

AN ORDINANCE 2014 - 10 - 09 - 0782

**APPROVING A PROFESSIONAL SERVICES AGREEMENT FOR ACTUARIAL SERVICES WITH AMI RISK CONSULTANTS, INC., TO PROVIDE ACTUARIAL SERVICES TO THE CITY FOR A 3-YEAR TERM BEGINNING OCTOBER 1, 2014 AND ENDING SEPTEMBER 30, 2017, WITH TWO RENEWAL TERMS OF ONE YEAR EACH AT THE CITY'S OPTION, WITH TOTAL COMPENSATION NOT TO EXCEED \$65,000.00.**

\* \* \* \* \*

**WHEREAS**, a Request For Proposals (“RFP”) seeking proposals to provide actuarial services to the City was issued by City Staff on May 15, 2014; and

**WHEREAS**, on June 16, 2014, three responsive proposals were received in response to the RFP; and

**WHEREAS**, an evaluation team comprised of various members of City Staff has evaluated the Proposal received and has recommended that the Proposal of AMI Risk Consultants, Inc. (“Respondent”) be accepted, and that the City enter into a Professional Services Agreement For Actuarial Services with the Respondent for an initial three year term, with two (2) one (1) year renewal terms at the City’s option, upon approval by the City Council; and

**WHEREAS**, the City Council, upon consideration of and deliberation on such recommendation, desires to accept City Staff’s recommendation; **NOW THEREFORE:**

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

**SECTION 1.** The terms and conditions of the Professional Services Agreement For Actuarial Services (“Agreement”) with the Respondent for an initial three year term beginning October 1, 2014, and ending September 30, 2017, with two (2) one (1) year renewal terms at the City’s option upon approval by the City Council, are hereby approved.

The City Manager, or her designee, or the Director of Finance, or his designee, are each hereby authorized to enter into and execute the Agreement, under terms and conditions substantially in accordance with those set forth in **Attachment I** to this Ordinance.

**SECTION 2.** Funding in the amount of \$13,000.00 for this ordinance is available for Fund 75003000, Cost Center 0709030001 and General Ledger 5201040, as part of the Fiscal Year 2015 Budget.

**SECTION 3.** Additional funding in the amount of \$26,000.00 for this ordinance as part of Fiscal Years 2016, and 2017’s Budget is contingent upon City Council approval of the City’s operating budget and the availability of funds.

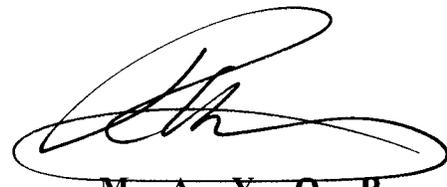
**SECTION 4.** Future funding not to exceed \$26,000.00 through the renewal terms of this contract is contingent upon City Council approval of subsequent fiscal year budgets.

**SECTION 5.** Payment not to exceed the budgeted amount is authorized to AMI Risk Consultants, Inc. and should be encumbered with a purchase order.

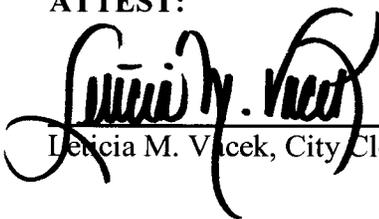
**SECTION 6.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager, or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 7.** This Ordinance is effective immediately, upon passage by eight (8) affirmative votes; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

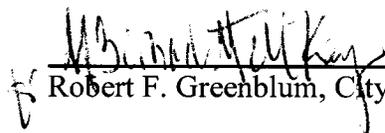
**PASSED and APPROVED** this 9<sup>th</sup> day of October, 2014.

  
M A Y O R  
for Ivy R. Taylor

**ATTEST:**

  
\_\_\_\_\_  
Leticia M. Vicek, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Robert F. Greenblum, City Attorney

<b>Agenda Item:</b>	17 ( in consent vote: 4, 5, 6, 7, 8, 11, 12, 13, 14, 16, 17, 18, 19 )
<b>Date:</b>	10/09/2014
<b>Time:</b>	09:27:39 AM
<b>Vote Type:</b>	Motion to Approve
<b>Description:</b>	An Ordinance approving a Professional Services Agreement with AMI Risk Consultants, Inc., to provide actuarial services to the City for a 3-year term beginning October 1, 2014 and ending September 30, 2017, with two renewal terms of one year each at the City's option, with total compensation not to exceed \$65,000.00. [Ben Gorzell, Chief Financial Officer; Troy Elliott, Director]
<b>Result:</b>	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Diego Bernal	District 1		x				
Keith Toney	District 2		x				
Rebecca Viagran	District 3		x				x
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Mari Aguirre-Rodriguez	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9	x					
Michael Gallagher	District 10		x			x	

**A T T A C H M E N T I**

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
ACTUARIAL 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 Troy Elliott, its Director of Finance, and **AMI RISK CONSULTANTS, INC.**, a corporation chartered under the laws of the State of Florida acting by and through its President, Aguedo M. Ingco (“Consultant”), both of which may be referred to herein collectively as the “Parties”.

