



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

1. Agenda Item Number:

30

2. Council Meeting Date:
November 20, 2014

TO: MAYOR & COUNCIL

3. Date Prepared: October 30, 2014

THROUGH: CITY MANAGER

4. Requesting Department: Human Resources

5. SUBJECT: Employee Benefits Consulting and Actuary Services

6. RECOMMENDATION: Approval of Agreement No. HR5-918-3461 for Employee Benefits and Actuary Services with Segal Consulting in an amount not to exceed \$120,000.00 with the option to renew for four additional one-year periods.

7. HISTORICAL BACKGROUND/DISCUSSION: The City has historically employed the services of a benefits consultant to assist the City with administrative vendor management of all group and voluntary insurance plans including Health, Dental, Vision, Life, Flexible Spending, and Employee Assistance Program offered to employees and their dependents for both self-funded and fully insured plans to include renewal negotiations.

The consultant's management process enables the City to define and continuously validate long-term benefit strategies that align its needs and those of the participants as demonstrated by the City's current health plan design and wellness initiative. The consultant is involved in claims/utilization analysis as well as plan performance reviews and compliance adherence. They also advise staff of legislation that impacts City benefits programs and work with the healthcare taskforce to review plan design strategies to reduce healthcare costs.

Segal has extensive public sector benefits consulting experience with a focus on customized expertise based on City of Chandler's goals and objectives. Segal focuses on a team approach to consulting with extensive peer review and quality control measures within their work product. Segal's consultants have broad experience and extensive knowledge of the employee benefits field and are frequent speakers at various national conferences and meetings.

The term of the agreement is January 1, 2015 through December 31, 2015. The agreement contains provisions allowing for up to four one-year extensions.

8. EVALUATION PROCESS:

Staff has reviewed the specific qualifications and experience offered by Segal Consulting and its team of consultants and finds the company is distinctively qualified. Staff reviewed the rates offered by Segal Consulting and found them to be very competitive, representing an almost 25% reduction in hourly fees compared to the City's current contract for these services.

9. FINANCIAL IMPLICATIONS:

Costs: \$120,000
Savings: N/A
Long Term Costs: N/A

Fund Source:

<u>Acct. No.:</u>	<u>Fund Name:</u>	<u>Program Name:</u>	<u>CIP Funded:</u>	<u>Funds:</u>
741.1290.5219	Other Professional Services	Medical Self Ins Fund	n/a	n/a

10. PROPOSED MOTION: Move to approve Agreement No. HR5-918-3461 for Employee Benefits and Actuary Services with Segal Consulting in an amount not to exceed \$120,000.00 with the option to renew for four additional one-year periods.

APPROVALS

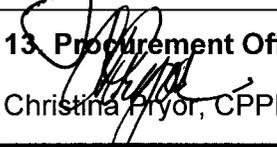
11. Requesting Department


Lynna Soller, Benefit Programs Manager

12. Department Head


Debra Stapleton, Director

13. Procurement Officer


Christina Pryor, CPPB

14. City Manager


Rich Dlugas

**CITY OF CHANDLER
SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into this ____ day of _____, 2014, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and The Segal Company (Western States), Inc., on behalf of itself and its affiliates hereinafter referred to as "CONTRACTOR".

WHEREAS, the Mayor and City Council of the City of Chandler is authorized and empowered by provisions of the City Charter to execute contracts for services; and

WHEREAS, CONTRACTOR represents that CONTRACTOR has the expertise and is qualified to perform the services described in the Agreement.

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1. CONTRACT ADMINISTRATOR:

- 1.1. CONTRACTOR shall act under the authority and approval of the Human Resources Director or designee, to provide the services required by this Agreement.
- 1.2. The CITY reserves the right to review and approve any/all changes to CONTRACTOR'S key staff assigned to the City of Chandler project by the firm during the term of this Agreement.

2. SCOPE OF WORK: CONTRACTOR shall provide consulting services as more specifically set forth in the Scope of Work, labeled Exhibit B, attached hereto and made a part hereof by reference.

