



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

1. Agenda Item Number:

33

2. Council Meeting Date:

September 20, 2007

TO: MAYOR & COUNCIL

3. Date Prepared: August 30, 2007

THROUGH: CITY MANAGER

4. Requesting Department: Management Services.

5. SUBJECT: Award a one-year contract with four one-year renewal options to The Frank Gates Service Company for Workers' Compensation Third Party Claims Administration in an amount of \$62,750.

6. RECOMMENDATION: Recommend awarding a one-year contract with four one-year renewal options (RFP No. RM8-953-2479) to The Frank Gates Service Company for Workers' Compensation Third Party Claims Administration in an amount of \$62,750.

7. HISTORICAL BACKGROUND/DISCUSSION: The complete Scope of Services is identified in Attachment A of the contract, including all claims administrative services for workers' compensation. Appropriate accounting and reporting controls have been established between the Third Party Administrator (TPA) and the City's Risk Management and Accounting Divisions to monitor transaction activity of the TPA. The TPA will pay medical providers and ensure the City receives favorable discounts associated with existing fee schedules.

8. EVALUATION PROCESS: The City issued a request for proposal (RFP) for Third Party Claims services on June 28, 2007. The Frank Gates Service Company, Pinnacle Risk Management Services, Southwest Risk Services, Intercare Insurance Services, TRISTAR Risk Management, Matrix Absence Management, and Claims International responded to the RFP.

The selection process was conducted in accordance with established City policies and procedures. The evaluation committee included the following:

Glenda Shackelford, Procurement Officer; Ladd Leder, Risk Manager; Kerry Cassens, Occupational Health Nurse.

The Committee reached an agreement with The Frank Gates Service Company, to include all costs necessary to provide Third Party Claims Administration for workers' compensation.

The evaluation committee recommends award to The Frank Gates Service Company due to their experience, qualifications, cost, and understanding of our business requirements.

9. FINANCIAL IMPLICATIONS: Funds for this project have been appropriated in account 736.1260.0000.5214 Workers Comp Self Insurance, Risk Management, Consultants.

10. PROPOSED MOTION: Move to approve a one-year contract with four one-year renewal options (RFP No. RM8-953-2479) to The Frank Gates Service Company for Workers' Compensation Third Party Claims Administration in an amount of \$62,750.

APPROVALS

11. Requesting Department

Ladd Leder
Ladd Leder, Risk Manager

12. Department Head

Dennis Strachota
Dennis Strachota, Management Svcs. Director

13. Procurement Officer

Glenda Shackelford
Glenda Shackelford, CPPB

14. City Manager

W. Mark Pentz
W. Mark Pentz

**CITY OF CHANDLER SERVICES AGREEMENT
THIRD PARTY CLAIMS ADMINISTRATOR
CONTRACT NO.: RM8-953-2479**

THIS AGREEMENT is made and entered into this 1st day of January, 2008, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and The Frank Gates Service Company, hereinafter referred to as "CONTRACTOR".

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. **Contract Administrator.** CONTRACTOR shall act under the authority and approval of the Risk Manager/designee, to provide the services required by this Agreement.

2. SCOPE OF WORK: CONTRACTOR shall provide Third Party Claims Administrator services all as more specifically set forth in the Scope of Work, labeled Exhibit A, attached hereto and made a part hereof by reference and as set forth in the Scope of Work and details included therein.

2.1. **Non-Discrimination.** The CONTRACTOR shall comply with State Executive Order No. 99-4 and all other applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.

2.2. **Licenses.** CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by the CONTRACTOR as applicable to this contract.

2.3. **Advertising, Publishing and Promotion of Contract.** The CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the CITY.

2.4. **Compliance With Applicable Laws.** CONTRACTOR shall comply with all applicable Federal, state and local laws.

3. ACCEPTANCE AND DOCUMENTATION: Service(s) shall be reviewed and approved by the Contract Administrator to determine acceptable completion.

3.1. **Records.** The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.

3.2. **Audit.** At any time during the term of this Contract and five (5) years thereafter, the CONTRACTOR'S or any SUBCONTRACTOR'S books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, the CONTRACTOR shall produce a legible copy of any or all such records.

