

CONSENT AGENDA  
ITEM NO. 33

**CITY OF SAN ANTONIO  
HUMAN RESOURCES DEPARTMENT  
INTERDEPARTMENTAL CORRESPONDENCE**

**TO:** Mayor and City Council

**THROUGH:** J. Rolando Bono, Interim City Manager

**FROM:** Sharon De La Garza, Director, Human Resources Department

**COPIES:** Frances A. Gonzalez, Assistant City Manager; Andrew Martin, City Attorney;  
Milo Nitschke, Finance Director; File

**SUBJECT:** TRICARE Supplement Medical Insurance Contract

**DATE:** October 21, 2004

**SUMMARY AND RECOMMENDATION**

This Ordinance authorizes the Interim City Manager or his designee to execute a contract with Association and Society Insurance Corporation (ASI) for the purpose of providing a fully insured TRICARE Supplement Medical Plan to City employees and their eligible dependents covered under TRICARE military retiree plans. The estimated annual cost of this contract is \$150,300. The term of this contract is two (2) years, beginning January 1, 2005 and ending December 31, 2006, with an option to extend the contract for up to two (2) one (1) year extensions, subject to and contingent upon funding and approval by City Council.

Staff recommends approval of this Ordinance.

**BACKGROUND INFORMATION**

The City's Flexible Benefits program currently offers full time active employees and their eligible dependents access to two medical plans with an option to waive coverage during open enrollment. Association Society Insurance (ASI) is a sole source vendor of a fully insured TRICARE Supplement Medical Plan underwritten by the Hartford Life Insurance Company. This plan would be offered as a fully insured supplement to all City employees who are eligible for TRICARE military retiree benefits.

The addition of the TRICARE Supplement medical plan option would carve out TRICARE-enrolled employees and their dependents from claims liability under the City's Self Insurance Fund. Based on a projection of 110 enrollees for the 2005 benefit year, this medical plan option will yield an estimated nine (9) month net savings of \$338,275.

**POLICY ANALYSIS**

Approval of this contract will allow for the creation of a new TRICARE Supplement Medical Plan option to be offered along with the CitiMed PPO and a CitiMed self-funded HMO to eligible employees and dependents enrolled in TRICARE Medical Plan due to prior military employment.

### **FINANCIAL IMPACT**

Funds are appropriated annually, by fiscal year, in the Employee Benefits Self-Insurance Fund to provide medical plan coverage. This ordinance will authorize the first nine (9) months of this contract in FY2004-2005 at an estimated amount of \$112,725 and the remaining fifteen (15) months will be authorized in FY 2005-2006 contingent upon subsequent funding. The monthly premium to the City for coverage will be \$60 for employee only, \$119 for employee plus spouse, \$160 for employee plus child(ren) and \$160 for full family coverage. The contract includes a two-year guarantee on the monthly premiums for service. The premiums for the TRICARE Supplement Medical Plan will be paid by the City from the anticipated savings to the Self Insurance Fund.

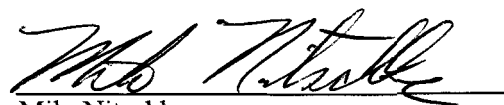
### **COORDINATION**

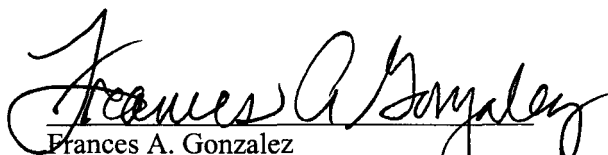
This proposed ordinance has been reviewed and coordinated with the following departments: Asset Management, Finance and City Attorney's Office.

### **SUPPLEMENTAL COMMENTS**

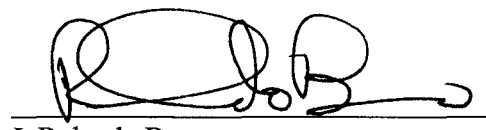
The required Discretionary Contracts Disclosure is attached.

  
Sharon De La Garza  
Human Resources Director

  
Milo Nitschke  
Finance Director

  
Frances A. Gonzalez  
Assistant City Manager

Approved:

  
J. Rolando Bono  
Interim City Manager

Attachments

City of San Antonio  
Discretionary Contracts Disclosure\*

For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2

Attach additional sheets if space provided is not sufficient.

State "Not Applicable" for questions that do not apply.

