

CITY OF SANTA FE

PROFESSIONAL SERVICES CONTRACT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, New Mexico, hereinafter referred to as the "City," and **AON Risk Insurance Services West, Inc.**, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the Parties.

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

A. The Contractor shall perform the following work:

- 1) Assist the Benefits Administrator in administering all group insurance plans, Provide benefits consulting services during the course of the contract period, and respond to questions from and provide information to staff as needed.
- 2) Assist in City of Santa Fe in complying with laws and regulations related to employee benefits.
- 3) Assist and advise the City of Santa Fe with the reporting and fee requirements established by the Affordable Care Act including counts, lookback periods, and other required information.
- 4) Review claims experience, claim service, and claim administration to ensure maximum benefits to the City of Santa Fe.
- 5) Determine and recommend the most economical funding methods for the benefit programs and help to strike a balance between cost and comprehensiveness of the programs.
- 6) Develop a solicitation/negotiation strategy and participate with the City of Santa Fe in all negotiations with providers on all issues including those related to premiums, benefit levels, plan design, and special terms and conditions.
- 7) Meet and provide reports to various City of Santa Fe representatives.
- 8) Assist the City of Santa Fe with the implementation and communication of new programs or changes to existing programs, which will include attending and presenting information at Open Enrollment meetings.
- 9) Research any new developments in the law and employee benefit programs on an ongoing basis.

- 10) As requested by the City of Santa Fe, prepare bid specifications and solicit proposals from insurance markets which specialize in group insurance plans as needed. Evaluate bids and bidders, including administration, coverage, claim payment procedures, customer service, networks, reserve establishment policies, financial soundness, and identify the most cost beneficial package among the various bidders.
- 11) Interface with insurance carriers as needed to assist the City of Santa Fe in the resolution of problems associated with benefit programs.

Consulting Services for Voluntary Coverages	Frequency	Cost
Implementation		
Review all existing process and procedures and develop updated/changes for new program	Annually	Included in Commission
▪ Coordinate the initiation and continuation of all program implementation processes necessary for the timely launch of the Program(s)	Annually	Included in Commission
▪ Monitor adherence to project timeline(s) by carriers/providers and any other involved parties	Annually	Included in Commission
▪ Coordinate agreement(s) on administrative procedures	Annually	Included in Commission
▪ Assist with issue resolution (claim, billing, eligibility)	As Needed	Included in Commission
Ongoing Service		
▪ Monitor the performance of carriers/providers in processing and fulfilling applications and the delivery of policies or certificates to insureds	Annually	Included in Commission
▪ Arrange and coordinate the routine submission of Program management reports regarding participation, utilization, vendor performance, etc. by all carrier/providers	Annually	Included in Commission
▪ Issues intervention as necessary in any area(s) of Program operations	As Needed	Included in Commission
▪ Meet with client staff as needed to discuss issues and open items	As Needed	Included in Commission
▪ Conduct meetings with carriers to identify issues or problems and monitor performance against performance standards, if applicable	Annually	Included in Commission
▪ Keep you informed of changes in the Voluntary Benefit(s) marketplace	As Needed	Included in Commission
▪ Carrier financial ratings/market review	Annually	Included in Commission
Resources		
▪ Voluntary Benefits & Enrollment Solution Experts <ul style="list-style-type: none"> ○ Voluntary Benefits ○ Enrollment Strategies 	As needed	Included in Commission

B. Performance Measures.

Contractor shall substantially perform the following Performance Measures:

- 1) The Contractor represents that it possesses the personnel, experience, and knowledge necessary to perform the services described under this Agreement.
- 2) The Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

2. Compensation.

A. The total amount payable to the Contractor under this Agreement, excluding/including gross receipts tax and expenses, shall not exceed (199,300.00) for the term of this Agreement.

- 1) The City shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work.

Year	Amount
FY 21 November 01, 2020 - June 30, 2021	\$ 47,600
FY 22 July 01, 2021 – June 30, 2022	\$ 63,800
FY 23 July 01, 2022 – June 30, 2023	\$ 65,500
FY 24 July 01, 2023 – October 31, 2024	\$ 22,400

Contractor will use its best efforts to negotiate placements for City's insurance programs on a net of (without) commission basis, to Contractor; however, it is not always possible or advisable to do so. In instances where a commission is paid to Contractor, Contractor will credit the commission against its fees, where Contractor is permitted to do so by applicable law. Contractor will advise City of all such commissions in writing prior to binding. If Contractor is required, for any reason, to return any commissions that were credited against the fee, City agrees to reimburse Contractor for this amount.

