chapter 252, as it may be amended from time to time, and all applicable law.
- 3.2.8 After City's election of coverage and prior to delivery of policies, review all binders, policies, and endorsements for conformity to agreed terms and coverages. Provide City with an outline of any issues found during the review process, any request for clarification from the carrier, and advice regarding when and how the issue(s) are resolved. Prepare a Schedule of Insurance report detailing coverage bound for City immediately following placement of coverage.
- 3.2.9 Issue binders, certificates of insurance, and other coverage documents as required.
- 3.2.10 Assume oversight responsibilities for any insurance policies City has in place and for which City has issued a Broker of Record letter in favor of Marsh at the beginning of the Consultant's contract period.

Consultant may utilize the services of intermediaries to place City's insurance, subject to City's approval.

Consultant will not serve as City's insurance broker, but only as its risk consultant, with respect to placements with ineligible insurers. In those circumstances, Consultant's non-U.S. affiliates shall provide the brokerage Services.

Intermediaries and affiliates shall be subcontractors of Consultant. City shall not be liable to any party, other than Consultant for payment of any fees for providing such services.

3.3 Consultant Services. Marsh shall provide the following Consultant Services:

- 3.3.1 Advise City on an appropriate timeline prior to renewal of each policy to develop Market Requests and to secure any and all coverages for City's insurable risks. The objective is to place insurance coverage for City's insurance program in accordance with the desired terms, conditions, and limits. This service involves developing insurance specifications and marketing submissions, and preparing an evaluation of responses. Make available to City all resources at its disposal to collect, organize and review all data properly.
- 3.3.2 Act in an advisory and consulting role to City for the duration of this Agreement and monitor whether the insurance carrier adheres to all terms and conditions

negotiated by the carrier and City, and notify City promptly when Consultant finds any such failures on the part of carriers.

- 3.3.3 Assist City in evaluating proposals from potential contractors for programs, including but not limited to Third Party Administration and Medical Cost Containment and Owner Controlled Insurance programs, as required.
- 3.3.4 Participate in the continuing development and enhancement of City's overall risk management program, including recommendations on coverage changes and program adjustments, as needed.
- 3.3.5 Assist in refining risk assessment and risk survey instruments utilized by City and assist in the evaluation of data collected from risk surveys to identify and measure exposures and new coverage needs.
- 3.3.6 Provide and/or collect industry survey/benchmark information upon request and assist City with evaluating data in making prudent risk management decisions.
- 3.3.7 Participate in the development (and improvement) of risk control programs for the various units, programs, and activities of City, as requested by City, as well as in the evaluation of risk financing opportunities and alternatives which may be available to City.
- 3.3.8 Provide contract review and insurance services support and assist City in the development of standards to be used for contract provisions and review.
- 3.3.9 Keep City informed of relevant trends, regulatory changes, and new insurance products. Review contractual risk transfer techniques when requested.
- 3.3.10 Provide assistance with forecasting and budgeting for annual claims and risk management-related expenditures, including a market forecast by line of coverage and claims trending during the City's budget period.
- 3.3.11 Work with City and its third party administrator in reviewing claims handling processes and make recommendations for improvement designed to avoid potential pitfalls, such as bad faith claims, penalties, and fines.
- 3.3.12 Provide information related to claims trends that may affect City's claims costs and provide solutions to manage those trends.
- 3.3.13 Act as City's advocate in claims disputes and in obtaining loss settlements from insurance carriers, assist in preparation of proof of loss, negotiate with insurers, resolve coverage disputes, identify and correct breakdowns in the claims-handling process.
- 3.3.14 Prepare and present a formal annual report to City on the past year's activities and future plans and goals.

