

AN ORDINANCE 2011-08-18-0679

AUTHORIZING THE EXECUTION OF A THREE-YEAR CONTRACT, WITH TWO ONE-YEAR EXTENSIONS, AT THE CITY'S OPTION, WITH TRISTAR RISK MANAGEMENT TO PROVIDE THIRD-PARTY ADMINISTRATION AND MEDICAL COST CONTAINMENT SERVICES FOR THE CITY'S LIABILITY AND WORKERS' COMPENSATION SELF-INSURANCE PROGRAMS, FOR A COST NOT TO EXCEED \$1,617,000 FOR THE FIRST YEAR OF THE CONTRACT, FUNDED BY THE LIABILITY INSURANCE SELF INSURANCE FUND AND THE WORKERS' COMPENSATION SELF INSURANCE FUND.

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WHEREAS, the City of San Antonio ("City") Department of Human Resources released a Request for Proposals ("RFP") for Third Party Claims Administration and Medical Cost Containment Services for the City's self-insured workers' compensation and liability program; and

WHEREAS, the Third Party Administrator investigates, adjusts, and pursues subrogation on all claims for the City arising out of workers' compensation, auto liability, property damage, general liability, and errors and omissions claims in accordance with the requirements of the Texas Worker's Compensation Act and the Texas Tort Claims Act; and

WHEREAS, the Third Party Administrator also administers the City's program to monitor and control medical costs for its workers' compensation plan; and

WHEREAS, of the seven responses received to City's RFP, six were deemed responsive and reviewed by a scoring panel; and

WHEREAS, staff recommends TRISTAR Risk Management to provide said services; **NOW THEREFORE:**

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

SECTION 1. TRISTAR Risk Management is hereby selected to provide Third Party Administration and Medical Cost Containment Services for a period commencing on January 1, 2012 and ending on December 31, 2014, for a cost not to exceed \$1,617,000 for the first year of the contract, and costs for subsequent years, including renewals, if authorized, are as provided for in the contract. The City Manager, the City Manager's designee, or the Interim Director of the Human Resources Department, is authorized to execute a contract with TRISTAR Risk Management in the form attached hereto and incorporated herein for all purposes as **Exhibit I**. The terms of said contract are hereby approved. This contract may be renewed for two successive one-year periods. This contract may also be extended on a monthly basis, not to

exceed a total of 180 days, beyond the term or any renewal period. Neither renewal nor extension shall require additional action by the San Antonio City Council so long as funds are appropriated for the expenditures required thereby.

SECTION 2. The amount of \$667,500.00 is authorized to be encumbered in Fund 75001000, Insurance Reserve Fund, in GL 5201040, entitled Fees to Professional Contractors, in Cost Center 1009020009, and payment is authorized to be made to TRISTAR Risk Management.

SECTION 3. The amount of \$949,500.00 is authorized to be encumbered in Fund 75003000, Workers' Compensation Fund, in GL 5201040, entitled Fees to Professional Contractors, in Cost Center 1009040003, and payment is authorized to be made to TRISTAR Risk Management.

SECTION 4. 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 and fund numbers as necessary to carry out the purpose of this ordinance.

SECTION 5. 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 18th day of August, 2011.



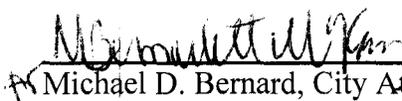
M A Y O R
Julián Castro

ATTEST:

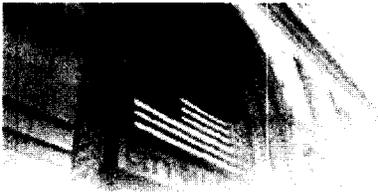
APPROVED AS TO FORM:



Leticia M. Vacek, City Clerk

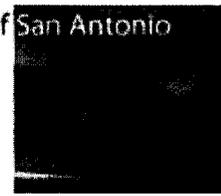


Michael D. Bernard, City Attorney



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 22

Name:	5, 6, 7, 8, 11, 12, 13, 16A, 16B, 17A, 17B, 17C, 17D, 17E, 17F, 17G, 17H, 17I, 17J, 17K, 17L, 17M, 17N, 17O, 17P, 17Q, 17R, 17S, 17T, 17U, 18, 19A, 19B, 20A, 20B, 21A, 21B, 22, 23, 24, 26, 27, 28A, 28B, 28C						
Date:	08/18/2011						
Time:	09:26:10 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the execution of a three-year contract, with two one-year extensions, at the City's option, with Tristar Risk Management to provide third-party administration and medical cost containment services for the City's Liability and Workers' Compensation Self-Insurance programs, for a cost not to exceed \$1,617,000.00 for the first year of the contract, funded by the Liability Insurance Self Insurance Fund and the Workers' Compensation Self Insurance Fund. [A.J. Rodriguez, Deputy City Manager; Flor Garcia, Interim Director, Human Resources]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x			x	
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				x
Carlton Soules	District 10		x				

**PROFESSIONAL SERVICES AGREEMENT FOR
THIRD PARTY CLAIMS ADMINISTRATOR &
MEDICAL COST CONTAINMENT SERVICES**

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 City Manager, or her designee, pursuant to Ordinance No. 2011-08-_____-____- passed and approved on the _____ day of _____, 2011 and TRISTAR Risk Management by and through its President, Thomas J. Veale (“Consultant” or “TPA”), 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 Contract and includes its successors and assigns.
- 1.2 “Consultant” is defined in the preamble of this Contract and includes its successors.
- 1.3 “Contract Year One” shall mean the first calendar year of this Contract, beginning on January 1, 2012 and ending on December 31, 2012.
- 1.4 “Contract Year Two” shall mean the second calendar year of this Contract, beginning on January 1, 2013 and ending on December 31, 2013.
- 1.5 “Contract Year Three” shall mean the third calendar year of this Contract, beginning on January 1, 2014 and ending on December 31, 2014.
- 1.6 “Contract Year Four” shall mean the first renewal period of this Contract, if the option to renew is exercised, beginning on January 1, 2015 and ending on December 31, 2015.
- 1.7 “Contract Year Five” shall mean the second renewal period of this Contract, if the option to renew is exercised, beginning on January 1, 2016 and ending on December 31, 2016.
- 1.8 “Director” shall mean the director, or interim director, of City’s Human Resources Department.
- 1.9 “Lost Time Claims” shall mean a claim where indemnity benefits are payable beginning the first day of incapacity for work.

II. TERM

- 2.1 The term of this Contract shall be for a period beginning January 1, 2012 and ending December 31, 2014, unless renewal and extension, or earlier termination occurs pursuant to any other provision contained in this Contract.
- 2.2 At City's option, this Contract may be renewed and extended beyond the date stated above under the same terms and conditions for two (2) additional one (1) year periods. Renewals shall be in writing, signed by the City Manager, or the City Manager's designee, or the Director. City shall also have the right to extend this 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. Said renewals and month to month extensions shall not require City Council approval, but are subject to and contingent upon appropriation of funds for payment of all costs to be incurred during those periods.
- 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 Contract 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 Services Applicable to Workers' Compensation and Liability Claims
 - 3.2.1 Maintain or establish, prior to the start of the contract's term, a local office, with a local account manager, dedicated liability and workers' compensation supervisors, and sufficient dedicated claims staff to handle the City's account.
 - 3.2.2 Meet with City Risk Management staff on a monthly basis, or "as needed" when determined by the City, to discuss status of active files, claims handling concerns, program operational issues and other areas of concern. Conduct a quarterly claims review with City's Risk Management staff; and meet with Director on an as needed basis.
 - 3.2.3 Investigate, adjust and subrogate all reported claims in accordance with the Texas Workers' Compensation Act, or Texas Tort Claims Act, as applicable, and all other applicable statutes / laws and City Ordinances, all as may be amended from time to time, unless otherwise directed by City.
 - 3.2.4 Ensure all adjusters dedicated to the City account maintain a valid and appropriate Texas adjuster license related to their business area of insurance; and ensure that the maximum caseload by adjuster shall be no more than:

- Workers' Compensation: Lost Time 135 claims
- Workers' Compensation: Medical Only 270 claims
- Liability (AL & GL combined) 170 occurrences

As a matter of best practices, managers and supervisors shall not maintain a case load, unless required by practical business needs or requested by City.