\* This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

**Disclosure of Parties, Owners, and Closely Related Persons**

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract:

None

(2) the identity of any **business entity**<sup>1</sup> that would be a party to the discretionary contract:

Association and Society Insurance Corporation  
656 Quince Orchard Rd.  
Gaithersburg, MD 20878

and the name of:

(A) any individual or business entity that would be a **subcontractor** on the discretionary contract;

None

and the name of:

(B) any individual or business entity that is known to be a **partner**, or a **parent** or **subsidiary** business entity, of any individual or business entity who would be a party to the discretionary contract;

None

<sup>1</sup> A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

- (3) the identity of any *lobbyist* or *public relations firm* employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

None

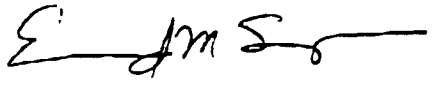
### Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
None		

### Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

Signature: 	Title: Executive Vice President  Company: Association & Society Insurance Corporation	Date:  September 22, 2004

<sup>2</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

**City of San Antonio**  
**Discretionary Contracts Disclosure\***

*For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2*

*Attach additional sheets if space provided is not sufficient.*

*State "Not Applicable" for questions that do not apply.*

**\* This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.**

**GROUP HEALTH INSURANCE  
SERVICES CONTRACT**

*Diage*

**STATE OF TEXAS**                   §  
   §  
**COUNTY OF BEXAR**               §

This CONTRACT is made and entered into by and between the **CITY OF SAN ANTONIO** (hereinafter referred to as "**CITY**"), a Texas municipal corporation, acting by and through its City Manager pursuant to Ordinance No. \_\_\_\_\_, passed and approved on, and **ADMINISTRATION & SOCIETY INSURANCE CORPORATION**, a Maryland corporation (hereinafter referred to as "**VENDOR**"), acting by and through \_\_\_\_\_.

**I.     PURPOSE**

- 1.1     The purpose of this CONTRACT is to state the terms and conditions under which the **VENDOR** shall develop and promote a TRICARE Supplement Group Insurance Plan (the "Insurance Plan") to be offered to TRICARE-eligible **CITY** employees, retirees, and their dependents ("Plan Participants").

**II.    DESCRIPTION OF SERVICES**

- 2.1     The **VENDOR** shall perform all the services as set forth in the **VENDOR'S** Proposal dated July 13, 2004, attached hereto respectively as Exhibit "A" and incorporated herein. The **VENDOR** understands and agrees that Exhibit A is a part of this CONTRACT, as though fully set out herein, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by the **VENDOR** as completely and fully as are the obligations, conditions, tasks, products and representations imposed by this CONTRACT.
- 2.2.    The terms of this CONTRACT shall be final and binding where there is any conflict between the terms of the **VENDOR'S** Proposal and the terms of this CONTRACT. However, where federal or state law conflicts with the CONTRACT or the **VENDOR'S** Proposal, the federal or state law shall control.
- 2.3     The **VENDOR** shall work with the Human Resources Director or designee and appropriate **CITY** officials to perform any and all related tasks required by the **CITY** in order to fulfill the purposes of this CONTRACT.
- 2.4     The **VENDOR** shall meet annually with representatives of the **CITY'S** Employee Benefits Division. The **CITY** shall give the **VENDOR** at least one week's notice of such meetings. The **VENDOR** agrees to provide no fewer than two on-site informational

meetings to **CITY** employees regarding the Insurance Plan and, additionally, to participate in the **CITY'S** annual health and enrollment fair.

- 2.5 The **VENDOR** shall cause a licensed carrier ("Insurer") to issue group insurance certificates to Plan Participants on a fully-insured basis; said certificates shall be satisfactory in form and substance to the **state law**.
- 2.6 The **VENDOR** will develop and oversee a detailed enrollment plan to be used at the commencement of the **CONTRACT**; such plan shall result in no additional cost to the **CITY** and shall include preparation, distribution and cost of participant ID cards, plan information and plan access.
- 2.7 The **VENDOR** and **CITY** will co-develop, co-design, print and furnish to the **CITY** promotional enrollment materials necessary for the administration of the Insurance Plan at the **VENDOR's** sole expense. All promotional material shall identify the **CITY** as the sponsor of the Insurance Plan. No mailing or related promotional services related to the Insurance Plan shall be undertaken by the **VENDOR** without prior consultation and consent of the **CITY**.
- 2.8 The **VENDOR** agrees to provide representatives of the **CITY'S** Employee Benefits Division with advance copies of all general correspondence to Plan Participants regarding changes in services and benefits. Subject to prevailing privacy laws.
- 2.9
- 2.10
- 2.11 **VENDOR** shall guarantee issue coverage to all eligible Plan Participants, process insurance applications received, prepare policies (if requested by Insurer), collect premium payments from the **CITY** and remit them to the Insurer, assist Plan Participants who so request in the preparation and presentation of claims, and conduct correspondence with Plan Participants and employees or retirees who wish to participate.
- 2.12 **VENDOR** shall account to Insurer for receipts and disbursements and outstanding balances of all funds which come into its possession or under its control in the course of its duties under this **CONTRACT**.
- 2.13
- 2.14
- 2.15 In the event of any written complaint to the State Board of Insurance by a **CITY** Plan Participant, the **VENDOR** shall provide to the **CITY** a copy of all written correspondence regarding the complaint within twelve (12) business days of receipt.