3. ACCEPTANCE AND DOCUMENTATION: Each task shall be reviewed and approved by the Human Resources Director or designee to determine acceptable completion.

4. FEES: CITY shall pay CONTRACTOR an amount not to exceed ONE HUNDRED TWENTY THOUSAND DOLLARS (\$120,000) for the completion of all work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR payable in accordance with the fee schedule as set forth in Exhibit C, attached hereto and made a part hereof by reference.

5. TERM: The term of the Agreement is one year, commencing on January 1, 2015 and terminating on December 31, 2015 unless sooner terminated in accordance with the provisions herein. CITY reserves the right, at its sole discretion, to extend the Contract for up to four additional terms of one year each.

6. TERMINATION:

- 6.1. **Termination for Convenience:** CITY reserves the right to terminate this Agreement or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, CONTRACTOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and SUBCONTRACTORS to cease

such work. As compensation in full for services performed to the date of such termination, the CONTRACTOR shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the CONTRACTOR and CITY, based on the agreed Scope of Work. If there is no mutual agreement, the Management Services Director shall determine the percentage of work performed under each task detailed in the Scope of Work and the CONTRACTOR'S compensation shall be based upon such determination and CONTRACTOR'S fee schedule included herein.

6.2. Termination for Cause: City may terminate this Agreement for Cause upon the occurrence of any one or more of the following events:

- 1) If CONTRACTOR fails to perform pursuant to the terms of this Agreement;
- 2) If CONTRACTOR is adjudged a bankrupt or insolvent;
- 3) If CONTRACTOR makes a general assignment for the benefit of creditors;
- 4) If a trustee or receiver is appointed for CONTRACTOR or for any of CONTRACTOR'S property;
- 5) If CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
- 6) If CONTRACTOR disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;
- 7) Where Agreement has been so terminated by CITY, the termination shall not affect any rights of CITY against CONTRACTOR then existing or which may thereafter accrue.

6.3. Availability of Funds for the next Fiscal Year. Funds may not presently be available under this agreement beyond the current fiscal year. No legal liability on the part of the CITY for services may arise under this agreement beyond the current fiscal year until funds are made available for performance of this agreement. The CITY may reduce services or terminate this agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.

7. GENERAL TERMS:

7.1. Entire Agreement: This Agreement, including all Exhibits attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives or each party.

7.2. Arizona Law: This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

- 7.2.1 Pursuant to the provisions of A.R.S. § 41-4401, the Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("Subcontractors") will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").
- 7.2.2 A breach of the Contractor Immigration Warranty (Exhibit A) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.
- 7.2.3 The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.
- 7.2.4 The City may, at its sole discretion, conduct random verifications of the employment records of the Contractor and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The Contractor agrees to assist the City in performing any such random verifications.
- 7.2.5 The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.
- 7.3. **Assignment:** Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.

8. CONFLICT OF INTEREST:

- 8.1. **No Kickback:** CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the CITY has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests were disclosed in CONTRACTOR'S proposal to the CITY.
- 8.2. **Kickback Termination:** CITY may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the CITY'S departments or agencies is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a CONTRACTOR to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from the CITY is received by all other parties to the Agreement, unless the notice specifies a later time (A.R.S. §38-511).

8.3. **No Conflict:** CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.

9. **DISPUTE RESOLUTION:**

9.1. **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

9.2. **Jurisdiction and Venue.** The parties agree that this Agreement is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.

9.3. **Fees and Costs.** Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees; provided, however, that no award of attorney's fees shall exceed ten percent (10%) of the damages awarded the prevailing party unless the non-prevailing party has been determined to have acted in bad faith or in a frivolous manner during the adjudication.