- 3.2.5 Securely store all closed claim files and claim files currently in storage in locked temperature and humidity controlled storage, at no cost to the City during the term of the contract. Upon termination of the contract, all closed claims must be returned to the City within 30 days, with appropriate paid printouts on each file, to a facility of the City's choice.
- 3.2.6 Provide daily courier service for pick-up and delivery of new claims, lawsuits and other information from the City, at a time to be coordinated with the City, at no expense to the City.
- 3.2.7 Provide capability to report, and accept all claims reported, directly into claims system (workers' compensation and liability claims), and also accept and enter all claims submitted by fax, telephone, email, and mail and courier service.
- 3.2.8 Report all Workers' Compensation and Liability Injury cases to Central Index Bureau (CIB), upon file creation with a copy retained in the file. Resubmit an index every six months until case is closed. TPA shall NOT allocate CIB expense to the City.
- 3.2.9 Use a 30 day adjuster diary system for timely file review. Each file diary review, including reserves, shall be documented in detail in the computer file notes. All reserves will be monitored and adjusted accordingly. File notes shall contain an explanation for any adjustment.
- 3.2.10 Estimate, establish and maintain reserves on a "most probable" basis. In reserving practices, the TPA will take into consideration indemnity, medical, rehabilitation, and allocated expense categories, and all other major sub-categories of each. Changes in reserves must be reviewed and approved by claims supervisor. Any reserve contemplated over \$20,000 requires notification and consent by the City's Risk Manager or designee.
- 3.2.11 Maintain copies of all written correspondence within the claim file, whether physical or electronic, and make same available at any time upon the City's request at no additional cost to the City.
- 3.2.12 Keep the City fully appraised of significant changes in the State of Texas Workers' Compensation rules and Tort law that may affect the City, and provide notices for continuing education courses offered in San Antonio or the surrounding areas.

- 3.2.13 Conduct internal audits to ensure contract requirements are being fulfilled every six months and provide report of findings to City's Risk Management staff.
- 3.2.14 Cooperate with City in identifying overpayments and duplicate payments, and provide explanation. If overpayments resulted from TPA's failure to discharge duties diligently, TPA shall reimburse the City within 30 days for overpayments and provide a report.
- 3.2.15 Submit to and cooperate with on-site visits and claims/operational audits performed by third-party consultants or City staff. If conflicts or perceived conflicts of interest arise, the City will determine if such conflict exists and act accordingly.
- 3.2.16 Provide periodic information to, and cooperate with, the City's actuarial service provider at no additional cost to the City.
- 3.2.17 Annually prepare and mail all IRS forms 1099 Misc. for all vendors by January 31st at no additional cost to the City. An electronic version shall be submitted to City no later than March 31st of each year.

Consultant shall validate tax identification information for employees, medical providers, vendors, citizens, and attorney's (W-9 or similar required forms) with the IRS TIN matching system and correct any found discrepancies. Consultant shall correct all reported errors in name, address, or TIN received prior to final electronic file submission to the IRS.

Consultant shall prepare and distribute any additional forms and processes required by the IRS, including, but not limited to issuance of B notices to suppliers and backup withholding.

Consultant shall maintain records to show due diligence to correct reporting to the IRS.

Consultant shall respond to any City request for information needed to formulate a formal reply to any IRS notice within 7 days from receipt of request.

- 3.2.18 Perform such functions normally contemplated to be the function of third party claim administrators, including, but not limited to, assuming responsibility for the management of pending, new, and reopened claims.
- 3.2.19 Have management/supervisory level personnel assign claims, utilizing appropriate cost center numbers, as provided by City.
- 3.2.20 Examine and report claims with indication of fraud. TPA will assign an investigator to investigate suspected fraudulent claims with City's advance written consent, and report findings to City.

- 3.2.21 TPA's account executive shall report periodically, or upon request, the program's successes and opportunities for improvement.
- 3.2.22 Provide to the City an annual "SOC 1" Type 2 report in accordance with Statement on Standards for Attestation Engagements (SSAE) No. 16, Reporting on Controls at a Service Organization, which supersedes the SAS 70 at no additional cost to the City. An electronic version shall be submitted to City no later than last business day in November of each year.
- 3.2.23 Conduct (at least quarterly) compliance reviews and medical bill audits on a randomly selected sample of the claim files with reports to City at no additional cost to the City.
- 3.2.24 Provide an electronic check register to City's Risk Management division for approval prior to issuance for all payments, at no additional cost to the City. Provide an electronic check register after checks are issued, not less than weekly, to the City's Finance Department. Provide support in reconciliation quarterly between records from Consultant and City.
- 3.2.25 Maintain a dedicated telephone line for City employees to report all claims directly to TPA. TPA shall also have a web-based reporting system for entering workers' compensation claims. All claims received during normal business hours shall be entered into the TPA's claims system by the TPA on the same business day.
- 3.2.26 Assume the role and responsibilities of the City's Reporting Agent pursuant to the Medicare, Medicaid, SCHIP Extension Act 2007, as amended from time to time (MMSEA) at no additional cost to City.
- 3.2.27 Prepare and submit all queries and quarterly reports to the Center for Medicare and Medicaid Services (CMS) in accordance with the Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA), as hereafter amended, at no additional cost to City.
- 3.2.28 Indemnify, defend and hold City harmless from all fines and penalties levied against the TPA or City for TPA's failure to comply with MMSEA requirements. In no way will TPA, if selected, pass along or otherwise cause City to pay fines, which are levied solely against the TPA or levied against City due to TPA's negligence, error or omission.
- 3.2.29 Upon termination of the contract, by expiration of the term or any other manner provided therein, TPA shall be required to upload, download, migrate and work with new vendor in transferring of all electronic data, hard copy data, and any other City owned records in TPA's possession at no additional cost to City.
- 3.2.30 TPA shall work with City's former TPA, City and STARS vendor to complete upload and migration and transfer all electronic data, hard copy data, and any

other City owned documents in former TPA's possession prior to the start of the contract term, at no additional cost to City.

3.2.31 TPA shall provide reports to City's excess workers' compensation and liability insurance provider on each specific claim that meets the reporting criteria of each provider. Such reporting will be conditioned upon the City providing all necessary coverage and reporting criteria to the TPA. TPA shall provide status of claim(s) to carrier and City every 30 days or as otherwise required by the carrier.

3.2.32 Should the City elect to participate in a Certified 1305 Network or a 504 Plan, assist and cooperate with City in development and implementation of a network plan, and pay in accordance with fee schedule guidelines and Network rates, or Plan rates.

3.3 Third Party Administration Services for Workers' Compensation Claims

3.3.1 Establish and assign files within 24 hours from receipt of the initial report.

3.3.2 Contact all injured employees, medical providers and applicable City department within 24 hours of claim assignment by telephone call, or mailed contact letter if the employee cannot be reached by phone.

3.3.3 Obtain employee's signature authorizing release of medical records on all claims, and request medical bills and records, as necessary.

3.3.4 Take recorded statements from all lost time injured employees as part of investigation.

3.3.5 Obtain approval from the City on surveillances, case management referrals, peer reviews, and vocational evaluations.

3.3.6 Maintain personal contact with all lost time injured workers at least once every 14 days, in order to maintain rapport and monitor medical progress and overall status.

3.3.7 Notify the injured employee when impairment benefits are owed; TPA's adjusters shall issue the first lost time check to the employee and explain all the benefits owed to the employee, including medical benefits.