3.4 Loss Control Services. Consultant shall provide the following Loss Control Services.

- 3.4.1 Support City's loss control efforts and arrange for Loss Control and Safety Audit Services upon request and authorization by the City's Risk Manager. Work with City to evaluate the effectiveness of its current loss prevention program and make recommendations on how to address any deficiencies found to strengthen the overall program.
- 3.4.2 Provide no less than 60 hours annually for Loss Control and Safety Audit services. The cost for this minimum number of hours shall be included in the Annual Service Fee. Additional service hours beyond the minimum may be requested by the City from time to time during the contract term and shall be provided by Consultant at the pricing indicated in Article IV herein.
- 3.4.3 Loss Control and Safety Audit services will include:
- in-house training;
 - safety program evaluations;
 - evaluation of high-risk activities;
 - ergonomic studies;
 - job safety/hazard analysis of specific worker activities;
 - assistance in the identification and evaluation of loss exposure as requested, including comparative data regarding other public entities that share the size and scope of City, and
 - providing loss prevention strategies to reduce said exposures.
- 3.5 Claims Audit Services. Consultant shall arrange for and coordinate an annual Claims Audit of City's Third Party Administrator, which includes City's Medical Cost Containment services. The annual claims audit shall commence during the month of January and final reports for Workers' Compensation, General Liability, and Automobile Liability shall be provided to City's Risk Manager no later than March 31 of the same year. In addition to claims audit services, Consultant shall provide up to 100 hours of annual claims consulting services.
- 3.6 Optional Services. Notwithstanding anything to the contrary herein, Loss Control Services in excess of the minimum 60 annual hours and Claims Audit Services all shall be performed at the City's sole option. City shall have the right to utilize these services at any time during the contract period, or may choose to obtain these services from another source. Utilizing any of these services during any given year shall not be a guarantee that the services shall be used in any subsequent year. However, City's right to use these services if desired, at the prices herein, is part of the consideration of this contract.
- 3.7 Response Times. Response time for routine requests, such as certificates of insurance, auto identification cards, etc. shall be 24 hours. Other responses shall be provided the same business day. Requests for certificates deemed urgent by City shall be handled within one hour.
- 3.8 Market Trend Reports. Consultant shall provide City with a copy of each of its publications and reports to keep City informed of current market trends to the extent the same publications and reports are provided to similarly situated clients, including but not limited to, (1) Quarterly Insurance Market Reports, (2) Limits of Liability Reports, (3) Risk Alerts, (4) Casualty Cost of Risk Reports, (5) written and graphical research reports

prepared by the Market Insurance Group on major insurers, (6) State of the Property Marketplace, (7) Marketwatch Terrorism Insurance, (8) Current Issues Publications, (9) Excellence in Risk Management and (10) New Reality of Risk Teleconferencing Calls.

3.9 MarshConnect. MarshConnect is Consultant's web based tool for managing services online. Consultant shall make MarshConnect available to City, subject to standard terms and conditions, attached hereto as Attachments B-1, B-2, and B-3. If the terms change, Consultant shall provide the new terms to City and provide City an opportunity to review. City shall not unreasonably withhold its agreement to revised terms. Terms posted on a website that are in addition to or in conflict with those attached hereto shall not be part of this agreement, unless accepted by City in writing, which acceptance shall not be unreasonably withheld. MarshConnect may provide the following online benefits:

- ability to request, route and track certificates of insurance online
- access the latest Marsh Team chart with role and contact information
- access to an insurance portfolio database that maintains high level policy information, including named insureds, limits and deductibles
- property information specific to COPE data can be collected and posted for each location
- automated tool for online values / exposures collection to streamline City's renewal process
- access to Marsh's intellectual capital such as industry specific content, insurer rating and analysis, country intelligence and Marsh's proprietary reports and white papers
- repository for client documents related to insurance, including, but not limited to scanned policies, submissions documents, binders, manuals and invoices
- ability to generate reports on Marsh handled data
- direct access to industry specific peer benchmarking information
- notifications of industry and Marsh events

3.10 Marsh Market Information (MMI) Website

Consultant shall provide City with access to its MMI Website, subject to standard terms and conditions, attached hereto as Attachments B-1, B-2, and B-3. If the terms change, Consultant shall provide the new terms to City and provide City an opportunity to review. City shall not unreasonably withhold its agreement to revised terms. Terms posted on a website that are in addition to or in conflict with those attached hereto shall not be part of this agreement, unless accepted by City in writing, which acceptance shall not be unreasonably withheld. The MMI Website provides 24/7 access to information on insurer and insurance industry credit analysis and information. Benefits may include:

- Tracks more than 1,000 insurers worldwide
- Provides ratings and outlooks from all 3 major credit rating agencies – AM Best, S&P, and Moody's, with stock charts, credit default swap (CDS) spreads, and more
- Integrates intercompany pools, affiliates, and parent companies to allow deeper financial analyses
- Has various interactive tools for analyzing insurance programs' overall credit exposure
- Contains comprehensive financial data, including summary financial statements, performance ratios, and historical trends

- Provides alternative indicators such as CDS spreads, stock prices and investment analyses to support multiple views of insurer's financial health
 - Ability to generate customized reports and alerts about the credit quality of current or prospective insurers
 - Objective analysis of insurance market security concerns from Marsh's financial experts.
- 3.11 All work performed by Consultant hereunder shall be performed to the reasonable 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 reasonably satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's work not be reasonably 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.

IV. COMPENSATION TO CONSULTANT

- 4.1 In consideration of Consultant's performance of all services and activities set forth in this Agreement, City agrees to pay Consultant:
- 4.1.1 ~~\$110,000.00~~ annually for years one and two of the contract;
~~\$115,000.00~~ annually for year three of the contract and optional year 4, if exercised;
~~\$120,000.00~~ for optional year 5, if exercised.
 - 4.1.2 ~~\$15,000.00~~ annually for Claims Audit Services, if utilized;
 - 4.1.3 ~~\$10,417.00~~ per month, for the optional monthly service fee during optional monthly extension periods, if exercised, pro-rata, should less than a full month be exercised;
 - 4.1.4 ~~\$230.00~~ per hour for Loss Control Consulting Services in excess of the 60 hours per year that are included in the annual fee stated in 4.1.1, if utilized.
- 4.2 Consultant shall invoice City as follows:
- 4.2.1 Consultant shall submit monthly invoices in arrears in the amount of 1/12th of the annual cost for that year for all services provided in Article III. Scope of Services, excluding Claims Audit and additional Loss Control Consulting Services. If City elects to renew this Agreement on a month to month basis, as described in Section 2.2, Consultant shall submit invoices on a monthly basis in arrears in the amount of 1/12th of the annual cost for year 5, or for a pro-rated amount, if the extension is for less than a month.
 - 4.2.2 Consultant shall submit an invoice for ~~\$15,000.00~~ for the Claims Audit Services conducted by Consultant upon completion of said audits and provision of final reports to City.

- 4.2.3 Consultant shall submit all invoices to City of San Antonio, Attn: Accounts Payable, P.O. Box 839976, San Antonio, TX 78283-3976, with a copy to City of San Antonio, Attn: Tina Southard, Risk Manager, P.O. Box 839966, San Antonio, TX 78283-3966.
- 4.3 City shall pay all invoices within 30 days of receipt thereof. Payment shall be deemed made upon posting of the check. All payments are to be made to Consultant at 9830 Colonnade Blvd., Suite 400, San Antonio, Texas 78230, or, if different, to the address stated on the invoice.
- 4.4 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 4.1 above. Total payments to Consultant for the original contract term cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the City Council by passage of an ordinance therefore.
- 4.5 Final acceptance of work products and services require written approval by City. The approval official shall be 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 provision of any goods or services.
- 4.6 Pursuant to the Texas Local Government Code §252.024 Selection of Insurance Broker – Consultant shall not receive any other remuneration from any other source. Consultant shall not accept commissions, gifts, entertainment, items of material value, or other incentives, or compensation of any kind from third parties for placement of coverage.
- 4.7 Prior to each placement by Consultant or its affiliates for City, Consultant or the applicable affiliate shall disclose to City and obtain City’s approval of any commissions to be collected by Consultant or its affiliates with respect to such placement. Consultant shall credit amounts equal to any retail commissions collected by Consultant or its affiliates for the lines of insurance placed by Consultant against remaining installments of the annual fee (except as provided below) and, to the extent in excess of the remaining installments, refund previously paid installments of the annual fee. In the event such retail commissions for a contract year exceed the annual fee for that year, then such excess retail commissions shall be returned to the carrier. However, when in the best interests of the City, Marsh shall attempt to place policies net of commission. Consultant shall not accept any wholesale or enhanced commissions.