4. PRICE: CITY shall pay to CONTRACTOR(s) a total sum not to exceed \$62,750 for the completion of all services described herein. CONTRACTOR(s) shall be paid only as service(s) are provided and invoiced, payable as set forth in Exhibit B, attached hereto and made a part hereof by reference.

- 4.1. **Taxes.** CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of the CONTRACTOR'S performance of this Agreement. The CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by the CONTRACTOR.
- 4.2. **Tax Credits or Exemptions.** When equipment, materials or supplies generally taxable to CONTRACTOR are eligible for a tax exemption due to the nature of the work, CONTRACTOR shall assist the City in applying for and obtaining such tax credits and exemptions, which shall be paid or credited to the City.
- 4.3. **Payments.** Payments are conditioned upon receipt of applicable, accurate, and complete reports to be submitted by the contractor. Billing must be sent to the Risk Management and Safety Division for all services. Invoices/monthly statements must be itemized and sent in billing format indicated.
- 4.4. **IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless not required by law.
- 4.5. **Acceptance by City.** CITY reserves the right to accept or reject the request for a price increase. If CITY approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon a written Contract Amendment must be approved and executed by the Parties.
5. **TERM:** The base term of the Contract term is one (1) year but may be extended by mutual agreement of the parties for up to four (4) additional successive terms of one year each.

5.1 The start date for this contract shall be January 1, 2008.

6. USE OF THIS CONTRACT:

- 6.1. **Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

7. CITY'S CONTRACTUAL REMEDIES:

- 7.1. **Right to Assurance.** If the City in good faith has reason to believe that the CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Contract Administrator may demand in writing that the CONTRACTOR give a written assurance of intent to perform. Failure by the CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Contract in addition to any other rights and remedies provided by law or this Contract.
- 7.2. **Stop Work Order.** The City may, at any time, by written order to the CONTRACTOR, require the CONTRACTOR to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the City after the order is delivered to the CONTRACTOR. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the CONTRACTOR shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
 - 7.2.1 If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the CONTRACTOR shall resume work. The Contract Administrator shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in

writing accordingly.

- 7.3. **Non-exclusive Remedies.** The rights and the remedies of the City under this Contract are not exclusive.
- 7.4. **Nonconforming Tender.** Services and materials supplied under this Contract shall fully comply with Contract requirements and specifications. Services or materials that do not fully comply constitute a breach of contract.
- 7.5. **Right of Offset.** The City shall be entitled to offset against any sums due CONTRACTOR, any expenses or costs incurred by the City, or damages assessed by the City concerning the CONTRACTOR'S non-conforming performance or failure to perform the Contract, including expenses to complete the work and other costs and damages incurred by CITY.

8. **TERMINATION:**

- 8.1. **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 for 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.
- 8.2. **Termination for Cause.** CITY may, upon written notice, terminate this Agreement for CONTRACTOR'S failure to comply with the terms of this Agreement.
- 8.3. **Cancellation for Conflict of Interest.** Pursuant to A.R.S. § 38-511, CITY may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the City is or becomes at any time while this Contract or an extension of this Contract is in effect, an employee of or a consultant to any other party to this Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.
- 8.4. **Gratuities.** CITY may, by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by CONTRACTOR or a representative of CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing this Contract, an amendment to this Contract, or favorable treatment concerning this Contract, including the making of any determination or decision about contract performance. The CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by CONTRACTOR.
- 8.5. **Suspension or Debarment.** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a SUBCONTRACTOR of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the CONTRACTOR is not currently suspended or debarred. If CONTRACTOR becomes suspended or debarred, CONTRACTOR shall immediately notify CITY.