3.3.8 Pursue all applicable contributions. Communication with various physicians and apportionment must be documented before final resolution of an impairment rating.

3.3.9 Provide a written summary to the Independent Medical Exam doctor, Required Medical Exam doctor, and/or designated doctor along with copies of all medical reports and films necessary for a successful and complete examination.

- 3.3.10 Timely pay all bills related to the claim, including fees owed to third parties, and benefits owed in accordance with the Texas Workers' Compensation Act.
- 3.3.11 Obtain all relevant signatures for payment processing. Instruments disbursing, or directing disbursement of funds for Workers' Compensation related bills or benefits in the amount of \$10,000.00 or more require a minimum of one original and one facsimile signature by TPA, or, in the absence of the original signature of a signer authorized by the TPA, one of the following: the signature of City's Director of Finance, Assistant Director of Finance – Accounting, the Disbursements and Receivables Administrator, the Controller or Financial Reporting Manager(s) in accordance with City ordinance 2008-05-29-0458. Instruments disbursing, or directing disbursement of funds for Workers' Compensation related bills or benefits that are less than \$1,500.00 require a minimum of one facsimile signature from TPA. City shall provide prompt notice to TPA of any change in signature requirements, which shall automatically be incorporated in the contract.
- 3.3.12 Issue any and all income and disability benefits to the employee and dependants/beneficiaries electronically via direct deposit as required by law, or directed by the City, obtaining payee's information and authorization for same. If not required by law or directed by City, issue said payments by check.
- 3.3.13 The City has engaged a law firm for legal representation for all hearings before the TDI/Division of Worker's Compensation, who also acts as City's Austin Division Representative. TPA will be required to coordinate with and work closely with this representative.
- 3.3.14 Provide a written report to City on the proceedings at any administrative hearing within 72 hours after such hearing, at no additional cost to the City. Any representation of the City beyond administrative hearings and selection of legal counsel for these matters shall be approved by the City Attorney.
- 3.3.15 Represent the City at all Benefit Review Conferences, unless otherwise instructed by City, and attend all legal proceedings that the City, or its outside counsel requests, at no additional expense to the City. Adjuster shall work cooperatively and consult as needed with City's Board Representative.
- 3.3.16 Track Benefit Review Conferences and Contested Case Hearings through a diary system, which can be altered based upon the City's needs and the nature of the claim.
- 3.3.17 Electronically transfer information required by statute or regulation to the Department of Insurance, Division of Workers' Compensation, and other involved parties in a timely manner at no expense to the City.
- 3.3.18 Indemnify, defend and hold City harmless from all fines and penalties levied against the TPA, or City for TPA's failure to comply with the Texas Workers' Compensation Act, including, but not limited to, failure to timely pay all

mandatory benefits and failure to timely comply with all reporting requirements. In no way will TPA pass along or otherwise cause City to pay fines, which are levied solely against the TPA or levied against City due to TPA's negligence, error or omission, including but not limited to payments that can be made based on estimated income benefits.

- 3.3.19 Adjusters shall investigate and pursue all subrogation and restitution exposures to the City. The "at fault" party must be placed on notice within 30 days of notification of claim, or within 30 days of receipt of third-party information. Risk Management must be notified prior to notice being sent to determine if a City Attorney will be assigned. If no City Attorney is to be assigned, follow-up correspondence must be completed every 30 days to adverse party. Cases involving subrogation shall not be considered a special claim allowing for allocated time and expense charges against the City.
- 3.3.20 Obtain approval from City through a proposed settlement memo or presentation to the City's subrogation Claim Committee on all subrogation agreements, which are less than 100% of the lien. All recoveries shall be sent to the Risk Management Division immediately upon receipt. All terms of the third-party settlement, such as amounts paid to the employee, amount of attorney's fees, adverse party policy limits, etc. shall be outlined in the claim notes, as well as the settlement memo so the City may take credit for any needed future care related to the claimant as provided under the Texas Labor Code Section 417.002 (b).
- 3.3.21 Provide quarterly executive summaries of issues, trends, opportunities and results as it relates to workers' compensation program management at no additional cost to the City.
- 3.3.22 Prepare and file, with the appropriate State agencies, all forms required for the City to maintain its qualifications as a self-insured political subdivision, as authorized under Texas Labor Code, Chapter 504, unless otherwise directed by City. Expenses related to maintaining this status under the rules and regulations of Texas shall be passed onto the City.
- 3.3.23 Obtain all necessary information to fully complete and file all required forms with the TDI-DWC, as required by law or regulation.
- 3.3.24 Monitor appropriateness of treatment, necessity and continuation of medical treatment and disability utilizing the ODG and MDA in relation to an on-the-job injury/illness.

3.4 Medical Cost Containment Services

- 3.4.1 Provide bill review, utilization review (prospective, concurrent, retrospective, pre-procedure) peer review, pre-authorization, case management, vocational and rehabilitation evaluation, discharge planning, identification of catastrophic illnesses or injury, and other workers' compensation medical cost management related services as requested and approved by the City.

- 3.4.2 Audit medical bills in accordance with TDI-DWC fee guidelines or special discounts negotiated with providers.
- 3.4.3 Make appropriate application of fee schedules.
- 3.4.4 Electronically transfer required information to the TDI-DWC and other involved parties in a timely manner at no cost to the City.
- 3.4.5 Use pro-active approval and coordinate activities with the claims adjusters and supervising staff with regard to case management services. All Case Management referrals must be approved by City.
- 3.4.6 Monitor appropriateness of treatment, necessity and continuation of medical treatment and disability utilizing the ODG and MDA in relation to an on-the-job injury/illness.
- 3.4.7 Review medical bills for any irregularities such as overlapping dates of services, unrelated fees, up-coding and unbundling.
- 3.4.8 Properly document files regarding analysis, recommendations/reviews, pre-authorization, etc. Documentation must show due diligence and reasonableness for any recommendations made, should these be challenged through administrative or judicial channels.
- 3.4.9 Perform such other functions normally contemplated to be the function of medical cost containment service providers.
- 3.4.10 Require bill review and utilization management staff to use Official Disability Treatment Guidelines (ODG) to properly handle claims and manage overutilization.
- 3.4.11 Provide services through experienced, qualified, and licensed professional staff. Services of a Medical Director may be utilized on a case by case basis. The Case Managers should have appropriate required designations.
- 3.4.12 Obtain Pre-approval from City on all vocational evaluation for job analysis;
- 3.4.13 Provide an on-site nurse to provide professional guidance on workers' compensation claims, review medical reports to ensure proposed treatment is reasonable for the established diagnosis, and to work along with the adjuster.
- 3.4.14 Should the City elect to participate in a Certified 1305 Network or a 504 Plan, assist and cooperate with City in development and implementation of a network plan, and pay in accordance with fee schedule guidelines and Network rates, or Plan rates.

- 3.4.15 Make case managers and utilization review staff available to treating physicians during physician's business hours.
- 3.4.16 Provide treating physicians with timely notification of decisions regarding authorization.
- 3.4.17 Provide monthly reporting, analysis and improvement opportunities for all cost containment and case management programs.