10. **NOTICES:** All notices or demands required to be given pursuant to the terms of this Agreement shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of the CITY

In the case of the CONTRACTOR

Department:	Human Resources	Firm Name:	The Segal Company (Western States), Inc.
Contact:	<u>Debra Stapleton</u>	Contact:	<u>Amy Girardo</u>
Mailing Address:	<u>PO Box 4008</u>	Address:	<u>1230 W Washington, #501</u>
Physical Address:	<u>175 S. Arizona Ave.</u>	City, State, Zip:	<u>Tempe, AZ 85281</u>
City, State, Zip:	<u>Chandler, AZ 85225</u>	Phone:	<u>(602) 381 4065</u>
Phone:	<u>(480) 782 2345</u>	FAX:	<u>(602) 532 7654</u>
FAX:	<u>(480) 782 2350</u>		<u>agirardo@segalco.com</u>

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

11. **FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.

12. **TAXES:** CONTRACTOR shall be solely legally responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Contract. CITY shall have

no legal obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR. City agrees that Contractor may bill the City for applicable privilege license taxes which are paid for by Contractor and that the City will reimburse Contractor for privilege license taxes actually paid by Contractor. If Contractor obtains any refund of privilege license taxes paid, City will be entitled to a refund of such amounts.

- 13. SUBCONTRACTORS:** During the performance of the Agreement, the CONTRACTOR may engage such additional SUBCONTRACTORS as may be required for the timely completion of this Agreement. The addition of any SUBCONTRACTORS shall be subject to the prior approval of the CITY. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with the CONTRACTOR.

14. INDEMNIFICATION AND INSURANCE:

14.1. Indemnification

Indemnification. To the fullest extent permitted by law, CONTRACTOR, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City and any of its elected or appointed officials, officers, directors, commissioners, board members, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties and fines (including, but not limited to, reasonable attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against the City to the extent resulting from the willful misconduct or negligent performance of this Agreement by CONTRACTOR, or any of its subcontractors, or anyone directly or indirectly employed by any of them.

14.2. Insurance Representations and Requirements:

1. General.

- A. At the same time as execution of this Agreement, the CONTRACTOR shall furnish the City of Chandler a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona possessing a current A.M. Best, Inc. rating of A-7, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY. Provided, however, the A.M. Best rating requirement shall not be deemed to apply to required Workers' Compensation coverage.
- B. The CONTRACTOR and any of its subcontractors, subconsultants or sublicensees shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, the insurances set forth below.
- C. The insurance requirements set forth below are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.
- D. The City in no way warrants that the minimum insurance limits contained in this Agreement are sufficient to protect CONTRACTOR from liabilities that might arise out of

the performance of the Agreement services under this Agreement by CONTRACTOR, its agents, representatives, employees, subcontractors, sublicensees or subconsultants and the CONTRACTOR is free to purchase any additional insurance as may be determined necessary.

- E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve the CONTRACTOR from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Agreement.
 - F. Use of Subcontractors: If any work is subcontracted in any way, the CONTRACTOR shall execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of the CONTRACTOR in this Agreement. The CONTRACTOR is responsible for executing the Agreement with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.
2. Minimum Scope and Limits Of Insurance. The CONTRACTOR shall provide coverage with limits of liability not less than those stated below.
- A. *Commercial General Liability-Occurrence Form.* CONTRACTOR must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$2,000,000 for each occurrence, \$4,000,000 aggregate. Said insurance must also include coverage for products and completed operations, independent contractors, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying insurance.
 - B. *Automobile Liability-Hired and Non-Owned Vehicles Vehicle Liability.* CONTRACTOR must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each accident on CONTRACTOR hired and non-owned vehicles assigned to or used in the performance of the CONTRACTOR's work or services under this Agreement. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be "follow form" equal or broader in coverage scope than underlying insurance.
 - C. *Workers Compensation and Employers Liability Insurance:* CONTRACTOR must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of CONTRACTOR employees engaged in the performance of work or services under this Agreement and must also maintain Employers' Liability insurance of not less than \$1,000,000 for each accident and \$1,000,000 disease for each employee.
 - D. *Professional Liability.* If the Agreement is the subject of any professional services or work performed by the CONTRACTOR, or if the CONTRACTOR engages in any professional services or work adjunct or residual to performing the work under this Agreement, the CONTRACTOR must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by the CONTRACTOR, or anyone employed by the CONTRACTOR, or anyone whose acts, mistakes, errors and omissions the CONTRACTOR is legally liable, with a liability limit of \$1,000,000 each claim and \$2,000,000 all claims. In the event the Professional

Liability insurance policy is written on a "claims made" basis, coverage must extend for 3 years past completion and acceptance of the work or services, and the CONTRACTOR, or its selected Design Professional will submit Certificates of Insurance as evidence the required coverage is in effect. The Design Professional must annually submit Certificates of Insurance citing that the applicable coverage is in force and contains the required provisions for a 3 year period.