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

**I. DEFINITIONS**

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

- 1.1 “City” is defined in the preamble of this Agreement and includes its successors and assigns.
- 1.2 “Consultant” is defined in the preamble of this Agreement and includes its successors.
- 1.3 “Director” shall mean the City’s Director of Finance, or his designee.

**II. TERM**

- 2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the initial term of this Agreement shall commence on October 1, 2014 and terminate on September 30, 2017.
- 2.2 City shall have the right to renew this Agreement on the same terms and conditions for two additional one year periods. Renewals shall be in writing and signed by Director, subject to and contingent upon appropriation of funds for expenditures due hereunder. Approval of the City Council of City shall not be required renewal upon the same terms and conditions.
- 2.3 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of

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

comprehensive actuarial analysis of City's self-insured workers' compensation and liability programs using the updated data for the period ending February 28, and shall project its findings forward through September 30 of that same fiscal year. Consultant shall provide an estimate of the unpaid loss and allocated loss adjustment expense for City's workers' compensation, general liability, and auto liability programs. This estimate will include a provision for known claims as of February 28, as well as claims which have occurred, but not yet been reported to City. Estimates shall be provided as described in section 3.4. Tables shall be included as described in section 3.4. The analysis may be provided in a memorandum format.

3.7.2 Consultant shall provide a draft of its analysis to City by March 27 of the applicable year\*, and a final report no later than April 3 of the applicable year\*.

\*Assuming all the data needed are received by March 6 of the applicable year.

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

3.8.1 The City, in its sole discretion, may require Consultant to perform the following optional additional services, related to the development of a methodology for, and preparation of, an assessment allocation plan. City shall notify Consultant in writing, if City wishes for Consultant to provide these services.

3.8.2 Background. The City maintains Workers' Compensation and General Liability Internal Service Funds ("WC/GL Internal Service Funds") from which it pays workers' compensation and general liability claims. Assessments are charged against individual City department's cost centers within the City budget to finance the WC/GL Internal Service Funds. The City seeks Consultant's expertise, using its skills and identified industry best practices, to develop a methodology for applying appropriate assessments against individual City department's cost centers in order to adequately finance the WC/GL Internal Service Funds. In addition, City wishes for Consultant to apply its methodology to ascertain the assessments that should be applied for the following City fiscal year.

3.8.3 If requested by City, Consultant shall develop a methodology for City-wide assessments, and apply the methodology to ascertain the appropriate assessments against individual City department's cost centers in order to finance the WC/GL Internal Service Funds. Consultant shall identify industry best practices to City, including how Consultant derived such practices, and a detailed explanation justifying its proposed methodology to City in a report, along with the proposed methodology and the actual assessments proposed. Consultant shall provide a draft of this report no later than 14 calendar days from the date City requests these services. City shall review the report and may request clarification or revision. If so, Consultant shall provide a revised report no later than 5 calendar days from City's request for clarification or revision. City shall notify Consultant in writing when City accepts Consultant's report as final.