- 8.6. **Continuation of Performance Through Termination.** The CONTRACTOR shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 8.7. **No Waiver.** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
9. **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.
10. **ALTERNATE DISPUTE RESOLUTION:** Notwithstanding anything to the contrary provided elsewhere in the Contract documents, the alternate dispute resolution (ADR) process provided herein shall be the exclusive means for resolution of claims or disputes and other matters in question between the City and the CONTRACTOR arising out of, or relating to the Contract documents, interpretation of the Contract, or the performance of or the breach by any party thereto, including but not limited to, original claims or disputes asserted as cross claims, counterclaims, third party claims or claims for indemnity or subrogation, in any threatened or ongoing litigation or arbitration with third parties, if such disputes involve parties to contracts containing this ADR provision.
11. **INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees individually and collectively; from and against all losses, claims, suits, actions, payments and judgments, demands, expenses, damages, including consequential damages and loss of productivity, attorney's fees, defense costs, or actions of any kind and nature relating to, arising out of, or alleged to have resulted from CONTRACTOR'S work or services. CONTRACTOR'S duty to defend, hold harmless and indemnify the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, damage, loss or expenses relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of CONTRACTOR, anyone directly or indirectly employed by them or anyone for whose acts CONTRACTOR may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the City of Chandler. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.
12. **INSURANCE:**
- 12.1. **Insurance Representations and Requirements:**
- A. CONTRACTOR, at its own expense, shall purchase and maintain insurance of the types and amounts required in this section, with companies possessing a current A.M. Best, Inc. rating of B++6, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.
- B. Policies written on a "Claims made" basis are not acceptable without written permission from the City's Risk Manager.

- C. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of CITY, constitute a material breach of this Agreement and may result in termination of this contract.
- D. If any of the insurance policies are not renewed prior to expiration, payments to the CONTRACTOR may be withheld until these requirements have been met, or at the option of the City, the City may pay the Renewal Premium and withhold such payments from any monies due the CONTRACTOR.
- E. All insurance policies, except Workers' Compensation required by this Agreement, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this contract, the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insureds.
- F. CONTRACTOR'S insurance shall be primary insurance over any insurance available to the CITY and as to any claims resulting from this contract, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
- G. The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of CONTRACTOR'S acts, errors, mistakes, omissions, work or service.
- H. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at the sole risk of CONTRACTOR. CONTRACTOR shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. CITY, at its option, may require CONTRACTOR to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit. Self-insured retentions (SIR) in excess of \$25,000 will only be accepted with the permission of the Management Services Director/Designee.
- I. All policies and certificates shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to CITY.
- J. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the CONTRACTOR with reasonable promptness in accordance with the CONTRACTOR'S information and belief.
- K. In the event that claims in excess of the insured amounts provided herein, are filed by reason of any operations under this contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the CONTRACTOR until such time as the CONTRACTOR shall furnish such additional security covering such claims as may be determined by the CITY.

12.2. Proof of Insurance – Certificates of Insurance

- A. Prior to commencing work or services under this Agreement, CONTRACTOR shall furnish to CITY Certificates of Insurance, issued by CONTRACTOR'S insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect and obtain from the City's Risk Management Division approval of such Certificates.

- B. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City of Chandler five (5) days prior to the expiration date.
- C. All Certificates of Insurance shall identify the policies in effect on behalf of CONTRACTOR, their policy period(s), and limits of liability. Each Certificate shall include the job site and project number and title. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the contract documents. Information required to be on the certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance company.
- D. REQUIRED CITY reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. CITY shall not be obligated, however, to review same or to advise CONTRACTOR of any deficiencies in such policies and endorsements, and such receipt shall not relieve CONTRACTOR from, or be deemed a waiver of CITY'S right to insist on, strict fulfillment of CONTRACTOR'S obligations under this Agreement.

12.3. Coverage

- A. Such insurance shall protect CONTRACTOR from claims set forth below which may arise out of or result from the operations of CONTRACTOR under this Contract and for which CONTRACTOR may be legally liable, whether such operations be by the CONTRACTOR or by a SUBCONTRACTOR by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., policy form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.
- B. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- C. Claims for damages because of bodily injury, occupational sickness or disease, or death of the CONTRACTOR'S employees;
- D. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the CONTRACTOR'S employees;
- E. Claims for damages insured by usual personal injury liability coverage;
- F. Claims for damages, other than to Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- G. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; Coverage will be at least as broad as Insurance Service Office, Inc., coverage Code "I" "any auto" policy form CA00011293 or equivalent thereof.
- H. Claims for bodily injury or property damage arising out of completed operations;
- I. Claims involving contractual liability insurance applicable to the CONTRACTOR'S obligations under the Indemnification Agreement;
- J. Claims for injury or damages in connection with one's professional services;
- K. Claims involving construction projects while they are in progress. Such insurance shall include coverage for loading and off loading hazards. If any hazardous material, as defined by any local, state or federal authorities are to be transported, MCS 90 endorsement shall be included.