- 2.16 The **VENDOR** will provide the **CITY** with a copy of all written correspondence regarding the complaint within twelve (12) business days of receipt. **VENDOR'S** proposal exhibit

- 2.17 Eligibility for **CITY** Plan Participants shall become effective the first day of the month following enrollment.

### **III. PERFORMANCE STANDARDS**

- 3.1 The **VENDOR** acknowledges and agrees that the **VENDOR** shall provide services under this **CONTRACT** with a certain degree of customer service and participant satisfaction. Accordingly, **VENDOR** shall provide services under this **CONTRACT** in accordance with all applicable requirements of state and federal law and accreditation standards relating to accessibility and availability and timeliness of services. The **VENDOR** agrees to the following performance standards:

- **CLAIMS TURNAROUND**

The **VENDOR** agrees that the average claims turn around time shall not exceed ten (10) business days for claims submitted with the TRICARE Explanation of Benefits form and fourteen (14) days for all other non-contested claims.

- **CLAIMS ACCURACY**

The **VENDOR** agrees that claims accuracy for claims paid through the Insurance Program will meet or exceed 98% accuracy of all claims paid through the plan.

- **TELEPHONE SERVICE**

- **GRIEVANCE RESOLUTION**

The **VENDOR** shall answer all grievances within ten (10) business days from receipt. The **VENDOR** shall fully investigate and facilitate resolution of any and all complaints received from **CITY** Plan Participants with regard to services resulting from this **CONTRACT**.

The **VENDOR** agrees to log and to maintain the logs of all **CITY** Plan Participant complaints (the "Grievance Log"). The **VENDOR** agrees to make available to the **CITY** the **VENDOR'S** Grievance Log, including the resolution of each complaint.

- **CUSTOMER SATISFACTION SURVEY**

The **VENDOR** will fulfill its obligations under this **CONTRACT** in such a manner as to obtain a minimum 80% favorable rating from the Plan Participants in the services administered by the **VENDOR**. For purposes of this **CONTRACT**, a favorable rating means a rating of "somewhat satisfied" or "very satisfied."



- 3.2 Performance compliance audits may be conducted at the discretion of the **CITY** using an independent auditor of the **CITY'S** choice. Such audits will be limited to one (1) per calendar year. Either party to this CONTRACT may conduct a second audit, at its own expense, by the same or another independent auditor using a different claim sample of at least equal size. The definition of an error in these audits is subject to a good faith review by the parties to this CONTRACT. The cost of the first independent audit in any year will be paid by the **CITY**. Should the **VENDOR** fail to meet any performance expectations, the **VENDOR** will pay the cost of all subsequent audits until it is meeting expected performance levels.
- 3.2 If the **CITY** waives its rights to an independent audit in any plan year, the **CITY** retains the right to audit in all subsequent years.
- 3.3

#### IV. TERM

- 4.1 The term of this CONTRACT shall commence at 12:00 a.m., Central Standard Time, on January 1, 2005, and shall terminate at 11:59 p.m., Central Standard Time, on December 31, 2006. With at least sixty (60) days written notice prior to December 31, 2006, the **CITY** may, at its sole option and through appropriate action of the City Council, have the right to extend the term of this CONTRACT for up to three (3) one (1) year extensions, with each one (1) year extension subject to the same notice requirement and appropriate action of its City Council. However, the **CITY** may terminate this CONTRACT at any time if funds are restricted, withdrawn, not approved or service is unsatisfactory; it being understood that funds for each calendar year covered by any resulting contract will be requested and, if approved, will be provided as part of the **CITY'S** budget for each fiscal year. Premiums for each year of the CONTRACT shall be determined in accordance with the provisions of Section 6.1 below.