- 3.8.4 Consultant is advised that the assessment and methodology may be used to charge both Federal and State of Texas grant funds.
- 3.8.5 Consultant represents and warrants to City that the Assessment Allocation Plan developed by Consultant and delivered to City in accordance with the terms and conditions of this Agreement shall be in full compliance with the then-current version of (a) all applicable Generally Accepted Accounting Principles (GAAP); (b) all applicable Federal and State statutes, rules, regulations, and circulars, including but not limited to (i) OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments; (ii) OMB Circular A-102 Common Rule for State, Local, and Indian Tribal Governments; (iii) OMB Circular A-133 for federal funding and the OMB Circular A-133 Compliance Supplement; and (iv) State of Texas Single Audit Circular for state funding.
- 3.8.6 Consultant acknowledges that City is relying upon the representation and warranty set forth in above in entering into this Agreement with Consultant.
- 3.8.7 In the event of a challenge by any Federal or State Agency, Commission, Department, or Office to any portion(s) of the Assessment Allocation Plan prepared by Consultant and delivered to City, Consultant shall, if requested by City, take any and all action necessary to defend the Assessment Allocation Plan, including, but not limited to, taking the lead role, or actively participating in the defense, at City's discretion, attendance at all meetings or hearings, timely providing to City and/or such Federal or State Agency, Commission, Department, or Office all services, personnel, records, work papers, and other materials or information that are necessary to support and justify the challenged portion(s) of such Assessment Allocation Plan.
- 3.8.8 A finding by a Federal or State Agency, Commission, Department, or Office that the Assessment Allocation Plan or any part(s) thereof developed by Consultant and delivered to City are not in compliance in any substantial manner with GAAP and/or any applicable Circular (whether or not specifically mentioned in above) shall constitute a breach by Consultant of its representation and warranty to City, and shall entitle City to recover all damages of any type and nature whatsoever resulting there from. The indemnity provisions of this Agreement shall apply to the recovery by City of all such damages.
- 3.9 The provisions of this Article and the indemnity provisions of this Agreement shall survive the completion or earlier termination of this Agreement.
- 3.10 All work performed by Consultant hereunder shall be performed to the satisfaction of City's Chief Financial Officer ("CFO"). The determination made by CFO 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 CFO. City shall have the right to terminate this Agreement, in accordance with Article VII, entitled Termination, in whole or in part, should Consultant's work not be satisfactory to CFO; 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 amount(s) set forth below as total compensation:
- 4.1.1 City shall pay Consultant \$24,000.00 for the actuarial services described in sections 3.2 through 3.6 herein for the original contract term.
  - 4.1.2 City shall pay Consultant \$8,000.00 for the actuarial services described in sections 3.2 through 3.6 herein for the first renewal term, if renewed.
  - 4.1.3 City shall pay Consultant \$8,000.00 for the actuarial services described in sections 3.2 through 3.6 herein for the second renewal term, if renewed.
  - 4.1.4 City shall pay Consultant \$3,000.00 for the Mid-Year Adjustment services described in section 3.7 herein for the first year of the original contract term, if City exercises its option to require Consultant to perform these services.
  - 4.1.5 City shall pay Consultant \$3,000.00 for the Mid-Year Adjustment services described in section 3.7 herein for the second year of the original contract term, if City exercises its option to require Consultant to perform these services.
  - 4.1.6 City shall pay Consultant \$3,000.00 for the Mid-Year Adjustment services described in section 3.7 herein for the third year of the original contract term, if City exercises its option to require Consultant to perform these services.
  - 4.1.7 City shall pay Consultant \$3,000.00 for the Mid-Year Adjustment services described in section 3.7 herein for the first renewal term, if renewed and if City exercises its option to require Consultant to perform these services.
  - 4.1.8 City shall pay Consultant \$3,000.00 for the Mid-Year Adjustment services described in section 3.7 herein for the second renewal term, if renewed and if City exercises its option to require Consultant to perform these services.
  - 4.1.9 City shall pay Consultant \$2,000.00 for the Assessment Allocation Plan services described in section 3.8 herein for the first year of the original contract term, if City exercises its option to require Consultant to perform these services.
  - 4.1.10 City shall pay Consultant \$2,000.00 for the Assessment Allocation Plan services described in section 3.8 herein for the second year of the original contract term, if City exercises its option to require Consultant to perform these services.

- 4.1.11 City shall pay Consultant \$2,000.00 for the Assessment Allocation Plan services described in section 3.8 herein for the third year of the original contract term, if City exercises its option to require Consultant to perform these services.
- 4.1.12 City shall pay Consultant \$2,000.00 for the Assessment Allocation Plan services described in section 3.7 herein for the first renewal term, if renewed and if City exercises its option to require Consultant to perform these services.
- 4.1.13 City shall pay Consultant \$2,000.00 for the Assessment Allocation Plan services described in section 3.7 herein for the second renewal term, if renewed and if City exercises its option to require Consultant to perform these services.
- 4.1.14 City shall pay Consultant its hourly rate and reimburse Consultant for travel expenses should Consultant be asked to defend its Assessment Allocation Plan as described in section 3.8.7 above.

Consultant's hourly rates are:	Actuary	\$ <u>185</u>
	Associate Actuary	\$ <u>110</u>

All travel expenses must be pre-approved by Director, and substantiated by original receipts. The authorized per diem allowances shall be the rates set annually by the Federal Government's General Services Administration for different areas of the Country. Consultant shall comply with City's Administrative Directive 8.31, which is attached hereto and incorporated herein by reference as Attachment A.