3.5 Pharmacy Benefit Management (PBM) Services

- 3.5.1 Consultant shall contract with pharmacies in and around the city of San Antonio, Texas, or with one or more pharmaceutical networks, to provide the City, as a self insured entity, with discounts on prescription drugs for City's employees who are entitled to workers' compensation benefits in order to save costs. Discounts should result in cost savings as measured against the rates established by the Texas Department of Insurance, Division of Workers Compensation ("TDI-DWC") fee guidelines.
- 3.5.2 Consultant shall maximize the number of pharmacies participating in Consultant's network to ensure ease of access and availability to City's employees throughout the city's geographical area.
- 3.5.3 Consultant shall conduct outreach to pharmacies located in and around San Antonio to inform pharmacies that Consultant is providing Pharmacy Benefit Management Services for City.
- 3.5.4 When the injured employee's treatment lasts longer than the initial prescription fill, Consultant shall contact the injured worker at the time Consultant mails out the permanent prescription ID card and key tags to explain Consultant's pharmacy benefit program and the injured worker's benefits, including authorization process for non-formulary medications.
- 3.5.5 Consultant shall provide City with its temporary Instant Access Prescription Card ("Rx Card") in a form approved by City for City to distribute to injured employees, providing as many cards as requested by City for City to provide to employees, supervisors and Human Resources Department personnel. Temporary Instant Access Cards shall allow a 10 day supply of medication.
 - 3.5.5.1 Information for Pharmacies: The Rx Card shall contain information for pharmacies regarding billing and payment arrangements, including plan numbers, City's name as the employer, a place for the employee's name, ID number and date of injury, Consultant's toll free phone number and hours of availability for billing questions or questions from the employee. The card should explain that the employee is not to be billed directly.
 - 3.5.5.2 Information for Employees: The Rx Card shall also contain an explanation for employees on how to use the card, and the names of participating pharmacies.

3.5.6 Once an injured employee has filed a claim, City's Third Party Administrator ("TPA") will notify Consultant. Within 24 hours of said notice, Consultant shall mail a permanent prescription ID card and key tags to the injured employee identified by City's TPA, accompanied by a letter, in a form approved by City, identifying Consultant as the party administering City's prescription plan. The letter shall be sent using City's letterhead, be in both English and Spanish, state the date of injury, instruct the employee how to activate the prescription ID card, and include information pertaining to pharmacy locations, Consultant's contact information and hours of operation, availability of in home delivery services, and whom to contact if the employee is in need of injury-related durable medical equipment or wound care and disposable supplies.

ID cards shall include basic information, including, but not limited to: (1) member id number; (2) group number; (3) any other identifying information required for bill processing; and (4) directional information regarding bill processing for pharmacies.

3.5.7 Consultant shall audit and pay all pharmacy bills in accordance with Texas Department of Insurance, Division of Workers Compensation ("TDI-DWC") fee guidelines or special discounts negotiated with providers, whether the bill is provided to Consultant directly by a pharmacy or other medical equipment provider, or by City's Third Party Administrator ("TPA"). Consultant shall invoice City's Third Party Administrator for pharmaceutical and medical equipment costs incurred by City's injured employees in accordance with TDI-DWC fee guidelines or, when applicable, in accordance with the special discount rates negotiated with Consultant's providers. Consultant is responsible for paying all providers in a timely manner.

3.5.8 Electronically transfer required information to the TDI-DWC and other involved parties in a timely manner, as required by law.

3.5.9 Provide monthly reporting, analysis and notification of improvement opportunities for pharmacy benefit management services as requested by City.

3.5.10 Comply with all rules and regulations promulgated by the Commissioner of Workers' Compensation, and, if enacted, all requirements of Texas Legislature 82(R) 2011 House Bill 528 (HB 528), pertaining to prescription medication and services.

3.5.11 Consultant shall at all times maintain written contracts with the health care providers providing pharmaceutical services contemplated herein ("HCP"), that contain a specific fee schedule, and which clearly state that the contractual fee arrangement is between Consultant and the HCP. Consultant shall comply with the notice provisions contained in HB 528, and indemnify City for any administrative violations charged against City for Consultant's failure to comply with the provisions of HB 528 in accordance with Article XI. Indemnification of this Agreement.

3.5.12 Perform such other functions normally contemplated to be the function of PBM service providers.

3.6 Third Party Administration Services for Third Party Liability Claims

3.6.1 Provide a Dedicated Liability Claims Unit for the City's account.

3.6.2 Initiate claims investigation with claimant(s), witnesses, affected City personnel, and any other necessary parties within 24 hours of receipt of a claim by telephone electronically, or in person.

3.6.3 Attempt to take recorded statements from all claimants as part of investigation. Include note in file if claimant refuses.

3.6.4 Secure photographs of the location in question on all claims involving the condition of tangible personal or real property when appropriate.

3.6.5 Assign an appraiser to inspect all property damage claims, where appropriate. Inspection shall include an itemized description and photos of damages.

3.6.6 Secure copies of all third party contracts for review of insurance and indemnification requirements, where appropriate.

3.6.7 Tender claims to third party contractor or other entities, where appropriate.

3.6.8 Coordinate contact with City Attorney's Office through Risk Management; Any requests made to the City Attorney's Office or outside counsel for written status, narratives, case evaluations, etc. must be approved by Risk Management.

3.6.9 Deny a claim if TPA determines the City has no liability or where immunity has not been waived. City, however, reserves the right to make such determinations on its own.

3.6.10 Make recommendations promptly to the City regarding investigation, negligence, and liability.

3.7 Third Party Administration Services for Settlement of Third Party Liability Claims

3.7.1 Negotiate settlement of the claim if TPA or City determines liability exists or if immunity has been waived. TPA shall consult with Risk Management on any case involving a loss in excess of \$15,000.00.

3.7.2 Settlements must be approved by City pursuant to City Ordinance 83926, 83927, and 2007-09-13-0969, Attachment XIII, unless the amount is \$2,500.00 or less, in which case settlement is within the authority of the TPA.

3.7.3 Required Approvals for Claims Settlements

3.7.3.1 Obtain City's approval prior to issuance of payment for settlement of a claim exceeding \$2,500.00. TPA shall forward a memo regarding the claim and reasons for settlement offer to City's Risk Manager for approval of the settlement, which approval shall be in writing.

3.7.3.2 If the settlement amount is between \$2,500.01 and \$15,000.00, two approvals are required before TPA may issue the check: Risk Manager or his/her designee and the City Attorney or his/her designee with notification to the Director of the department from whence the claim originated.

3.7.3.3 If the settlement amount is between \$15,000.01 and \$50,000.00, written approval from City's Claims Review Board is required before TPA may issue the check.

3.7.3.4 If the settlement amount exceeds \$50,000.00, City Council approval is required before TPA may issue the check.

3.7.4 Make payments promptly on all approved settlements.

3.7.5 Instruments disbursing, or directing disbursement of funds for third party liability bills/settlements in the amount of \$10,000.00 or more require a minimum of one original and one facsimile signature by TPA, or, in the absence of the original signature of a signer authorized by the TPA, one of the following: the signature of City's Finance Director, Assistant Finance Director – Accounting, the Disbursements and Receivables Administrator, or the Controller or Financial Reporting Manager(s), in accordance with City ordinance 2008-05-29-0458. Instruments disbursing, or directing disbursement of funds for third party liability bills/settlements that are less than \$10,000.00 require a minimum of one facsimile signature by TPA. City shall provide prompt notice of any change in signature requirements, which shall automatically be incorporated in the contract.

3.8 Third Party Administration Services for Litigation of Third Party Liability Claims

3.8.1 If a lawsuit is filed, TPA will forward contents of the claim file to the appropriate attorney as assigned by the Litigation Division of the City Attorney's Office. TPA shall continue to monitor the claim, and adhere to all instructions, requests, etc. as directed by the assigned City Attorney (or outside Counsel).

3.8.2 Pay all bills involved with litigation in prompt fashion once received from and/or approved by the City's Chief of Litigation.

3.8.3 Obtain approval of the Deputy City Attorney in charge of City's litigation division prior to payment of any bills related to litigation.