#### V. GENERAL ASSURANCES

- 5.1 **VENDOR** covenants and agrees to perform all services described in this CONTRACT in a workmanlike manner with a high degree of care to ensure accuracy and timeliness. **VENDOR** shall perform its services in accordance with the ordinary, reasonable standard of care and diligence normally practiced by recognized professional firms in performing services of a similar nature, in the San Antonio, Texas area, under similar circumstances. This includes the knowledge and experience ordinarily required of a member of that profession, and includes performing the skills necessary to adequately cope with problems that arise in performing its services, which skills are not possessed by ordinary laymen.
- 5.2 The **VENDOR** warrants and certifies that the **VENDOR** and any other person designated by it to provide services herein has the requisite training, license and/or certification to provide said service.

**5.3 VENDOR** agrees to employ, at its own expense, all personnel required in performing the services described in this CONTRACT. Personnel employed by **VENDOR** shall neither be employees of nor have any contractual relationship with **CITY**. All **VENDOR'S** personnel engaged in providing services under this CONTRACT shall be fully qualified and shall be authorized or licensed to perform such work as required.

**5.4 VENDOR** shall, at a minimum, maintain the experience and quality of staff in accordance with **VENDOR'S** proposal, attached hereto and incorporated herein for all purposes as Exhibit A, to perform services as required under this CONTRACT.

## **VI. CONSIDERATION & BILLING**

**6.1** In consideration of **VENDOR's** performance hereunder, **CITY** shall pay to **VENDOR** a flat fee as follows:

• Employee only	\$ 60.00	per month
• Employee + Spouse	\$119.00	per month
• Employee + Child(ren)	\$160.00	per month
• Family	\$160.00	per month

If the term of this CONTRACT is extended by the **CITY** as provided in Section 4.1 above, the premium fee schedule shall be mutually agreed upon by the **CITY** and the **VENDOR**.

**6.2** Payments to **VENDOR** shall be in the amount shown by the monthly billings and other documentation submitted and shall be subject to **CITY's** approval. All services shall be performed to **CITY's** satisfaction, and **CITY** shall not be liable for any payment under this CONTRACT for services which are unsatisfactory and which have not been approved by **CITY**. The final payment due herein will not be paid until the reports, data, and documents required under this CONTRACT have been received and approved by the **CITY**. No additional fee or charge will be assessed against the **CITY** for late payment of any amount due to the **VENDOR** under this CONTRACT.

**6.3** **CITY** shall not be liable to **VENDOR** for costs incurred or performances rendered by **VENDOR** prior to the commencement of this CONTRACT or after its termination.

**6.4** **CITY** shall not be obligated or liable under this CONTRACT to any party, other than **VENDOR**, for payment of any monies or provision for any goods or services.

## **IX. RETENTION AND ACCESSIBILITY OF RECORDS**

**9.1** **VENDOR** shall maintain at its principal administrative office adequate books and records of all transactions in which **VENDOR** engages with **CITY**.

- 9.2 The books and records must be maintained for the term of this CONTRACT to which they relate and for the five (5) year period following the end of this CONTRACT's term.
- 9.3 **VENDOR** shall maintain the books and records in accordance with prudent standards of insurance recordkeeping and all requirements of HIPAA.
- 9.4 **CITY**, the Texas Department of Insurance (TDI) Commissioner, United States Department of Health and Human Services, and their designated agents shall be given access to those books and records for the purpose of either examination, audit, or inspection as permitted by HIPAA.
- 9.5 Trade secrets, including the identity and address of policyholders and certificate holders, are confidential, except that the TDI Commissioner may use such information in proceedings instituted against the **VENDOR**.
- 9.6 .
- 9.7 **VENDOR** may, at **CITY's** option, fulfill the legal requirements of this provision on termination of this CONTRACT by delivering to **CITY**, the books and records and by giving written notice to the TDI Commissioner of the location of the books and records.

#### **X. HIPAA COMPLIANCE**

- 10.1 **VENDOR** will maintain the security and confidentiality of all medical, dental, prescription and other patient-identifiable health information specifically relating to Plan Participants ("Patient Health Information") in accordance with all applicable federal and state laws and regulations, including the Security Rule and the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as may be amended from time to time.
- 10.2 **VENDOR** shall comply with the electronic transmission standards and security requirements by the applicable deadlines, and with all other regulations as might be adopted by HIPAA.
- 10.3 The parties acknowledge that they are "Business Associates" as defined in Title 45, Section 160.103, of the Code of Federal Regulations. **VENDOR** shall abide by the terms of the Business Associate Agreement executed by the parties, attached hereto as Exhibit B and incorporated herein by reference.