V. OWNERSHIP OF DOCUMENTS AND CONFIDENTIALITY

- 5.1 Any and all writings, documents or materials in whatsoever form and character produced by Consultant specifically and exclusively for City pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or material shall be the subject of any copyright or proprietary claim by Consultant.

- 5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and material, City has the right to use all such writings, documents and material as City desires, without restriction.
- 5.3 No reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by, or assembled by Consultant specifically and exclusively for City under this Agreement shall be disclosed or made available to any individual or organization by Consultant without the express prior written approval of City. In the event Consultant receives any such request, Consultant shall forward such request to City immediately.
- 5.4 Notwithstanding the foregoing, Consultant retains all of its rights in its inventions, expressions, know how, techniques, skills, knowledge and experience and materials used by it generally or provided by it generally to clients, and Consultant shall not be restricted in any way with respect thereto.
- 5.5 Consultant shall establish a method to secure the confidentiality of records and information that Consultant may have access to in accordance with the applicable federal, state, and local laws, rules and regulations. This provision shall not be construed as limiting City's right of access to records or other information under this Agreement.

VI. RECORDS RETENTION

- 6.1 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 all documents relating to placements made by Consultant for City hereunder and other services provided to City pursuant to this Agreement (other than internal Consultant correspondence) 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 same by City and any of its authorized representatives.
- 6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. 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 (other than internal Consultant correspondence) at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return said documents to City prior to or at the conclusion of said retention at Consultant's expense.
- 6.3 Notwithstanding the foregoing, files (other than core documents, as defined in Consultant's record retention policy, including insurance policies, which are permanently

retained) will not be retained for more than five years after the expiration of a particular policy's term. Prior to destruction, Consultant shall notify City and City may, at its election, require Consultant to return those files to City at Consultant's expense.

VII. TERMINATION

- 7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.
- 7.2 Termination Without Cause. This Agreement may be terminated by the City upon 60 calendar days' written notice, or by Consultant upon 220 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.
- 7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. 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:
- 7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting;
 - 7.3.2 Neglect or failure by Consultant to perform or observe any of the material terms, conditions, covenants or guarantees of this Agreement or of any amendment between City and Consultant; or
 - 7.3.3 Violation by Consultant of any law, rule, or regulation to which Consultant is bound or shall be bound under the terms of this Agreement.
- 7.4 Defaults with Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 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 fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such fifteen-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.
- 7.4.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA;
 - 7.4.2 Failing to perform or failing to comply with any covenant herein required, other than a material term;
 - 7.4.3 Performing unsatisfactorily.
- 7.5 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.

- 7.6 If either Party terminates this Agreement, Consultant will be paid a prorated portion of its annual fee for that contract year through the date of termination.
- 7.7 Regardless of how this Agreement is terminated, Consultant shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any 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 VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and 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, if requested.
- 7.8 Within forty-five (45) calendar days of the effective date of completion, or 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. Failure by Consultant to submit its claims within said forty-five (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.
- 7.9 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. Consultant's obligation and the obligation of its affiliates (including, if applicable, Consultant's U.K. affiliates) to provide Services to City will cease upon the effective date of termination, unless otherwise agreed in writing.
- 7.10 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.

VIII. NOTICE

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 delivery 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, unless and until otherwise notified in writing by the respective Party, 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: Tina Southard, Risk Manager
Human Resources
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for Consultant, to:

Marsh USA Inc.
Attn: Mark Perrson
9830 Colonnade Blvd., Suite 400
San Antonio, Texas 78230

IX. [Reserved]

X. INSURANCE

- 10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Human Resources Department, which shall be clearly labeled "Risk Management Consulting Services and Insurance Broker of Record" 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 have the agent's signature and phone number, and 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 perform under this Agreement until such certificate and endorsements have been received and approved by the City's Human Resources Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 10.2 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 the required insurance coverages and their limits upon mutual agreement of the parties when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.
- 10.3 A Consultant's financial integrity is of interest to the City; therefore, subject to Consultant's right to maintain reasonable deductibles, 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 and, with the exception of Consultant's Professional Liability, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	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 \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit for Bodily Injury and Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