3.8.4 Maintain adequate reserve levels for each case.

- 3.8.5 Attend meetings, mediation and legal proceedings as requested by City at no additional cost to the City.
- 3.8.6 Issue settlement checks as instructed by City Attorney, and deliver such settlement checks directly to assigned City Attorney, not to the claimant for all cases in litigation. TPA shall have no authority to settle cases that have resulted in litigation.
- 3.8.7 Track litigation costs, monitor litigation, pay legal bills once approved by the City Attorney's office, and provide litigation expense reports upon request.
- 3.9 Third Party Administration Services for a Risk Management Information System (RMIS) for the Workers' Compensation and Liability Claims. Consultant shall provide the following services, using its RMIS.
 - 3.9.1 ELECTRONIC REPORTING TO THE PROPER AUTHORITIES OF ALL CLAIMS AS REQUIRED BY MMSEA IS MANDATORY, AT NO COST TO THE CITY.
 - 3.9.2 TPA shall provide software (claims platform) necessary to perform services hereunder (Consultant's "RMIS").
 - 3.9.3 Consultant shall provide secure, password protected access to its online RMIS. Login information shall be granted to authorized City personnel with access available 24 hours a day, seven days a week, 365 days a year, except for periodic maintenance by Consultant or Internet outages beyond Consultant's control. Consultant shall conduct maintenance outside City's normal business hours, and shall ensure that the site is down for no longer than 4 hours at a time, and no more frequently than is reasonably necessary. Consultant shall provide 72 hours notice to City of expected maintenance intervals. Consultant shall notify City of any unplanned system outages within 1 hour of their occurrences and provide an estimated time for reinstatement of services. If Consultant's system is down longer than 4 hours for any reason, City shall be entitled to a credit of \$500.00 per hour for every hour the system is down. Consultant shall indicate this credit on the next invoice Consultant submits to City. The Parties agree that the actual damages that might be sustained by City by reason of the breach by Consultant of its covenant to maintain its RMIS in operational condition with outages not exceeding four hour intervals are uncertain and would be difficult of ascertainment, and that the sum specified above would be a reasonable compensation for such breach. Consultant hereby promises to pay, and City hereby agrees to accept, such sum as liquidated damages, and not as a penalty, in the event of such breach.
 - 3.9.4 TPA shall provide City direct access to its RMIS for as many users as City requires, for the term of this Contract, including any extensions or renewals hereof, and for an additional 30 days following termination. Risk Management shall have direct access to the RMIS' electronic claims file and report writer, to review claims information and generate reports. The current estimated number of users is twenty-five (25).

3.9.5 System Capabilities. TPA's RMIS shall be capable of, though not limited to, the following:

3.9.5.1 Secured data;

3.9.5.2 Access via standard Internet connection 24 hours a day, 7 days a week;

3.9.5.3 Direct claim reporting of new claims – 24/7;

3.9.5.4 All usual and necessary statistical claim information data;

3.9.5.5 Capturing detailed information on: medical bills, other payments, client, injured worker, injured worker history, provider, diagnosis and treatment;

3.9.5.6 Reporting the number of claims for a specific time period by injury date and by report date;

3.9.5.7 Accurately calculate the number of full and partial days of disability for each claim accounting for all periods of intermittent changes in the claimant's work status;

3.9.5.8 Producing monthly reports on employees who, in addition to the claim filed in a particular month, have filed one or more prior claims with City;

3.9.5.9 Accurately reflecting paid and incurred amounts of net subrogation recoveries;

3.9.5.10 Accurately capturing the number of lost time claims reported during a specific period for medical only claims, reopened claims, and prior claims;

3.9.5.11 Capturing return to work dates;

3.9.5.12 Capturing North American Industrial Classification System, National Council on Compensation Insurance, and Standard Industrial Classification Codes;

3.9.5.13 Distinguishing among the different types of payments made for cost containment services, and tracking same, including, but not limited to, state fee schedule, utilization review results and clinical edit reductions;

3.9.5.14 Tracking denials and disputes by the reason for the denial/dispute, such as un-allowed condition, wage calculation, waiting period and vocational rehabilitation;

3.9.5.15 Electronically making payment for any and all benefits, programmed specific to Texas, and calculating the amount due based upon wages earned and

the type of allowance, offering accuracy, timeliness, edit and audit processing, approval review and check production;

3.9.5.16 Tracking Benefit Review Conferences and Contested Case Hearings through a diary system, which can be altered based upon the City's needs and the nature of the claim;

3.9.5.17 Tracking claims by City location codes, and be extracted by department, division and section;

3.9.5.18 Tracking of all third party liability claims.

3.9.6 TPA shall provide reports through its web-based RMIS monthly or as requested by City. All reports shall be available on-line and may be run at any frequency requested by City. Custom formatting and detailing of data fields shall be available. Available reports shall include:

3.9.6.1 All Open Claims – Liability and Workers' Compensation;

3.9.6.2 Claims Summary by Claim Year, including claim counts - Liability and Workers' Compensation;

3.9.6.3 Claims Lost Detail - Liability and Workers' Compensation;

3.9.6.4 Closed Liability Claims with Total Incurred > \$200,000;

3.9.6.5 Open Liability Claims with Total Incurred > \$200,000;

3.9.6.6 Open Liability Suits with Total Incurred > \$200,000;

3.9.6.7 Suits with Status Activity During Fiscal Year;

3.9.6.8 Open Litigation Claims – Liability;

3.9.6.9 Liability Claims Loss Detail – Auto Liability Claims;

3.9.6.10 Liability Claims Loss Detail – General Liability Claims;

3.9.6.11 Claims Paid – Liability and Workers' Compensation.

3.9.6.12 TPA shall provide City with a loss run, which shall include record of overpayments recovered by fiscal year each month. This report shall be submitted to City by the 15th working day of each month.

3.9.6.13 TPA shall provide City with report of gross billings, number of audited bills, cost of audit, fee guideline reductions and PPO discounts, net amount and percentage of savings on a monthly basis. This report shall be submitted to City by the 15th working day of each month.

- 3.9.6.14 TPA shall make available to City, a copy of all status reports to the excess insurance carrier as warranted by the severity and complexity of the claim.
- 3.9.6.15 TPA shall provide City with the monthly recap report via electronic mail no later than thirteen (13) days after the last day of the month.
- 3.9.6.16 OSHA Report – TPA shall provide City with a quarterly OSHA report, compliant with OSHA claims reporting criteria. In the event the City becomes subject to OSHA’s authority, OSHA reports must be generated and sent according to OSHA requirements.
- 3.9.6.17 TPA shall provide an annual stewardship report indicating overall program performance for both workers’ compensation and liability claims, including content requested by City, including but not limited to current trending, and resolution of any deficiencies and any negative trends.
- 3.9.6.18 TPA shall provide all other monthly reports to the City as requested by the City at no additional cost to City.
- 3.9.7 TPA shall enable City to do *ad hoc* reporting from its RMIS on any other information requested by City.
- 3.9.8 TPA shall provide City with RMIS training for all users. Training shall occur on a quarterly basis, or as deemed necessary by City. The first training session shall be held within 10 days of the start of the Contract, and will occur at a City-designated facility. Length of training sessions shall be sufficient, as determined solely by City, to ensure adequate knowledge for use of the RMIS.
- 3.9.9 TPA shall retain all ownership and copyright interest in and to any and all software, computer programs, business methods, related documentation, technology, know-how and processes developed by TPA.
- 3.9.10 TPA will grant City a paid-up, non-exclusive, non-transferable license for its RMIS/Claims Administration Software, and will procure on City’s behalf a paid-up, non-exclusive, non-transferable license for any required third party software that may be necessary for use in conjunction with TPA’s software for an unlimited number of City users. The term of the licenses shall be for the duration of the Contract, including any extensions or renewals thereof and for 30 days after contract termination or expiration.
- 3.9.11 City will acknowledge that the licenses granted will be limited to City’s own use exclusively and that City will not have the right to sub-license any of the software in either its original or modified form.
- 3.9.12 TPA’s software contemplated for the provision of services under the Contract should be web-based, and as such, fully compatible with City’s existing software and hardware, and City shall not incur any additional expenses, other than

providing access to the Internet, in accessing and using TPA's software for performance of services hereof.

3.9.13 TPA shall provide daily uploading of all claims and financial data into Risk Management's stand alone RMIS system ("STARS") at no cost to the City. Consultant's format, fields and data will be selected by the City and subject to change by City.