#### **XI. PUBLICATION**

- 11.1** In order to use any advertising relating to business underwritten and/or developed for **CITY**, **VENDOR** must obtain approval by **CITY** at least ten (10) business days prior to such use.

## **XII. NOTICE OF VENDOR'S CAPACITY**

- 12.1** **VENDOR** shall give notice to Plan Participants of the identity of **VENDOR** and the relationship between **VENDOR**, the **CITY**, and the Plan Participant. The notice must be approved by **CITY** at least ten (10) business days prior to such distribution.

## **XIII. AMENDMENT**

- 13.1** This **CONTRACT**, together with its authorizing ordinance and its exhibits, constitutes the entire agreement between the parties. No amendment, modification or alteration of the terms of this **CONTRACT** shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

## **XIV. ASSIGNING INTEREST**

- 14.1** Any subcontracts or assignments on interests entered into by **VENDOR** concerning work tasks for this **CONTRACT** shall be communicated in writing to **CITY** prior to the effective date of this **CONTRACT** and prior to commencement of any work subsequent to this **CONTRACT**'s effective date. **VENDOR** shall not assign, sell, pledge, transfer or convey any interest in this **CONTRACT**, nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or by any other means, to any other party without prior written consent of **CITY**, evidenced by passage of an ordinance to that effect by the San Antonio City Council. Any such attempt at an assignment will be void *ab initio*, and shall confer no rights on the purported assignee. Should **VENDOR** assign, transfer, convey, delegate or otherwise dispose of any part of, or all of, its right, title or interest in this **CONTRACT**, the **CITY** may, at its option, cancel this contract and all rights, titles and interest of **VENDOR** shall thereupon cease and terminate, notwithstanding any other remedy available to **CITY** under this **CONTRACT**. The violation of this provision by **VENDOR** shall in no event release **VENDOR** from any obligation under the terms of this **CONTRACT**, nor shall it relieve or release **VENDOR** from the payment of any damages to **CITY** which **CITY** sustains as a result of such violation.
- 14.2** **VENDOR**'s subcontractors may not voluntarily assign, transfer, subcontract or pledge, in whole or in part, any contract with **VENDOR** arising from or in relation to this **CONTRACT**, nor shall any involuntary transfer or assignment result in a transfer of any rights conferred by this **CONTRACT**. **VENDOR** shall indicate this limitation in all contracts with approved subcontractors.
- 14.3** **VENDOR** agrees to notify **CITY** any changes in ownership interest greater than 10%, or control of its business entity, not less than sixty (60) days in advance of the effective

date of such change. Notwithstanding any other remedies that are available to **CITY** under this **CONTRACT**, any such change of ownership interest or control of its business entity may be grounds for termination of this **CONTRACT** at the sole discretion of the **CITY**.

- 14.4** In no event shall such written consent, if obtained, relieve **VENDOR** from any and all obligations hereunder or change the terms of this **CONTRACT**.
- 14.5** **CITY** must approve all substitutions of subcontractors to determine if the disadvantaged business enterprise goal will be decreased by substitution of a disadvantaged subcontractor with a non-disadvantaged subcontractor.

## **XV. INSURANCE AND BONDING**

- 15.1** Prior to the commencement of any work under this **CONTRACT**, **VENDOR** shall furnish an original completed Certificate(s) of Insurance or City's Standard Certificate of Insurance form to **CITY's** Budget and Employee Services Department and City Clerk's Office, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and telephone number, and be mailed directly from the agent to **CITY**. **CITY** shall have no duty to pay or to perform under this **CONTRACT** until such certificate has been delivered to **CITY's** Human Resources Department and the City Clerk's Office, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 15.2** **CITY** reserves the right to review the insurance requirements of this section during the effective period of this **CONTRACT** and any extension or renewal hereof and to modify insurance coverages and its limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this **CONTRACT**, but in no instance will **CITY** allow modification whereupon **CITY** may incur increased risk.
- 15.3** **VENDOR's** financial integrity is of interest to **CITY**. Therefore, subject to **VENDOR's** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **VENDOR** shall obtain and maintain in full force and effect for the duration of this **CONTRACT**, and any extension hereof, at **VENDOR's** sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to **CITY**, in the following types and amounts:

### **TYPE:**

### **AMOUNT:**

A. Commercial Crime/Fidelity Bond

\$1,000,000.00 per occurrence

B. Commercial General (public) Liability Insurance to include coverage for the following:

- |                                      |   |
|--------------------------------------|---|
| 1. Contractual Liability             | Bodily Injury and Property Damage                   |
| 2. Premises Operations               | of \$1,000,000 per occurrence;                      |
| 3. Personal Injury Liability         | \$2,000,000.00 general aggregate or its             |
| 4. Products and Completed Operations | equivalent in umbrella or excess liability coverage |
| 5. Independent Contractors           |   |