3. Additional Policy Provisions Required.
 - A. *Self-Insured Retentions Or Deductibles.* All self-insured retentions or deductibles shall be the sole responsibility of the Contractor
 - B. *City as Additional Insured.* The policies, except for professional liability, are to contain, or be endorsed to contain, the following provisions:
 1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the CONTRACTOR including the City's general supervision of the CONTRACTOR; Products and Completed operations of the CONTRACTOR; and automobiles hired or borrowed by the CONTRACTOR.
 2. The CONTRACTOR's insurance must contain broad form contractual liability coverage.
 3. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the CONTRACTOR even if those limits of liability are in excess of those required by this Agreement.
 4. The CONTRACTOR's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by the CONTRACTOR and must not contribute to it.
 5. The CONTRACTOR's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 6. Coverage provided by the CONTRACTOR must not be limited to the liability assumed under the indemnification provisions of this Agreement.
 7. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the CONTRACTOR for the City.
 8. The CONTRACTOR, its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this Agreement for a minimum period of 3 years following completion and acceptance of the Work. The CONTRACTOR must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this 3 year period containing all the Agreement insurance requirements, including naming the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.

9. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the required policies expire during the life of this Agreement, the CONTRACTOR must forward renewal or replacement Certificates to the City within 10 days after the renewal date containing all the necessary insurance provisions.

15. SEVERABILITY AND AUTHORITY:

- 15.1. Severability:** if any term or provision of this Agreement shall be found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this Agreement shall remain in full force and effect and such term or provision shall be deemed to be deleted.
- 15.2. Authority:** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

16. BUSINESS ASSOCIATE AGREEMENT

This Section 16 shall be deemed the Business Associate Agreement ("B.A.A.") between The Segal Company (Western States), Inc., on behalf of itself and its affiliates, ("Segal") and City of Chandler ("Client").

- 16.1** Client is a group health plan or a plan sponsor of one or more group health plans, which group health plan(s) is a Covered Entity as such term is defined in 45 CFR §160.103. For purposes of this B.A.A. the term Client shall refer to the group health plan(s) that is the Covered Entity.
- 16.2** Segal provides consulting services to Client in accordance with the underlying services agreement Sections 1 through 15 of this Agreement (the "Services Agreement"), and is a Business Associate, as such term is defined in 45 CFR §160.103, of the Client when it conducts such services (the "Services").
- 16.3** City and Segal agree that in order to perform the Services, Segal needs to access, use, disclose and maintain Protected Health Information ("PHI"), as such term is defined below and in Section 16.5.
- 16.4** City and Segal agree that access to, and use, disclosure and maintenance of, PHI, electronic transmission and storage of PHI, and security of PHI are regulated by the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH"), Segal and Client desire to exchange and treat PHI in compliance with HIPAA and HITECH under the Privacy, Security and Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

16.5 In consideration of the premises and the mutual promises contained herein, Client and Segal hereby agree as follows:

16.5.1 Definitions

- A. **Business Associate.** "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Segal Consulting.
- B. **Covered Entity.** "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the City of Chandler.
- C. **HIPAA Rules.** "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- D. All terms used and not otherwise defined herein shall have the same meaning as in the HIPAA Rules.