3.10 Third Party Administration Services for Funding Account

3.10.1 TPA shall issue payments electronically via direct deposit and any checks on a "positive pay" basis tied to a zero balance checking account, established at the City's depository, which is currently Frost Bank, for payments to employees, medical providers, vendors, citizens and attorneys.

3.10.2 TPA shall provide its daily payment register, in advance of issuing payments, no later than 10:00 a.m. each day to allow time for City to review, issue approvals, and deposit funds. TPA shall provide, at the minimum, a weekly check register and void list to the City of San Antonio's Finance Department in a format that can be uploaded to our SAP System. Consultant shall provide the totals of all checks issued and voided for both liability and workers' compensation, upon request.

3.10.3 City shall place funds in the account on a daily basis in an amount determined by the daily payment register provided by TPA, taking into consideration required City approval for payments as described herein.

3.10.4 TPA shall, at no additional cost to City, provide the checks which comply with the City's financial institution minimum standards.

3.10.5 Upon termination of the contract, by expiration of the term or any other manner provided therein, TPA shall have all outstanding invoices received through the date prior to termination paid and processed, and shall have all files completed and updated in a neat and orderly manner.

3.11 As a measure of performance, Consultant hereby guarantees that it will score 90% or higher on any Performance Based Over-site ("PBO") audits conducted by the State of Texas, through any of its departments or agencies, during the first 180 days of this contract, and 95% or higher for the remainder of the contract term and any renewals. If Consultant fails to achieve this performance measure, Consultant shall pay City the sum of \$1,000 for each percentage point, rounded to the nearest whole number, that Consultant falls below the guarantee. Consultant shall apply this sum as a credit on the next invoice Consultant submits to City. If no further invoices are due, Consultant shall pay this sum within 30 days of City's demand for same. The Parties agree that the actual damages that might be sustained by City by reason of the breach by Consultant of this guarantee are uncertain and would be difficult of ascertainment, and that the sum specified above would be a reasonable compensation for such breach. Consultant hereby promises to pay, and City hereby agrees to accept, such sum as liquidated damages, and not as a penalty, in the event of such breach.

- 3.12 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 VII. 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.

IV. COMPENSATION TO CONSULTANT

- 4.1 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 annual fees set forth below as total compensation, to be paid to Consultant:
- 4.1.1 Contract Year One - \$1,617,000.00, of which \$949,500.00 is for Workers Compensation Claims and \$667,500.00 is for Third Party Liability Claims;
 - 4.1.2 Contract Year Two - \$1,669,000.00, of which \$980,500.00 is for Workers Compensation Claims and \$688,500.00 is for Third Party Liability Claims;
 - 4.1.3 Contract Year Three - \$1,724,000.00, of which \$1,013,500.00 is for Workers Compensation Claims and \$710,500.00 is for Third Party Liability Claims;
 - 4.1.4 Contract Year Four - \$1,781,000.00, of which \$1,047,500.00 is for Workers Compensation Claims and \$733,500.00 is for Third Party Liability Claims (subject to contract renewal for this period); and
 - 4.1.5 Contract Year Five - \$1,836,000.00, of which \$1,079,500.00 is for Workers Compensation Claims and \$756,500.00 is for Third Party Liability Claims (subject to contract renewal for this period).
- 4.2 City shall pay the fees owed to TPA described in sections 4.1 above in equal monthly installments in arrears. TPA shall submit a monthly invoice for said amount to City, in a form acceptable to City, no earlier than the 30th day of each month, which City shall pay within 30 days of receipt and approval by Director, or her designee. Invoices shall be submitted to City at City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio, Risk Management Division, P.O. Box 839966, San Antonio, Texas 78283-3966.
- 4.3 Charges for the services identified below will be billed directly to the claims file at the rates shown below.

SERVICE	COST				
	1st Year	2nd Year	3rd Year	4th Year	5th Year
Medical Bill Audit Flat Rate (per bill)					
UB-92	\$7.00 per bill	\$7.00 per bill	\$7.50 per bill	\$7.50 per bill	\$8.00 per bill
HCFA	\$7.00 per bill	\$7.00 per bill	\$7.50 per bill	\$7.50 per bill	\$8.00 per bill
Pharmaceutical	\$7.00 per bill	\$7.00 per bill	\$7.50 per bill	\$7.50 per bill	\$8.00 per bill
Pre-authorization Fee (per request)					
Medical	\$145.00 per request	\$145.00 per request	\$150.00 per request	\$150.00 per request	\$155.00 per request
Pharmaceutical	\$145.00 per request	\$145.00 per request	\$150.00 per request	\$150.00 per request	\$155.00 per request

SERVICE	COST				
	1st Year	2nd Year	3rd Year	4th Year	5th Year
Case Management	\$90.00 per hour	\$90.00 per hour	\$95.00 per hour	\$95.00 per hour	\$95.00 per hour
Peer Review	\$250.00 per review				
Required Medical Examination Coordination	\$350.00 flat fee				
Private Investigation Services	\$60.00 per hour				

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 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 San Antonio City Council by passage of an ordinance therefore. No additional fees or expenses may be charged to the claims file, other than as provided in section 4.3 above, without express written approval of the Director, except for legal fees, which require express written approval from the City Attorney.

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 Contract to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

V. OWNERSHIP OF DOCUMENTS

- 5.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information 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 information, City has the right to use all such writings, documents and information as City desires, without restriction.

VI. RECORDS RETENTION AND AUDIT

6.1 Records Retention

- 6.1.1 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 same by City and any of its authorized representatives.
- 6.1.2 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 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.
- 6.1.3 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.

6.2 Audit

- 6.2.1 City shall perform audits of Consultant in accordance with 28 TAC 7.1611, as hereafter amended. The provisions below describe the method and manner in

which said audits shall be conducted; however, if state law is hereafter changed, audits shall be conducted in accordance with the law in effect at the time of the audit. Consultant shall comply with all reasonable requests and make all records and premises available as is required for City to conduct said audits.

6.2.2 No less than two times each fiscal year, City shall review the operations of Consultant. This review may be conducted on City's premises or at another location designated by City and may be conducted by electronic means.

6.2.3 No less than once every two fiscal years, City shall conduct an on-site audit of Consultant.

6.2.4 Notwithstanding section 6.2.2 above, City is not required to review the operations of Consultant more than one time in the same fiscal year in which City conducts an on-site audit of Consultant.

6.2.5 Both a review and on-site audit shall be designed to:

6.2.5.1 assess the business practices and procedures of Consultant to ensure competent administration, including evaluating:

- Consultant's compliance with the Insurance Code, the Labor Code, and any rules adopted there under, as applicable;
- Consultant's compliance with the provisions of this Agreement;
- Consultant's performance of claims adjudication and payment;
- the adequacy of the financial security maintained by Consultant, if any; and
- Consultant's practices and procedures for establishing the adequacy of the insurer's reserves, if any; and

6.2.5.2 include a written summary of the objectives and scope of the review or on-site audit and the results of the review or on-site audit, including a corrective action plan addressing any deficiencies found during the review or on-site audit.

6.2.6 The purpose of the on-site audit is to verify the accuracy, integrity, and completeness of the information received during a review conducted by City pursuant to section 6.2.2 above. In addition to the requirements stated above, the on-site audit must also:

6.2.6.1 include a physical inspection of Consultant's place of business; and

6.2.6.2 include a written assessment of the reliability of the information provided to City and relied upon by City when conducting a review or on-site audit of Consultant under this section.

6.2.7 A review or on-site audit required under this article may be performed by City or City's designated representative.

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 City upon 30 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; or
- 7.3.2 Any material breach of the terms of this Contract.
- 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 Bankruptcy or selling substantially all of company's assets;
- 7.4.3 Failing to perform or failing to comply with any covenant herein required that is not material in nature;
- 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

- 7.6 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.
- 7.7 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.
- 7.8 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.
- 7.9 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.