- 10.4 Consultant agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Consultant herein, and provide a certificate of insurance and endorsement that names the Consultant and the City as additional insureds. Respondent 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 agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.
- 10.5 In the event of a dispute involving the insurance policies affording additional insured coverage to the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto.
- 10.6 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 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.
 - Consultant or its insurer will endeavor to provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage.
- 10.7 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.
- 10.8 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.
- 10.9 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.
- 10.10 It is agreed that Consultant’s insurance affording coverage to the additional insured 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 Agreement.
- 10.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided..
- 10.12 Consultant and any subcontractors are responsible for all damage to their own equipment and/or property.

XI. INDEMNIFICATION

- 11.1 **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,**

finances, 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.

- 11.2 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 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.
- 11.3 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.
- 11.4 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 Agreement. 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.

XII. ASSIGNMENT AND SUBCONTRACTING

- 12.1 Consultant shall supply qualified personnel 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.

- 12.2 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: Mazur Risk Consulting, LLC. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Director. Changes may be made to Consultant's SBEDA Plan with the written approval of Director and City's SBEDA Program Manager.
- 12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the 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.
- 12.4 Except as otherwise stated herein, Consultant may not sell, assign, 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, without the consent of Director. 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.
- 12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, 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.

XIII. INDEPENDENT CONTRACTOR

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 control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of *respondeat superior* shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, 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 the Consultant has no authority to bind the City.

XIV. SBEDA

- 14.1 **SBEDA Program**. The City has adopted a Small Business Economic Development Advocacy Ordinance (the “SBEDA Program”), which is posted on the City’s Economic Development Department website and is also available in hard copy form upon request to the City. In addition to the definitions provided in the SBEDA Program, the following definitions will apply pursuant to SBEDA Program requirements and this Agreement:
- 14.2 **SBEDA Enterprise (“SE”)** – A corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.
- 14.3 **Commercially Useful Function** – A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.
- 14.4 **Conduit** – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In this type of relationship, the SE has not performed a Commercially Useful Function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE’s participation does not count toward the SE utilization goal.
- 14.5 **SBEDA Plan** – The Good Faith Effort Plan (“GFEP”), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that are submitted with Consultant’s proposal for this Agreement, attached hereto and incorporated herein as “Attachment A”.
- 14.6 **For this Agreement, the Parties agree that:**
- 14.6.1 The terms of the City’s SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance (collectively, the “SBEDA Program”) are incorporated into this Agreement by reference; and
- 14.6.2 The failure of Consultant or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program

and this Agreement.

- 14.6.3 Failure of Consultant or any applicable SE to provide any documentation or written submissions required by the City Managing Department or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this Agreement.
- 14.6.4 During the Term of this Agreement, and any renewals thereof, any unjustified failure to utilize good faith efforts to meet, and maintain, the levels of SE participation identified in Consultant's SBEDA Plan ("Attachment A") shall constitute a material breach of the SBEDA Program and this Agreement.
- 14.6.5 Consultant shall pay all suppliers and subcontractors identified in its SBEDA Plan ("Attachment A") in a timely manner for satisfactory work, pursuant to and as outlined in Section VII, Paragraph F(2)(e) of the SBEDA Ordinance, as amended. Documentation of all billing and payment information applicable to SBEDA Plan suppliers and subcontractors shall be submitted by Consultant to the City Managing Department. Failure to pay SEs in a timely manner or submit the required billing and payment documentation shall constitute a material breach of this Agreement.

14.7 The Parties also agree that the following shall constitute a material breach of the SBEDA Program and this Agreement:

- 14.7.1 Failure of Consultant to utilize an SE that was originally listed at bid opening or proposal submission to satisfy SBEDA Program goals in order to be awarded this Agreement, or failing to allow such SE to perform a Commercially Useful Function; or
- 14.7.2 Modification or elimination by Consultant of all or a portion of the scope of work attributable to an SE upon which the Agreement was awarded; or
- 14.7.3 Termination by Consultant of an SE originally utilized as a subcontractor, Joint Venturer, Supplier, Manufacturer or Broker in order to be awarded the Agreement without replacing such SE with another SE performing the same Commercially Useful Function and dollar amount, or without demonstrating each element of Modified Good Faith Efforts to do so; or
- 14.7.4 Participation by Consultant in a Conduit relationship with an SE scheduled to perform work that is the subject of this Agreement.