16.5.2 Permitted Uses and Disclosures by Segal

- A. Segal shall not use or disclose PHI other than as permitted or required by this Agreement and agrees to use and disclose the minimum necessary PHI required.
- B. In particular:
 - i. Segal may use or disclose PHI as necessary to provide the Services set forth in the Services Agreement.
 - ii. Segal may use or disclose PHI as Required by Law.
 - iii. Segal may not use or disclose PHI in a manner that would violate the Privacy Rule if done by Client, except for the specific uses and disclosures set forth herein at subsections iv, v and vi.
 - iv. Segal may use PHI for its proper management and administration or to carry out its legal responsibilities.
 - v. Segal may disclose PHI for its proper management and administration or to carry out its legal responsibilities, provided the disclosures are Required by Law, or Segal obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies Segal of any instances of which it is aware in which the confidentiality of the information has been violated;
 - vi. Segal may use and disclose PHI for purposes of data aggregation services relating to the health care operations of Client.

- vii. Segal may de-identify PHI in accordance with the requirements of 45 CFR §164.514(a)-(c), and may use or disclose the information that has been de-identified.

16.5.3 Obligations and Activities of Segal

- A. Segal shall use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by the Agreement.
- B. Segal will report to Client any use or disclosure of PHI not provided for by the Agreement of which it becomes aware.
- C. Segal shall comply with the Security Rule with respect to electronic Protected Health Information ("ePHI") and shall report to Client any Security Incident of which it becomes aware. For purposes of reporting under this Section, the definition of Security Incident shall be limited to the successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- D. Segal shall report to Client, as soon as practicable, but no later than 10 business days after discovery, any Breach of Unsecured PHI as required at 45 CFR §164.410. Such notice shall include all available information required, including:
 - i. The identity of each Individual whose Unsecured PHI has been or is reasonably believed by Segal to have been accessed, acquired, used or disclosed during the Breach;
 - ii. A brief description of what happened, including the date of the Breach and the date of discovery if known;
 - iii. A description of the type of Unsecured PHI involved in the Breach;
 - iv. The steps Individuals should take to protect themselves from potential harm resulting from the Breach;
 - v. A brief description of the steps Segal is taking to investigate, mitigate harm, and protect against further breaches; and
 - vi. Contact information for follow-up questions.
- E. If Segal uses subcontractors in the provision of the Services, Segal shall ensure that subcontractors who create, receive, maintain, or transmit PHI on its behalf agree to equivalent restrictions, conditions, and requirements as contained herein with respect to such information.
- F. Segal shall make available to Client PHI in a Designated Record Set as necessary to satisfy Client's obligations under 45 CFR §164.524.
- G. Segal shall make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by the Client pursuant to 45 CFR §164.526, or take other reasonable measures as necessary to satisfy Client's obligations under 45 CFR §164.526.

- H. Segal shall maintain and make available to Client the information required to provide an accounting of disclosures, as necessary to satisfy Client's obligations under 45 CFR §164.528.
- I. Segal shall only carry out Client's obligations under the Privacy Rule as mutually agreed to by the parties. In such instances, Segal shall comply with the Privacy Rule requirements that apply to Client in the performance of such obligations.
- J. Subject to any applicable legal privileges or confidentiality agreements, Segal shall, upon reasonable notice and during normal business hours, make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules by Segal and/or Client.

16.5.4 Obligations and Activities of Client

- A. Client shall notify Segal of any limitation(s) in its notice of privacy practices under 45 CFR §164.520, to the extent that such limitation may affect Segal's use or disclosure of PHI.
- B. Client shall notify Segal of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Segal's use or disclosure of PHI.
- C. Client shall notify Segal of any restriction on the use or disclosure of PHI that it has agreed to or is required to abide by under 45 CFR §164.522, to the extent that such restriction may affect Segal's use or disclosure of PHI.
- D. Client shall not request Segal to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Client, except to the extent that such use or disclosure is for the purposes set forth above in subsections 16.5.2.B. iv, v and vi.