C. Business Automobile Liability

- |   |   |
|---|---|
| Comprehensive Automobile Liability Including: | Combined Single Limit for Bodily Injury and Property Damage |
| 1. Owned/Leased Vehicles                      | of \$1,000,000.00 per occurrence                            |
| 2. Non-Owned Vehicles                         |   |
| 3. Hired Vehicles                             |   |

D. Workers' Compensation and Employer's Liability

- |  |           |
|--|-----------|
| Worker's Compensation Employer's Liability | Statutory |
|--|-----------|

E. Professional Liability

- |  |  |
|--|--|
| Professional Liability<br>(Claims made form) | \$1,000,000.00 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 |
|--|--|

**15.4** CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by CITY and may make a reasonable request for 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). Upon such request by CITY, VENDOR shall exercise reasonable efforts to accomplish such changes in policy coverage and shall pay the cost thereof.

• **15.5**

**15.6** VENDOR shall notify CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notice not less than 30 days prior to the change or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to CITY at the following addresses:

**City of San Antonio  
Human Resources Department  
Employee Benefits Division  
P.O. Box 839966  
San Antonio, Texas 78283-3966**

**City of San Antonio  
City Clerk's Office  
P.O. Box 839966  
San Antonio, Texas  
78283-3966**

- 15.7** If **VENDOR** fails to maintain the aforementioned insurance or fails to secure and maintain the aforementioned endorsements, **CITY** may obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the **CONTRACT**; however, procuring of said insurance by **CITY** is an alternative to other remedies **CITY** may have, and is not the exclusive remedy for failure of **VENDOR** to maintain said insurance or secure such endorsement. In addition to any other remedies **CITY** may have upon **VENDOR's** failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, **CITY** shall have the right to order **VENDOR** to stop work hereunder, and/or withhold any payment(s) which become due, to **VENDOR** hereunder until **VENDOR** demonstrates compliance with the requirements hereof.
- 15.8** Nothing herein contained shall be construed as limiting in any way the extent to which **VENDOR** may be held responsible for payments of damages to persons or property resulting from **VENDOR's** or its subcontractors' performance of the work covered under this **CONTRACT**.

## **XVI. INDEMNITY**

- 16.1** **VENDOR** COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS THE CITY AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS, AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY OR 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 **VENDOR's** ACTIVITIES UNDER THIS **CONTRACT**, INCLUDING ANY ACTS OR OMISSIONS OF **VENDOR**, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONTRACTOR OF **VENDOR**, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS **CONTRACT**, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES,

EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY UNDER THIS CONTRACT. 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. VENDOR SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE CITY OR VENDOR KNOWN TO VENDOR RELATED TO OR ARISING OUT OF VENDOR'S ACTIVITIES UNDER THIS CONTRACT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT VENDOR'S COST. THE CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING VENDOR OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

- 16.2 IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS CONTRACT, THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION (SECTION XVI), IS AN INDEMNITY EXTENDED BY VENDOR TO INDEMNIFY, PROTECT AND HOLD HARMLESS THE CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE, PROVIDED HOWEVER, THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL APPLY ONLY WHEN THE NEGLIGENT ACT OF THE CITY IS A CONTRIBUTORY CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE, AND SHALL HAVE NO APPLICATION WHEN THE NEGLIGENT ACT OF THE CITY IS THE SOLE CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE. VENDOR FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE AND ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, ANY CLAIM OR LITIGATION BROUGHT AGAINST THE CITY AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES, IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE.

## XVII. INDEPENDENT CONTRACTOR

- 17.1 **VENDOR** covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of **CITY**; that **VENDOR** shall have exclusive right to control the details of the work performed hereunder and all person performing the same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of *respondeat superior* shall not apply as between **CITY** and **VENDOR**, its officers, agents, employees, contractors and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between **CITY** and **VENDOR**.



**17.2.** Any and all of the employees of the **VENDOR**, wherever located, while engaged in the performance of any work required by the **CITY** under this **CONTRACT** shall be considered employees of the **VENDOR** only, and not of the **CITY**, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the **VENDOR**.

**17.2** No Third Party Beneficiaries: For purposes of this **CONTRACT**, including its intended operation and effect, the Parties specifically agree and contract that (1) this **CONTRACT** only affects matters/disputes between the Parties to this **CONTRACT** and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entity may benefit incidentally by this **CONTRACT**; and (2) the terms of this **CONTRACT** are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either **CITY** or **VENDOR**.