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 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: Risk Manager

Risk Management Division, Human Resources Dept.
111 Soledad, Suite 1000
San Antonio, Texas 78205

If intended for Consultant, to:
TRISTAR Risk Management
Attn: Thomas J. Veale, President
100 Oceangate, Suite 700
Long Beach, CA 90802

IX. CONFIDENTIALITY & NETWORK SECURITY

- 9.1 No reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by, or assembled by Consultant under this Agreement shall be disclosed or made available to any individual or organization by Consultant, other than as expressly permitted by this Agreement, without the express prior written approval of City. In the event Consultant receives any such request, Consultant shall forward such request to City immediately.
- 9.2 Consultant shall establish a method to secure the confidentiality of records and information that Consultant may have access to hereunder 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.
- 9.3 If City's access to claims data requires a network connection (the "Network Connection") between City's wide area network and TPA's wide area network, TPA and City shall take reasonable and customary precautions to prevent the unauthorized access to or use of the Network Connection through their respective networks. The parties agree, however, that each party is responsible for the security of its own network. Neither party shall be liable to the other for unauthorized access to the Network Connection, so long as the accused party shall have taken reasonable and customary precautions to prevent such unauthorized access.
- 9.4 Whether or not marked as such, and without regard to the media in which such records are stored, "Confidential Information" shall mean:
- 9.4.1 any business or technical information pertaining to the parties herein or to third parties, which is furnished, disclosed or made available by one party to the other, including, without limitation, specifications, prototypes, software, marketing plans, financial data and personnel statistics; and
- 9.4.2 medical records, reports and information, as well as any other non-medical records, reports or information pertaining to claimants under the Program.
- 9.5 "Confidential Information" shall not mean this contract document, or any other document required or permitted to be disclosed pursuant to the Texas Public Information Act.

- 9.6 Each party agrees to protect Confidential Information received hereunder with the same degree of care that such party exercises with its own confidential information (but in no event less than reasonable care) and to limit access and disclosure of Confidential Information only to their employees, agents and contractors who have a "need to know," and who agree to maintain confidentiality in accordance with this section. Notwithstanding the foregoing, City agrees to permit TPA to compile and disseminate aggregate, de-identified information for benchmarking purposes or forward to a data collection facility data for Qualified Claims handled pursuant to this Agreement, provided that such facility agrees in writing to keep City's data confidential. Further, TPA shall be entitled, without violation of this section and without prior consent of City, to retain claims administration information and to forward claims administration information to government agencies to the extent required by law for the proper performance of the services set forth herein. The dissemination of information referred to in this paragraph is that dissemination of information as required for TPA to perform its obligations under this Agreement.
- 9.7 The provisions of this section shall survive the expiration or termination of the Agreement.

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 "Third Party Claims Administrator and Medical Cost Containment Agreement" 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 insurance coverages and their limits 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 in such amounts as are approved by the 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 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 Respondents 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</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Claims-made Basis)	\$2,000,000 per claim, \$5,000,000 aggregate
6. Commercial Crime Coverage (Policy shall be endorsed to name City as a joint loss payee.)	\$500,000 per claim

10.4 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 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 a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Human Resources Department, Risk Management Division
P.O. Box 839966
San Antonio, Texas 78283-3966

- 10.5 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, professional liability and commercial crime 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, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 10.6 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 Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 10.7 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.
- 10.8 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.
- 10.9 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 Agreement.
- 10.10 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.
- 10.11 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, 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**, it s 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 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.
- 11.4 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.

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: Modern Medical, Inc., Argus Services, Injury Management Organization, CasePro, Argus Investigations, and Dependable Express. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by the City Manager, or her designee, prior to the provision of any services by said subcontractor.
- 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 the City Manager, or her designee.
- 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 the the City Manager, or her designee. 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 he or she 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. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

14.1 SBEDA Program. City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531, also referred to as “SBEDA” or “the SBEDA Program”), which is posted on City’s International and Economic Development (IEDD) website page and is also available in hard copy form upon request to City. The SBEDA Ordinance Compliance Provisions contained in this section of the agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by City pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this agreement. Unless defined in a contrary manner herein, terms used in this section of the agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

14.2 Definitions

14.2.1 **Affirmative Procurement Initiatives (API)** – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise (“S/M/WBE”) Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance.)

14.2.2 **Certification or Certified** – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy

eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6 of Attachment A.

14.2.3 **Commercially Useful Function** – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by Consultant to perform such “pass-through” or “conduit” functions that are not commercially useful shall be viewed by the City as fraudulent if Consultant attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, the Consultant shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and the Consultant and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

14.2.4 **Good Faith Efforts** – documentation of the Consultant’s or Respondent’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent’s commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office’s directory of certified SBE or M/WBE

firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of Consultant's Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

- 14.2.5 **HUBZone Firm** – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]
- 14.2.6 **Independently Owned and Operated** – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not, itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.
- 14.2.7 **Individual** – an adult person that is of legal majority age.
- 14.2.8 **Industry Categories** – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as “business categories.”
- 14.2.9 **Originating Department** – the City department or authorized representative of City which issues solicitations or for which a solicitation is issued.
- 14.2.10 **Payment** – dollars actually paid to Consultants and/or Subcontractors and vendors for City contracted goods and/or services.
- 14.2.11 **Prime Contractor** – the vendor or contractor to whom a purchase order or contract is issued by City for purposes of providing goods or services to or for City. For purposes of this agreement, this term refers to Consultant.

- 14.2.12 **Relevant Marketplace** – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.
- 14.2.13 **Respondent** – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City. For purposes of this agreement, Consultant is the Respondent.
- 14.2.14 **Responsible** – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.
- 14.2.15 **San Antonio Metropolitan Statistical Area (SAMSA)** – also known as the Relevant Marketplace, the geographic market area from which City's MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).
- 14.2.16 **SBE Directory** - a listing of small businesses that have been certified for participation in City's SBE Program APIs.
- 14.2.17 **SBE Subcontracting Program** – an API in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified SBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein there have been ongoing disparities in the utilization of available SBE Subcontractors.
- When specified by the GSC, the SBE Subcontracting Plan or Good Faith Efforts plan submitted by Consultant may also be required to reflect Good Faith Efforts that a Prime Contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for SBE firms.
- 14.2.17 **Significant Business Presence** – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message

center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

- 14.2.18 **Small Business Enterprise (SBE)** – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry/(ies) and meets the Significant Business Presence requirements as defined herein.
- 14.2.19 **Small Business Office (SBO)** – the office within the International and Economic Development Department (IEDD) of the City that is primarily responsible for general oversight and administration of the S/M/WBE Program.
- 14.2.20 **Small Business Office Manager** – the Assistant Director of the IEDD of the City that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.
- 14.2.21 **Subcontractor** – any vendor or contractor that is providing goods or services to a Prime Contractor or Consultant in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of each binding agreement between the Consultant and its subcontractors shall be submitted to City prior to execution of this contract agreement and any contract modification agreement.
- 14.2.22 **Suspension** – the temporary stoppage of the SBE or M/WBE firm's beneficial participation in City's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of Consultant's and/or S/M/WBE firm's performance and payment under City contracts due to City's imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.
- 14.2.23 **Subcontractor/Supplier Utilization Plan** – a binding part of this contract agreement which states the Consultant's commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of Consultant's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be

14.3 SBEDA Program Compliance – General Provisions. As Consultant acknowledges that the terms of City’s SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in City’s SBEDA Policy & Procedure Manual are in furtherance of City’s efforts at economic inclusion and, moreover, that such terms are part of Consultant’s scope of work as referenced in City’s formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines, and procedures are hereby incorporated by reference into this Agreement, and are considered by the parties to this Agreement to be material terms. Consultant voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by City. Without limitation, Consultant further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

14.3.1 Consultant shall cooperate fully with the Small Business Office and other City departments in their data collection and monitoring efforts regarding Consultant’s utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;