14.8 Remedies for Violation of SBEDA Program. The Parties further agree that in addition to any other remedies the City may have at law or in equity, or under this Agreement for material breach, including the specified remedies available under the SBEDA Program for Alternative Construction Delivery Method, the City shall be entitled, at its election, to

exercise any one or more of the following remedies if the Consultant materially breaches the requirements of the SBEDA Program:

- 14.8.1 Terminate this Agreement for default;
- 14.8.2 Suspend this Agreement for default;
- 14.8.3 Withhold all payments due to the Consultant under this Agreement until such violation has been fully cured or the Parties have reached a mutually agreeable resolution; and/or
- 14.8.4 Offset any amounts necessary to cure any material breach of the requirements of the SBEDA Program from any retainage being held by the City pursuant to the Agreement, or from any other amounts due to Consultant under the Agreement.
- 14.8.5 Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.
- 14.9 The Parties agree that nothing in the SBEDA Program or that any action or inaction by the SBEDA Program Office or the SBEDA Program Manager shall be deemed a representation or certification that an SE is qualified to perform work in a particular area for the purposes of this Agreement.
- 14.10 *The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.*
- 14.11 **City Process For Exercising SBEDA Program Remedies.** The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA Program Manager shall make a recommendation to the Managing Department Director regarding appropriate remedies for the City to exercise in the event a contractor violates the SBEDA Program. The Managing Department Director shall make a recommendation regarding appropriate remedies to the City Manager or designee, who shall have final approval regarding the remedy to be exercised except for termination of the Agreement. If the recommended remedy is to terminate the Agreement, then the Managing Department Director or City Manager, or her designee, shall bring forward the

recommendation to City Council for final determination. Termination for any reason that is outside the breaches identified in this Article may be made by the City Manager, or her designee, without City Council approval.

14.12 **Special Provisions for Extension of Agreements.** In the event the City extends this Agreement without a competitive Bid or Proposal process, the City Managing Department responsible for monitoring the Agreement shall establish the following, subject to review and approval by the SBEDA Program Manager:

14.12.1 a SBEDA Utilization Goal for the extended period; and

14.12.2 a modified version of the Good Faith Efforts (“Modified Good Faith Efforts Plan”) set forth in the SBEDA Program Ordinance, as amended, if Consultant does not meet the SBEDA Utilization Goal; and

14.12.3 the required minimum Good Faith Efforts outreach attempts that Consultant shall be required to document in attempting to meet the SBEDA Utilization Goal. The SBEDA Utilization Goal, Modified Good Faith Efforts Plan and the required number of minimum Good Faith Efforts outreach attempts shall be added into the Agreement extension document. The Consultant entering into the extension shall either meet the SBEDA Utilization Goal or document that it has made the Good Faith Efforts to meet the SBEDA Utilization Goal. Failure to do so shall:

(i) subject Consultant to any of the remedies listed above; and/or

(ii) result in a new bid or proposal request of the Agreement that was considered for extension.

XV. CONFLICT OF INTEREST

15.1 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 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.

15.2 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 is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVI. ADDITIONAL TERMS AND CONDITIONS