### **XVIII. SBEDA**

**18.1**

### **XIX. NON-WAIVER**

**19.1** The granting or acceptance of extensions of time to complete the work or furnish the materials or reports required hereunder will not operate as a release to **VENDOR** from any other covenants and conditions required in this **CONTRACT**.

### **XX. FRAUD AND ABUSE PREVENTION**

**20.1** **VENDOR** shall establish, maintain and utilize internal management procedures sufficient to protect against fraud, abuse or misappropriation of funds while in performance of obligations and duties under this **CONTRACT**. Any suspected fraud, abuse or misappropriation of funds shall be investigated promptly at the sole expense of **VENDOR**. Any funds that are found to be misappropriated shall be repaid to **CITY** by **VENDOR** within thirty (30) days of such finding.

**20.2** **VENDOR** agrees to repay **CITY** for overpayments to service providers resulting from **VENDOR's** claims system's or processors' errors within 30 days of verification of overpayments.

### **XXI. EQUAL EMPLOYMENT OPPORTUNITY**

**21.1** **VENDOR** shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment and will take

affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, disability, or political belief or affiliation. Specifically, **VENDOR** agrees to abide by all applicable provisions of the City of San Antonio ordinance number 69403 on file in the City Clerk's office.

## **XXII. CONFLICT OF INTEREST**

- 22.1** **VENDOR** 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 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.
- 22.2** **VENDOR** warrants and certifies, and this **CONTRACT** is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the **CITY**. **VENDOR** further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.
- 22.3** **VENDOR** warrants that no person or selling agency has been employed or retained to solicit or secure this **CONTRACT** upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by **VENDOR** for the purpose of securing business. For breach or violation of this warranty, **CITY** shall have the right to rescind this **CONTRACT** without liability or, at its discretion, to deduct from the **CONTRACT** price or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
- 22.4** If at any time it shall be found that the person, firm or corporation to whom a **CONTRACT** has been awarded has, in presenting any proposal, colluded with any other party or parties, then the contract so awarded shall be voidable at **CITY's** option, and **VENDOR** shall be liable to **CITY** for all loss or damage that **CITY** may suffer thereby.

## **XXIII. TERMINATION**

- 23.1 For purposes of this CONTRACT, "termination" of this CONTRACT shall mean termination by expiration of the CONTRACT term or earlier termination pursuant to any of the provisions hereof.
- 23.2 Termination by Notice. This CONTRACT may be canceled by either party upon written notice, provided such notice specifies an effective date of termination, which shall be not less than 30 calendar days nor more than 90 calendar days after the date of receipt of the notice by the other party. If the notice does not specify a date of termination, the effective date of termination shall be 30 calendar days after receipt of the notice by the other party. All files are the property of the **CITY** and, at the **CITY's** request, will be delivered at no cost to the **CITY** or its designated recipient on the effective date of termination. Any **CITY** funds held in any escrow account(s) shall be returned to the **CITY** within 30 calendar days after the effective termination date.
- 23.3 Termination for Cause. Should either party default in the performance of any of the terms or conditions of this CONTRACT, the other party shall deliver to the defaulting party written notice thereof specifying the matters in default. The defaulting party shall have fifteen (15) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such fifteen (15) day period, this CONTRACT shall terminate at 11:59:59 p.m., Central Standard Time, on the fifteenth (15th) day after the receipt of the notice by the defaulting party.
- 23.3 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 CONTRACT shall automatically terminate as of the effective date of such prohibition.
- 23.4 Effect of Termination. The period between notice of termination and the effective date of termination shall be used to effect an orderly transfer of records and funds, if any, from **VENDOR** to **CITY** or to such person(s) or firm(s) as the **CITY** may designate. Any records transfer shall be completed within 15 calendar days of the termination date. Any such transfer of records or funds shall be completed at **VENDOR's** sole cost and expense.
- 23.5 Upon termination or cancellation of this CONTRACT, **CITY** may immediately commence audit of **VENDOR's** books, accounts, and records. Within 30 calendar days after being notified by **CITY** of the results of said audit, **VENDOR** shall pay **CITY** any amount shown by said audit to be owed **CITY** or its employees. No waiver of existing default shall be deemed to waive any subsequent default.
- 23.6
- 23.7 Upon termination of this CONTRACT, at no additional cost to the **CITY**, **VENDOR** shall be responsible for all incurred claims administration, unless responsibility for these claims is assumed by the Insurer. If responsibility for these claims is assumed by the Insurer, the **VENDOR** shall pay any and all costs that the Insurer bills to the **CITY**.