- L. Errors & Omissions insurance in an amount of at least one million dollars shall be included with Contractor's response.

12.4. Commercial General Liability - Minimum Coverage Limits.

The Commercial General Liability insurance required herein shall be written for not less than \$500,000 limits of liability. Any combination between general liability and excess general liability alone amounting to a minimum of \$1,000,000 per occurrence (or 10% per occurrence) and an aggregate of \$2,000,000 (or 20% whichever is greater) in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the Insurance Services, Inc's (ISO) Additional Insured, Form B, CG 20101001, and shall include coverage for CONTRACTOR'S operations and products, and completed operations.

12.5. Automobile Liability

CONTRACTOR shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of the CONTRACTOR'S work. Coverage shall be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof).

12.6. Worker's Compensation and Employer's Liability

CONTRACTOR shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over CONTRACTOR'S employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease coverage for each employee, and \$1,000,000 disease policy limit.

In case any work is subcontracted, CONTRACTOR will require the SUBCONTRACTOR to provide Workers' Compensation and Employer's Liability to at least the same extent as required of CONTRACTOR.

- 13. 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	
Contract Administrator:	Risk Manager	Firm Name:	The Frank Gates Service Company
Contact:	<u>Ladd Leder</u>	Contact:	<u>Monica Kloskowski</u>
Mailing Address:	<u>PO Box 4008 – MS 608</u>	Address:	<u>8777 N. Gainey Center Dr. #171</u>
Physical Address:	<u>25 S Arizona Pl, Ste 300</u>	City, State, Zip:	<u>Scottsdale, AZ 85258</u>
City, State, Zip:	<u>Chandler AZ 85244</u>	Phone:	<u>480-609-3806 ext 23815</u>
Phone:	<u>480-782-2376</u>	FAX:	<u>480-483-3055</u>
FAX:	<u>480-782-2379</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.

14. CONFLICT OF INTEREST:

- 14.1 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.
- 14.2 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 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 CITY is received by all other parties, unless the notice specifies a later time (A.R.S. §38-511).
- 14.3 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.
- 15. GENERAL TERMS:**
- 15.1 Entire Agreement.** This Agreement, including Exhibits A - B 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.
- 15.2 Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 15.3 Assignment:** Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.
- 15.4 Amendments.** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the City in writing or made unilaterally by the CONTRACTOR are violations of the Contract. Any such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on such changes.
- 15.5 Independent CONTRACTOR.** The CONTRACTOR under this Contract is an independent CONTRACTOR. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 15.6 No Parole Evidence.** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 15.7 OWNERSHIP.** All deliverables and/or other products of the Contract (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by CONTRACTOR in performance of the Contract) shall be the sole, absolute and

exclusive property of CITY, free from any claim or retention of right on the part of CONTRACTOR, its agents, sub-contractors, officers or employees.

15.8 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.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this
day of 2007.

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

MAYOR

By: _____
Signature

ATTEST:

ATTEST: If Corporation

City Clerk

SEAL _____
Secretary

Approved as to form:

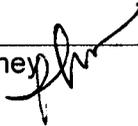
City Attorney 

EXHIBIT A SCOPE OF WORK

CONTRACTOR shall provide claims handling services. CONTRACTOR shall provide a toll-free phone and fax number for use by CITY, claimants, and medical providers, and shall accept delivery of Industrial Commission of Arizona (ICA) Form 101's via internet email.