Contractor is named broker of record for voluntary elective benefits. Contractor will receive commissions as disclosed and agreed to in a separate comprehensive disclosure statement, which will be provided in advance of insurance placements. Where permitted by applicable law, a portion of these commissions will be used for the purpose of delivering services to City's employee benefit plan. Contractor will be responsible for the delivery of services described in this SOW. If services listed in Exhibit A are not permitted to be offset by the commissions received, then City will pay for those services based on the time required to complete the assignment, or via a fixed fee if provided for in this SOW. Unless otherwise set forth in such writing, our fees for other projects

will be determined in accordance with Contractor's then current billing rates and the value of Contractor services based on time, complexity, and the level of skill and urgency required. We will discuss estimated fees in more detail for larger projects. If you remove Contractor as broker of record during the course of this Agreement, commissions are not subject to return.

Contractor will disclose to City all marketing quotes, including any applicable commission rates, received prior to binding any coverages for City's insurance programs. City will also be provided prior to binding with a disclosure of any amounts to be paid to Contractor and/or Contractor affiliate intermediaries if available, in connection with coverages placed for City's insurance programs, including any fees, if applicable, paid to Contractor for services it provides to third parties.

In addition to retail commissions, Contractor may receive additional forms of compensation from insurers and third parties including but not limited to: national additional commissions, subscription market brokerage charges and/or administrative expense reimbursements. This revenue is in addition to and shall not be credited against the fees or any other compensation earned hereunder and shall not be applied to any service set forth in Exhibit A. As of the effective date of this SOW, the Health and Benefits Practice does not accept contingent compensation. If this policy on accepting contingent compensation changes, we will notify you at that time. Additional information is available upon request.

In some instances, insurance placements made by Contractor on City's behalf may require the payment of state surplus lines or other premium taxes and/or fees in addition to the premium itself. Contractor will make every effort to identify any of these taxes and/or fees in advance, but in all instances the payment of these taxes and/or fees will remain City's responsibility. Contractor will invoice City for the payment of these taxes and fees. City acknowledges its responsibility to report and communicate in writing to Contractor changes in exposures, loss related data, and other material changes during the course of this SOW.

Contractor's goal is to procure insurance for City with insurance companies possessing the financial strength to perform in today's economic environment. Toward this objective, Contractor regularly reviews publicly available information concerning an insurer's financial condition, including, but not limited to:

- Approvals by various regulatory authorities;
- Analyses of insurers by professional rating agencies such as A.M. Best, Standard and Poor's, Moody's, and/or Fitch; and
- The input of Contractor's global affiliates and correspondents.

Most Contractor placements are made with insurers that are rated "Excellent" by the professional rating agencies; however, Contractor does not guarantee the solvency of any insurer. Contractor encourages City to review the publicly available information made available by Contractor. The decision to accept or reject an insurer will be made solely by City.

Contractor and/or its affiliates may from time to time maintain contractual relationships with the insurers that are recommended as potential markets, or with whom City's coverage may

ultimately be placed. Further details concerning Contractor's relationship with insurance carriers can be found at <http://www.Contractor.com/about-Contractor/corporate-governance/corporate/market-relationships/contractual-relationship-with-carriers.jsp#>.

Contractor's professional services do not in any case include legal, investment, or accounting services, and we are not a fiduciary to your plans. The services and work product provided by Contractor hereunder are provided solely for City's internal use; they are not intended to be used or relied upon by third parties.

The New Mexico gross receipts tax is included

B. Payment shall be made upon receipt, approval and acceptance by the City of detailed statements containing a report of services completed. Fees and expenses are due and payable within thirty (30) days of the invoice date. Compensation shall be paid only for services actually performed and accepted by the City.

3. **Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on **October 31, 2023** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. **Termination.**

A. **Termination.** This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. The Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the City original copies of all work product, research or papers prepared under this Agreement.

Compensation is based upon hourly rates and expenses, Contractor shall be paid for services rendered and expenses incurred through the date of termination..

5. **Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City Council, this Agreement shall terminate immediately upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

6. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City. However, a party may assign its rights and obligations to an affiliate entity controlled by, controlling, or in common control with the assigning party.

8. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the City.

9. Release.

Except with respect to the provisions detailed in Section 10, the Contractor, upon acceptance of final payment of the amounts due under this Agreement shall operate as a release of the City, its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

10. Confidentiality.

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City. Notwithstanding the foregoing, Contractor may use City's Confidential Information in combination with other data, including the disclosure of such information to third parties, provided that no such City Confidential Information is identifiable by City or City employee and that either party may disclose the other party's Confidential Information to its legal counsel and auditors.

The parties acknowledge that City is a public entity and subject to state laws governing disclosure of public records. City agrees that the confidential and proprietary information of Contractor which is in writing and marked as confidential and proprietary shall be afforded protection under applicable law. Prior to disclosing such confidential and proprietary information of Contractor, City shall immediately notify Contractor of any requests for information made by a third party pursuant to the New Mexico Inspection of Public Records Act (IPRA) to claim applicable exemptions and/or designate those portions of this information that constitute proprietary information exempt from disclosure under IPRA.