14.3.2 Consultant shall cooperate fully with any City or SBO investigation (and shall also respond truthfully and promptly to any City or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of Consultant or its Subcontractors or suppliers;

14.3.3 Consultant shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;

14.3.4 Consultant shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Consultant’s Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Consultant to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Consultant of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and

value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

- 14.3.5 Consultant shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with City, as well as any transfer or change in its ownership or business structure.
- 14.3.6 Consultant shall retain all records of its Subcontractor payments for this contract for a minimum of four years, or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years, or as required by state law, following the final determination of litigation, whichever is later.
- 14.3.7 In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a Consultant's Subcontractor / Supplier Utilization Plan, the Consultant shall not be given credit for the participation of its S/M/WBE or HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and Consultant and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

- 14.4 SBEDA Program Compliance – Affirmative Procurement Initiatives. City has applied the following contract-specific Affirmative Procurement Initiative to this contract. Consultant hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification, and absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

SBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 5. (a), this contract is being awarded pursuant to the SBE Subcontracting Program. Consultant agrees to subcontract at least 8% of the total contract value to certified SBE firms. The Subcontractor / Supplier Utilization Plan that Consultant submitted to City with its response for this contract, and that contains the names of the certified SBE Subcontractors to be used by Consultant on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE Subcontractor, and documentation including a description of each SBE Subcontractor's scope of work and confirmation of each SBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of Consultant to attain this subcontracting goal for SBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with City, and may result in debarment from performing future City contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon SBE subcontracting goal, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

- 14.5 Commercial Nondiscrimination Policy Compliance. As a condition of entering into this agreement, Consultant represents and warrants that it has complied with throughout the course of this solicitation and contract award process, will continue to comply with, City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, Consultant shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. Consultant shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in City's Relevant Marketplace. Consultant understands and agrees that a material violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Consultant's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to City pursuant to the solicitation for this contract is hereby attached and incorporated into the material terms of this Agreement. Consultant shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.
- 14.6 Prompt Payment. Upon execution of this contract by Consultant, Consultant shall be required to submit to City accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the Consultant's reported subcontract participation is accurate. Consultant shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from City. In the event of Consultant's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to Consultant, and no new City contracts shall be issued to the Consultant until City's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.
- 14.7. Violations, Sanctions and Penalties. In addition to the above terms, Consultant acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:
- 14.7.1 Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
- 14.7.2 Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any

false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;

- 14.7.3 Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
 - 14.7.4 Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
 - 14.7.5 Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.
- 14.8 Any person who violates the provisions of section 14.7 shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions, and remedies available under law, including but not limited to:
- 14.8.1 Suspension of contract;
 - 14.8.2 Withholding of funds;
 - 14.8.3 Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
 - 14.8.4 Refusal to accept a response or proposal; and
 - 14.8.5 Disqualification of Consultant or other business firm from eligibility for providing goods or services to City for a period not to exceed two years (upon City Council approval).

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

XVI. 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 City Manager, or her designee, shall have authority to execute amendments on behalf of the City without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the City.

XVII. 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.

XVIII. 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.

XIX. 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.

XX. 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 the City Manager or her designee, 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.

XXI. 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.

XXII. 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.

XXIII. 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.

XXIV. 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.

XXV. INCORPORATION OF EXHIBITS

- 25.1 Each of the Exhibits 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 exhibits:
- 25.1.1 The Subcontractor / Supplier Utilization Plan
 - 25.1.2 Consultant's certification of its compliance with this Commercial Nondiscrimination Policy

XXVI. PROHIBITED CONTRIBUTIONS

- 27.1 Consultant acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a "high-profile" discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits the response to the Request for Proposal (RFP) or Request for Qualifications (RFQ) until 30 calendar days following the contract award. Consultant understands that if the legal signatory entering the contract has made such a contribution, the city may not award the contract to that contributor or to that contributor's business entity. Any legal signatory for a proposed high-profile contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response.
- 27.2 Consultant acknowledges that the City has identified this Agreement as high profile.
- 27.3 Consultant warrants and certifies, and this Agreement is made in reliance thereon, that the individual signing this Agreement has not made any contributions in violation of City Code section 2-309, and will not do so for 30 calendar days following the award of this Agreement. Should the signor of this Agreement violate this provision, the City Council may, in its discretion, declare this Agreement void.

XXVII. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, 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 XVI. Amendments.

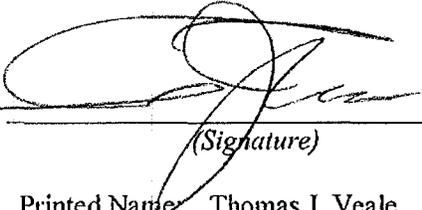
EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO

TRISTAR RISK MANAGEMENT

(Signature)

Printed Name: _____
Title: _____
Date: _____



(Signature)

Printed Name: Thomas J. Veale
Title: President
Date: _____

Approved as to Form:

Assistant City Attorney



CITY OF SAN ANTONIO SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN

SOLICITATION NAME: *Third Party Claims Administrator & Medical Cost Containment Services*

RESPONDENT NAME: TRISTAR Risk Management

SOLICITATION API: *Small Business Enterprise (SBE) Subcontracting Program*

API REQUIREMENTS: Respondents must demonstrate commitment to satisfy an eight percent (8%) SBE subcontracting goal. In the absence of a waiver granted by the Small Business Office, failure of a Respondent to commit to satisfying the SBE subcontracting goal shall render its response NON-RESPONSIVE.

Section 1. Enter Respondent's (Prime) proposed contract participation level. Leave blank for revenue generating contracts.

Section 2. List ALL subcontractors / suppliers that will be utilized for the entire contract period, excluding possible extensions and renewals. Use additional sheets if necessary.

	PARTICIPATION DOLLAR AMOUNT	% LEVEL OF PARTICIPATION	CERTIFICATION TYPE AND NUMBER	TYPE OF WORK TO BE PERFORMED (BY NIGP CODE)
SECTION 1. PRIME				
Name: TRISTAR Risk Management	\$1,617,000	65.65%		524,291
			#:	
SECTION 2. SUBCONTRACTOR(s):				
1. Name: Argus Services	\$300,000	12.18%	SBE	541,618
			#:	
2. Name: Injury Management Organiza	\$200,000	8.12%	SBE	524,292
			#:	
3. Name: CasePro	\$20,000	0.81%	WBE	524,298
			#:	
4. Name: Argus Investigations & Secu	\$20,000	0.81%	SBE	561,611
			#:	
5. Name: Modern Medical	\$300,000	12.18%		208,209,465
			#:	
6. Name: Dependable Express	\$6,000	0.25%	SBE	492,210
			#:	
Total Prime Participation:	\$1,617,000	65.65%		
			#:	
Total Sub Participation:	\$846,000	34.35%		
			#:	
Total Prime & Sub Participation:	\$2,463,000	100%		
			#:	
Total Certified Sub Participation:	\$526,000	21.35%		
			#:	

If a business is not certified, please call the Small Business Program Office at (210) 207-3900 for information and details on how subcontractors and suppliers may obtain certification.

I HEREBY AFFIRM THAT I POSSESS DOCUMENTATION FROM ALL PROPOSED SUBCONTRACTORS/SUPPLIERS CONFIRMING THEIR INTENT TO PERFORM THE SCOPE OF WORK FOR THE PRICE INDICATED ABOVE. I FURTHER AFFIRM THAT THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND AND AGREE THAT, IF AWARDED THE CONTRACT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.

[Handwritten Signature]

SIGNATURE OF AUTHORIZED AGENT

Director

TITLE

July 21, 2011

DATE

361-688-0449

PHONE

FOR CITY USE

Action Taken:

Approved X

Denied _____

for Alejandra Lopez

DIRECTOR
INTERNATIONAL AND ECONOMIC DEVELOPMENT