CONTRACTOR shall provide, at a minimum, the following 3rd Party Claims administration services:

- 1. Claims handling service and medical control services:**
 - 1.1** Review and process all industrial injury or illness claims in accordance with the requirements of the Industrial Commission of Arizona, and related applicable statutes, rules, and guidelines.
 - 1.2** Determine compensation for injuries and illnesses in accordance with Arizona Worker's Compensation laws and ICA rules, guidelines, and formulas.
 - 1.3** Authorize independent medical examination as necessary, to determine compensability, the nature and extent of temporary or permanent disability, and/or seek clarification of treatment.
 - 1.4** Determine eligibility for and authorize payment of medical treatment in accordance with Arizona Worker's Compensation rules, make payments in a timely manner, and utilize available cost containment measures.
 - 1.5** Administer permanent disability compensation and/or death benefits in accordance with State of Arizona Worker's Compensation laws, awards, or settlement agreements.
 - 1.6** Maintain files and computerized records of all reported claims, cross-referenced by the name of the claimant, date of loss, claim number and current reserves, estimated recovers and total incurred.
 - 1.7** Retain files administered under this agreement until notified of disposition by CITY. All files shall be the property of CITY.
 - 1.8** Have knowledge of Phoenix area medical providers of Worker's Compensation treatment and their specialties for referral and/or independent medical examinations and providers for diagnostic, pharmaceutical, and ancillary medical services.
 - 1.9** Notify CITY immediately when any claimant is represented by legal counsel, and work with any legal counsel retained by CITY to defend contested cases or other ICA-related matters, including making any information available and providing legal counsel with appropriate assistance.
 - 1.10** Treat all files and claims information as strictly confidential, and not discuss the nature of any claim or the amount paid or reserved under it, with any person who is not a party to the contract, except when and to the extent CITY authorizes, or when ordered to do so by a court of competent jurisdiction.
 - 1.11** Alert CITY to statute changes, court decisions, and ICA procedures, which impact the Worker's Compensation program.
 - 1.12** Monitor treatment programs for injured or ill employees, including review of all medical reports.
 - 1.13** Maintain a close working relationship with treating physicians and CITY's contact clinics.

- 1.14 Work with CITY to optimize return to work and light duty programs.
- 1.15 Monitor and adjust medical bills in compliance with Arizona Worker's Compensation medical fee schedule, through use of bill review or PPO agreements, and/or usual, reasonable and customary fee schedules.
- 1.16 Promptly notify and seek approval from CITY on questionable claims, which may benefit from claimant activity checks or investigation. With approval of CITY, as necessary and appropriate, arrange for activity or investigational services and promptly report back findings, on questionable cases.
- 1.17 Recommend vocational assessment of injured employees, when necessary and appropriate, with approval of CITY.
- 1.18 Obtain prior claim and medical history, and when applicable submit the claim to the Second Injury Fund at ICA for apportionment of compensation.
- 1.19 Subrogate against third parties when they are liable for injuries to employees. CONTRACTOR shall notify employee or the employee's attorney, of the existence of a Worker's Compensation lien, and provide information to the responsible party, the CITY, or to the court of the lien amount. All lien or recovery checks shall be made payable to CITY and sent to CITY's Risk Manager. Any waiver or reduction of any lien or other settlement shall receive prior approval from CITY's Risk Manager or designated representative. Exception: For medical only claim's the CITY's Risk Management Division will subrogate and provide copies of any recoveries to the CONTRACTOR.
- 1.20 Provide 1099 forms for each respective medical provider as required by IRS.
- 1.21 Assist CITY with the determination of appropriate Worker's Compensation rate settings, reserve limits, actuarial projects, and reporting to excess and/or reinsurance carriers as required.
- 1.22 Provide narrative written initial status, and settlement evaluation reports on all claims/cases with an indemnity reserve of \$25,000 or greater.
2. **Reporting Requirements. CONTRACTOR shall:**
 - 2.1 Make available electronically, check registers that can be sorted by check number, claim number, payee, payment type, and date of service.
 - 2.2 Make available for review at facility by claimant bills, bill review documents and payment history.
 - 2.3 Make available electronically reports that show paid medical, reserves for medical and indemnity claims, allocated expenses, and total incurred by claim. The report shall summarize information by department, division, and CITY as a whole. The loss runs, at a minimum, shall contain claims data by year, with field of information detailing date of loss, claimant's name, description of accident, medical paid, medical reserved, indemnity paid, indemnity reserved, expenses paid, expense reserves, and total incurred loss. Reports shall include status on all claims.
 - 2.4 Provide CITY with copies of all Notice(s) of Claim Status issued to claimant at the time of issuance.
 - 2.5 Provide quarterly written status reports on all claims originated during the previous quarter as well as all claims open for at least sixty (60) days.
 - 2.6 Share all relevant internal and external Worker's Compensation audit reports with CITY generated during the term of the contract.