16.5.5 Term and Termination

- A. The Term of this B.A.A. shall be effective as of the date set forth below and shall run concurrently with the Services Agreement, unless this Agreement is terminated earlier due to the violation of a material term as provided for in subsection 16.5.5 B below.
- B. Either party may terminate this B.A.A. if the other violates a material term of the Agreement, provided that the non-breaching party provides the breaching party with no less than 30 days in which to cure such violation prior to termination becoming effective. However, if the non-breaching party reasonably and in good faith determines that the violation is not curable, it may terminate this Agreement immediately upon written notice to the breaching party.
- C. Upon termination of this Agreement, the Services Agreement also shall terminate to the extent that it requires Segal to access, use, disclose and/or maintain PHI in order to provide the Services.
- D. Upon termination of this Agreement for any reason, Segal, with respect to any PHI either received from Client, or created, maintained, or received by Segal on Client's behalf, shall:

- i. Where feasible, return or destroy the PHI, which Segal still maintains in any form. Client understands that Segal's need to maintain portions of the PHI in records of actuarial determinations and for other archival purposes related to memorializing advice provided will render return or destruction infeasible.
 - ii. Continue to use appropriate safeguards and comply with the Security Rule with respect to ePHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Segal retains the PHI; and
 - iii. Not use or disclose the PHI retained other than for the purposes for which such PHI was retained and subject to the same conditions set out in Section 16.5.2.B.iv and v of this Agreement which applied prior to termination.
- E. The parties' respective obligations under this Section 16.5.5 shall survive the termination of this Agreement.

16.6. Miscellaneous

- A. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- B. Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law. Any amendment shall be in a writing duly executed by both parties.
- C. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules. In the event of any inconsistency or conflict between this Agreement, and the Services Agreement or any other written agreement between the parties, the terms, provisions and conditions of this Agreement shall control and govern.
- D. Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any third party beneficiary rights in any person, including any participant or beneficiary of Client.
- E. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile or Portable Document Format (PDF) copies thereof shall be deemed to be originals.
- F. Informal Resolution. If any controversy, dispute, or claim arises between the parties with respect to this Agreement, the parties shall make good faith efforts to resolve such matters informally.
- G. Remedies. Neither party shall be liable to the other party for any incidental, consequential or punitive damages of any kind or nature, whether such liability is asserted on the basis of contract, tort (including negligence or strict liability), or otherwise, even if the other party has been advised of the possibility of such loss or damages.
- H. Notices. All notices to be given pursuant to the terms of this Agreement shall be in writing and shall be sent certified mail, return receipt requested, postage prepaid or by courier

service. If to Client, the notice shall be sent to the address set forth below Client's signature or such other address as Client notifies Segal of in writing. If to Segal, the notice shall be sent to the Privacy Official, c/o General Counsel, Segal Consulting, 333 West 34th Street, New York, New York 10001.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this ____ day of _____, 2014.

Group Health Care Plan Sponsored
by the City of Chandler

The Segal Company
(Western States), Inc., on behalf of itself
and its affiliates

By: _____

By: Amos J. G. [Signature]

Print Name: _____

Print Name: Amos J. G. [Signature]

Print Title: _____

Print Title: Vice President

Date: _____

Date: 10-28-14

CITY OF CHANDLER

ATTEST: If Corporation

By: _____

Secretary _____

Print Name: _____

Print Title: _____

Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney CH

EXHIBIT A

**Contractor Immigration Warranty
To Be Completed by Contractor Prior to Execution of Contract**

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the contractor and subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

By completing and signing this form the contractor shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

Contract Number:		
Name (as listed in the contract):		
Street Name and Number:		
City:	State:	Zip Code:

I hereby attest that:

1. The contractor complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this contract;
2. All subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees.

Signature of Contractor (Employer) or Authorized Designee:

Amy G. ...

Printed Name: Amy G. ...

Title: Vice President

Date (month/day/year): 10-28-14

EXHIBIT B SCOPE OF WORK

Scope of Services

The Contractor shall provide consulting services upon request. Services may include:

1. Assist in the development and management of Request for Proposals for benefit plans.

These services may include project planning to set goals; review and redline of City prepared draft of RFP, review RFP responses and provide summary information on each RFP; attend RFP committee meetings as resource for technical issues; vendor negotiations; contract terms and conditions review, assist with the development, negotiation and implementation of performance standards and guarantees. Assist with the implementation of new plans and vendors. May involve legal and actuarial review, including interpretation of technical payroll deduction issues associated with insurance deductions. The City acknowledges that the Contractor does not provide legal services or advice.