- 4.2 Consultant shall invoice City for its services upon completion of said services and provision of final reports to City. Consultant shall submit all invoices to City of San Antonio, Attn: Accounts Payable, P.O. Box 839976, San Antonio, TX 78283-3976, with a copy to City of San Antonio, Attn: Deborah Ojo, Risk Manager, P.O. Box 839966, San Antonio, TX 78283-3966. City shall pay all invoices within 30 days of receipt thereof. Payment shall be deemed made upon posting of the check.
- 4.3 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 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 City in accordance with Article XVI, entitled Amendments.
- 4.4 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to Consultant following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

## **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**

- 6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make 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.
- 6.2 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.
- 6.3 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.

## 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, entitled 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, entitled Notice.
- 7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII, entitled Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one 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, entitled Assignment and Subcontracting.
- 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 15 calendar days after receipt of the written notice, in accordance with Article VIII, entitled 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 Bankruptcy or selling substantially all of company's assets
- 7.4.2 Failing to perform or failing to comply with any covenant herein required
- 7.4.3 Performing unsatisfactorily
- 7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
- 7.6 Regardless of how this Agreement is terminated, Consultant shall affect 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, entitled Records Retention. Any record transfer shall be completed within 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 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 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: Deborah Ojo, Risk Manager

Mailing Address:  
P.O. Box 839966  
San Antonio, Texas 67283-3966

Street Address:  
111 Soledad, 10th Floor  
San Antonio, Texas 78205

If intended for Consultant, to:  
AMI Risk Consultants, Inc.  
Attn: Aguedo M. Ingco, President

Mailing Address:  
1336 SW 146<sup>th</sup> Ct.  
Miami, FL 33184

Street Address:  
1336 SW 146<sup>th</sup> Ct.  
Miami, FL 33184

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## IX. PROCUREMENT DOCUMENTS INCORPORATED

- 9.01 City issued Request For Proposal No. RFP-2014-042-AV ("RFP") on May 15, 2014. The RFP solicited proposals with regard to an Actuarial Services Agreement For Analysis of City's Self-Funded Workers' Compensation and Liability Programs.
- 9.02 On or about June 16, 2014, Consultant submitted its Proposal in response to the RFP.
- 9.03 To the extent there is no conflict between the provisions of the RFP and the Proposal, Consultant shall provide all of the services included in the Proposal. To the extent there is a conflict between the provisions of the RFP and the Proposal, the provisions of the RFP shall control.
- 9.04 To the extent there is no conflict between the provisions of the Proposal and this Agreement, Consultant shall provide all of the services included in the Proposal. To the extent there is a conflict between the provisions of the Proposal and this Agreement, the provisions of this Agreement shall control.

## 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 Finance Department, which shall be clearly labeled Actuarial Services for the City's Self-Funded Workers' Compensation and Liability Programs" 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 Finance 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:

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

10.4 Consultant agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Consultant herein, and provide a certificate of insurance and endorsement that names the Consultant and the City as additional insureds. Consultant shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

- 10.5 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: Finance Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

- 10.6 Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
  - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
  - Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
  - Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 10.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 10.8 In addition to any other remedies the City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

- 10.9 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.
- 10.10 It is agreed that Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- 10.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.
- 10.12 Consultant and any subcontractors are responsible for all damage to their own equipment and/or property.

## XI. INDEMNIFICATION

- 11.1 **CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this Agreement, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 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: None. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Director, prior to the provision of any services by said subcontractor.
- 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 Director, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an

assignee, transferee, or subcontractor, indicate only such an entity as has been approved by Director.

- 12.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of Director. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.
- 12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII, entitled 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. RESERVED**

### **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. Any amendment that does not cause this Agreement to exceed \$50,000 shall be executed by an Assistant City Manager or Deputy City Manager. Any amendment that causes this Agreement to exceed \$50,000 requires approval of the San Antonio City Council. All amendments are subject to and contingent upon appropriation of funds for any expenditure.

## **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 (1) is and at all times during the term of this Agreement will be a member in good standing of the Casual Actuarial Society and 2) has the requisite training, license and/or

certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

### **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 as described in Article XVI, entitled 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 or she has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant to all of the terms, conditions, provisions and obligations herein contained.

**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. 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, entitled Amendments.

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

**CITY OF SAN ANTONIO**

**AMI RISK CONSULTANTS, INC.**

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

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

Printed Name: Troy Elliott  
Title: Director of Finance  
Date: \_\_\_\_\_

Printed Name: Aguedo M. Ingco  
Title: President  
Date: 9/15/2014

Approved as to Form:

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