- 2.7 Provide any data and/or reports required by the ICA, such as the preparation and submission of annual Self-Insurers Statement.
- 2.8 Prepare loss run and other reports to supplement CITY's excess Worker's Compensation insurance application or renewal.
- 2.9 Claim administrator shall be required to meet with CITY to review outstanding claim status at least three (3) times per contract year.

3. DELINEATION OF RESPONSIBILITIES.

3.1 Responsibilities of CONTRACTOR:

- 3.1.1 CONTRACTOR shall be responsible to undertake the services identified under Section 2 above and as delineated in CONTRACTOR's response to the RFP Questionnaire as negotiated and directed by CITY.
- 3.1.2 All invoices shall be submitted in duplicate, and no more often than on a monthly basis. Mail all invoices to CITY OF CHANDLER; Risk Management, PO Box 4008 – Mail Stop 608, Chandler, Arizona, 85244-4008.

3.2 Responsibilities of CITY:

- 3.2.1 CITY will make available to CONTRACTOR all documents, which will be useful in completing the project work. However, it shall remain CONTRACTOR's responsibility to request and verify all data and information provided by CITY.
- 3.2.2 CITY will pay invoices submitted in conformance with the contract within thirty (30) calendar days after submittal, but no more than once per month.

EXHIBIT B

COST SUMMARY

DESCRIPTION	CALENDAR YEAR 2008	CALENDAR YEAR 2009	CALENDAR YEAR 2010
Estimated Total Annual TPA Fees*	\$62,730.00	\$65,866.50	\$68,501.00
Fees for handling claims:			
A. Reported during each contract year:			
Medical only, per claim	\$125.00	\$131.25	\$136.50
Indemnity, per claim	\$635.00	\$656.25	\$682.50
Report only, per claim	\$ 45.00	\$ 45.00	\$ 45.00
B. Annual continuation fee for indemnity claims that remain open in subsequent years	\$420.00 ea.	\$441.00 ea.	\$458.64 ea.
Charge per claim if more than 135 are reported in one-year period	\$ Per schedule above	\$ Per schedule above	\$ Per schedule above
Credit on basic annual service charge if fewer than 125 claims are reported in a one-year	\$ Per schedule above	\$ Per schedule above	\$ Per schedule above
Computer Terminal Access Fee	\$1,200.00	\$1,200.00	\$1,200.00
Terms of payment:			
A. Annual			
B. Quarterly*	\$15,682.50	\$16,466.62	\$17,125.25
C. Monthly			

*Annual fee/quarterly payments are an estimate based the maximum number of new and existing claims anticipated during the contract year based on the per claim fees. If fewer claims are filed the amount payable to contractor will be less than the stated amount, and if more claims are filed the amount payable to the contractor will be more than the stated amount. The stated amount includes an annual administration fee of 6% of the total per claim fees and one annual computer terminal access user fee.

If the City elects to use the Contractor's internal bill review system exclusively then Contractor agrees to discount per claim fees 10% from the above stated amount because the internal system is less labor intensive for the Contractor.

Two additional one-year renewal options are at an additional three percent (3%) increase in fees annually.



Glenda Shackelford/COC
09/06/2007 03:53 PM

To Joni Chambers/COC@ci.chandler.az.us, Sandra
McGee/COC@ci.chandler.az.us
cc Robert Combs/COC@CI.CHANDLER.AZ.US
bcc
Subject N drive

Would one of you initial the 3rd party agreement in the N drive. This was previously approved under RFLS PG7-251.

Robert needs a copy for a meeting tomorrow and one of us will pick it up when complete (if possible this afternoon).

Thanks

Glenda Shackelford
MS 901
Phone (480) 782-2404
Fax (480) 782-2410
glenda.shackelford@chandleraz.gov