- 16.1 Taxes and Fees. Consultant may place insurance for the City that may require the payment of insurance premium taxes (including U.S. federal excise taxes), sales taxes, use taxes, surplus or excess lines and similar taxes and/or fees to federal, state or foreign regulators, boards or associations. The City agrees to pay such taxes and fees. Consultant will remit any taxes and fees that it collects from the City to the appropriate authorities, provided the City is not exempt from paying such taxes and fees. Consultant shall notify City of all estimated applicable taxes and fees at the time Consultant reviews proposals for coverage with City, and prior to placement.
- 16.2 City Responsibilities. The City shall be solely responsible for the accuracy and completeness of all information that it furnishes to Consultant and/or insurers, and the City shall sign any required application for insurance. Consultant shall not be responsible to verify the accuracy or completeness of any information that the City provides, and Consultant shall be entitled to rely on that information. Consultant shall have no liability for any errors, deficiencies or omissions in any Services provided to the City, including the placement of insurance on the City's behalf, that are based on inaccurate or incomplete information provided to Consultant by City. The City understands that the failure to provide all necessary information to an insurer, whether intentional or by error, could result in the impairment or voiding of coverage.
- The City will review all policy documents provided to it by Consultant.
- 16.3 Other Revenue. Consultant earns and retains interest income on premium payments held by Consultant on behalf of insurers between the time Consultant receives these payments from the City and the time Consultant remits these payments to the insurers, where permitted by applicable law. Consultant shall remit premium payments to insurers in a timely manner.
- 16.4 Disclaimers. Consultant does not speak for any insurer, is not bound to utilize any particular insurer and is not authorized to make binding commitments on behalf of any insurer, except under special circumstances which Consultant shall endeavor to make known to the City. Consultant shall not be responsible for the solvency of any insurer or its ability or willingness to pay claims, return premiums or other financial obligations. Consultant does not guarantee or make any representation or warranty that insurance can be placed on terms acceptable to the City. Consultant will not take any action to replace the City's insurers unless the City instructs Consultant to do so.

Consultant will not be responsible for the adequacy or effectiveness of any insurance programs or policies implemented by another broker, or any acts or omissions occurring prior to Consultant's engagement.

Any loss control services performed by Consultant are advisory in nature. These services do not constitute a safety inspection and do not include every loss potential, hazard, statutory or code violation or violation of good practice. All surveys and reports are based upon conditions observed and information supplied by the City. Consultant does

not guarantee or warrant the safety of any site or operation or that the city or any of its sites or operations is in compliance with federal, state or local laws, codes, statutes, ordinances or recommendations. Consultant shall, however, use its expertise to advise City of loss potentials and hazards based upon its observations, information supplied by City and best practices.

- 16.5 No Third Party Benefits. The parties hereto mutually agree that this Agreement is intended by them to be solely for the benefit of the parties hereto and that no third parties may rely on any reports, analysis or other material provided by Consultant or shall obtain any direct or indirect benefits from the Agreement, have any claim or be entitled to any remedy under this Agreement or otherwise in any way be regarded as third party beneficiaries under this Agreement.

XVII. AMENDMENTS

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. The Director of Human Resources shall have the authority to amend this Agreement without additional action by the City Council; however, any amendments that require additional appropriation of funds shall be subject to approval by the City Council, as evidenced by passage of an ordinance.

XVIII. SEVERABILITY

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.

XIX. LICENSES/CERTIFICATIONS

Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder 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.

XX. COMPLIANCE

Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XXI. NONWAIVER OF PERFORMANCE

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 Director, as described in Article XVI. 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.

XXII. LAW APPLICABLE

21.1 **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.**

21.2 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.

XXIII. LEGAL AUTHORITY

The signer of this Agreement for Consultant represents, warrants, assures and guarantees that he 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.

XXIV. PARTIES BOUND

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

XXV. CAPTIONS

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

XXVI. INCORPORATION OF ATTACHMENTS

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:

- 1. Attachment "A" – Good Faith Effort Plan;
- 2. Attachment "B-1" – Marsh's Standard Terms and Conditions for access to Marsh Connect and Marsh Market Information (MMI) Website;
- 3. Attachment "B-2" – MMI Supplemental Terms; and
- 4. Attachment "B-3 – MMI Privacy Policy

XXVII. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its attachments, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement 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, in accordance with Article XVII. Amendments.

EXECUTED and AGREED to by the Parties as indicated below.

CITY OF SAN ANTONIO

MARSH USA INC.

By: _____

By: MARK PERSSON

Name: _____

Name: Mark Persson

Title: _____

Title: SENIOR VICE PRESIDENT

Date: _____, 2010

Date: September 29, 2010

Approved as to Form:

Assistant City Attorney