- 23.8 Within 30 calendar days of the effective date of termination or cancellation, **VENDOR** shall submit to **CITY** its claims, in detail, for the monies owed by **CITY** for services performed under this CONTRACT through the effective date of termination, except for monies owed for processing of claims incurred prior to the termination date and submitted for processing after the termination date.

#### **XXIV. COMPLIANCE WITH LAWS**

- 24.1 **VENDOR** hereby agrees to provide services hereunder in compliance with all applicable Federal, State and local laws, regulations, policies and procedures.

#### **XXV. SUCCESSORS AND ASSIGNS**

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

#### **XXVI. NOTICES**

- 26.1 Any notice required or permitted to be given under this CONTRACT shall be sufficient if given in writing and sent by certified mail, return receipt requested, postage prepaid to **CITY**, or to **VENDOR** at the addresses set forth below or to any other address of which written notice of change is given:

##### **CITY**

City Clerk  
City of San Antonio  
P. O. Box 839966  
San Antonio, TX 78283-3966

AND

City of San Antonio  
Human Resources Department  
Employee Benefits Division  
115 Plaza De Armas  
Suite 10-E  
San Antonio, TX 78205

##### **VENDOR**

Association & Society Insurance Corporation

656 Quince Orchard Road, Suite 620  
Gaithersburg, MD 20878

## **XXVII. EXHIBITS**

- 27.1** **VENDOR** understands and agrees that all exhibits referred to in this CONTRACT are intended to be and hereby are, specifically made a part of this CONTRACT. Said exhibits are as follows:

**VENDOR's** Proposal  
HIPAA Business Associate Agreement

Exhibit A  
Exhibit B

- 27.2** **VENDOR** understands and agrees that Exhibits A and B are a part of this CONTRACT, as though fully set out herein, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by **VENDOR** as completely and fully as are the obligations, conditions, tasks, products and representations imposed by this CONTRACT.
- 27.3** The terms of this CONTRACT shall be final and binding where there is any conflict between the terms of **CITY's** Request for Proposal, **VENDOR's** Proposal and the terms of this CONTRACT; **CITY's** Request for Proposal shall control where it conflicts with **VENDOR's** Proposal.

## **XXIII. LEGAL AUTHORITY**

- 28.1** The signer of this CONTRACT for **VENDOR** represents, warrants, assures and guarantees full legal authority to execute this CONTRACT on behalf of **VENDOR** and to bind **VENDOR** to all of the terms, conditions, provisions and obligations herein contained.

## **XXIX. VENUE AND GOVERNING LAW**

- 29.1** Venue of any court action brought directly or indirectly by reason of this CONTRACT shall be in Bexar County, Texas. This CONTRACT shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties created hereunder are to be performed in Bexar County, Texas.

## **XXX. GENDER**

- 30.1** Words of any gender used in this CONTRACT shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

## **XXXI. CAPTIONS**

- 31.1 The captions contained in this CONTRACT are for convenience or reference purposes only and shall in no way limit, enlarge or alter the terms and/or conditions of this CONTRACT.

#### **XXXII. ENTIRE AGREEMENT**

- 32.1 This CONTRACT, its exhibits and the authorizing ordinance constitute the final and entire agreement between the parties hereto, superseding all verbal or written agreements, previous and/or contemporaneous agreements between the parties and relating to matters in this CONTRACT. No other agreements, oral or otherwise, regarding the matters of this CONTRACT 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 hereto.

#### **XXXIII. SEVERABILITY**

- 33.1 If any clause or provision of this CONTRACT is illegal, invalid 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 CONTRACT 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 to this CONTRACT that, in lieu of each clause or provision of this CONTRACT that is illegal, invalid or unenforceable, there be added as part of this CONTRACT a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

#### **XXXIV. ACKNOWLEDGMENT**

- 34.1 Each of the parties acknowledges that it has read this CONTRACT, understands its contents and executes this CONTRACT voluntarily.

**EXECUTED** this, the \_\_\_\_\_ day of \_\_\_\_\_, 2004, by the **CITY**, signing by and through its City Manager, and by the **VENDOR**, acting through its duly authorized officials.

**CITY OF SAN ANTONIO, TEXAS**

**ASSOCIATION & SOCIETY  
INSURANCE CORPORATION**

---

Sharon De La Garza,  
Human Resources Director

Approved as to Form:

---

Kathleen Finck  
Assistant City Attorney