This Paragraph 1 of the Scope of Work shall not include work regarding the Request for Proposal for the City's health care benefits plan for coverage beginning January 1, 2016, which is covered by a separate contract.

2. Make recommendations as well as participate in renewal negotiations for benefit plans

Make recommendations on matters such as, but not limited to, premium rates, benefit levels, performance standards and guarantees, contractual terms and conditions as they relate to the service benefit, quality assurance standards, utilization and performance reports, statistical and/or financial reports and plan specific data such as medical conditions, prescription drugs, high cost procedures, in-patient data, etc.

3. Assist the City with implementation for any plan changes

The services may involve third party administrators and may involve actuarial and legal review. The City acknowledges that the Contractor does not provide legal services or advice.

4. Review and make recommendations regarding existing and potential benefit plans and programs

Services may also include modifications to existing plan design, implementation, administration, cost (rates), and quality, adequacy, competitiveness, cost effectiveness of employee benefit plans and programs. Advise on alternative delivery systems, financing alternatives, employee contributions, benefits and HR Administration Systems and other areas as appropriate. Provide financial and/or performance reviews of benefit plans. Evaluate cost and risk implication related to plan design changes. Review of benefits program to determine whether employer/employee premium structure is appropriately divided. Review of accrual rates for any City benefit plan. May involve actuarial and legal review. The City acknowledges that the Contractor does not provide legal services or advice.

5. Assist the City in modifying and editing plan documents

Including Certificates of Coverage, Insurance Handbook and Summary Plan Descriptions as needed.

- 6. Provide regular and timely communication of changes in law and regulation**
These services include proposed changes in federal and state statutes and regulation that may impact the City's employee benefit plans and programs. Recommend procedures and/or policies that the City should implement to comply with federal and state statutes and regulations. May involve on-site training regarding legislative updates or best practice seminars.
- 7. Provide day-to-day service support**
Provide services including plan interpretation, legal consultation and advice, problem resolution support, calls, meetings, and/or written reporting on any employee benefit insurance program.
- 8. Perform research and provide responses**
Provide services upon request to provide responses to questions posed by the City. May involve comparison surveys of other public employers' benefit plans and programs, especially Arizona, to determine competitiveness.
- 9. Provide actuarial and financial services**
Provide services that will enable the City to satisfy its obligation for financial reporting under GASB Statement 43 and 45 on Other Postemployment Benefits and any other actuarial need arising from state or federal legislation or otherwise related to employee benefits.
- 10. Assist in evaluating the City's wellness initiatives**
Services include identifying areas needing to be addressed based on analysis of high claim costs and apparent risk factors.
- 11. Provide communications consulting as needed**
Services may include the following:
 - Assist with annual and ongoing enrollment communications materials
 - Participate in open enrollment planning
 - Review and comment on internal communications
 - Provide technical and creative assistance with the on-going development and preparation of various employee/retiree communications about existing and new insurance offerings and wellness
 - Assist with special projects such as benefits summary, newsletters, etc.
 - Assist with the design of benefits web-site and provide content advice
 - Presentations to various employee and retiree groups and to Mayor and Council
- 12. Accept broker fees from voluntary insurance plan providers**
Maintain on account for City expenditures related to administration, communication and support for any and all benefit plans and account for the fees and expenditures on a monthly basis.

Additional Requirements

1. The Contractor shall comply with the provisions of A.R.S. 23-908 and the privacy rule provisions of the Health Insurance Portability and Accountability Act regarding the use and disclosure of medical information to the extent applicable by these laws or their successor sections.

2. The Contractor shall have no interest in other projects or independent contracts that conflict with the interests of the City. The Consultant shall immediately notify the City of any relationship or project that represents an actual or perceived conflict of interest.
3. The Contractor shall maintain effective relationships with appropriate industry commissions.
4. The Contractor shall maintain effective relationships with appropriate industry providers, networks and carriers.
5. The Contractor shall provide additional, closely related services upon request of the City.