11. Product of Service -- Copyright.

Contractor has created, acquired or otherwise has rights in, and may, in connection with the performance of Services hereunder, employ, provide, modify, create, acquire or otherwise obtain rights in, various concepts, ideas, methods, methodologies, procedures, processes, know-how, and techniques (including, without limitation, function, process, system and data models); templates; software systems, user interfaces and screen designs; general purpose consulting and software tools; websites; benefit administration systems; and data, documentation, and proprietary information and processes ("Contractor Information").

All right, title and interest in and to any data, information and other materials furnished to Contractor by City hereunder ("City Information") are and shall remain City's sole and exclusive property. City grants to Contractor a license to use such City Information to provide the Services. Except as provided below, upon full and final payment to Contractor hereunder, any Contractor work product which the parties expressly agree is created solely and exclusively by Contractor for City to be owned by City (the "Deliverables"), if any, shall become the property of City. To the extent that any Contractor Information is contained in any of the Deliverables or provided in connection with the Services, subject to the terms of this Agreement, Contractor hereby grants to City a paid-up, royalty-free, nonexclusive license to use such Contractor Information solely for City's internal use in connection with the Deliverables.

To the extent that Contractor utilizes any of its property, including, without limitation, the Contractor Information, in connection with the performance of Services, such property shall remain the property of Contractor and, except for the limited license expressly granted in the preceding paragraph, the City shall acquire no right or interest in such property. City will honor Contractor copyrights, patents, and trademarks relating to Services, Deliverables and Contractor Information, and will not use Contractor's name or other intellectual property without Contractor's prior written consent.

Nothing contained in this Agreement will prohibit Contractor from using any of its general knowledge or knowledge acquired under this Agreement (excluding City's Confidential Information) to perform similar services for others.

12. Conflict of Interest; Governmental Conduct Act.

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, and Article 16 NMSA 1978.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later

determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this section.

13. Amendment.

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

14. Entire Agreement.

This Agreement, together with any other documents incorporated herein by reference and all related Exhibits and Schedules constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to the subject matter. In the event of any inconsistency between the statements in the body of this Agreement, and the related Exhibits and Schedules, the statements in the body of this Agreement shall control.

15. Penalties for violation of law.

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

16. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and Santa Fe City Code, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

17. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of

competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

19. Professional Liability Insurance.

Contractor shall maintain professional liability insurance throughout the term of this Agreement as required under the New Mexico Tort Claims Act. The Contractor shall furnish the City with proof of insurance of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

20. Other Insurance

If the services contemplated under this Agreement will be performed on or in City facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the City as additional insured.

A. Commercial General Liability insurance shall be written on an occurrence basis and be as broad as ISO Form CG 00 01 with limits not less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate for claims against bodily injury, personal and advertising injury, and property damage. Said policy shall include broad form Contractual Liability coverage and be endorsed to name the City of Santa Fe their officials, officers, employees, and agents as additional insureds.

B. Business Automobile Liability insurance for all owned, non-owned automobiles, with a combined single limit not less than \$1,000,000 per accident.

C. Broader Coverage and Limits. The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Contractor hereunder.

D. Contractor shall maintain the above insurance for the term of this Agreement and name the City as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

21. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection once annually during normal business hours and with advance notice to Contractor, by the City. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments

22. Indemnification and Limitation of Liability.

The Contractor shall defend, indemnify and hold harmless the City from all losses, , claims, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by Contractor's performance under this Agreement as well as the performance of Contractor's employees, agents representative and subcontractors. The

If City suffers Losses (regardless of whether such Loss is based on breach of contract, tort, strict liability, breach of warranties, failure of essential purpose, statutory liability or otherwise) as a result of Contractor's breach of its obligations hereunder with respect to Services performed pursuant to a Schedule, Contractor will be liable to City up to an amount equal to the Contract Price.

The limitations on Contractor's liability contained in the paragraph immediately above will not apply to Losses arising from: (i) Contractor's willful, fraudulent or criminal misconduct; (ii) Contractor's breach of the confidentiality provisions of this Agreement resulting in unauthorized use, access or disclosure of Confidential Information; (iii) bodily injury, including death, or damage to tangible personal or real property incurred while Contractor is performing the Services and to the extent caused by the negligent or willful acts or omissions of Contractor's personnel or agents in performing the Services; or (iv) the infringement of the proprietary rights of a third party by use of the Contractor Information contemplated hereunder.

In no event will either party be liable to the other party for incidental, consequential, special, or punitive damages (including loss of profits, data, business or goodwill, or government fines, penalties, taxes, or filing fees), regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranty, failure of essential purpose, statutory liability or otherwise, and even if advised of the likelihood of such damages.

Notwithstanding the foregoing, as applicable to the City and the Services, Contractor will not be liable to City for any amounts for which City or any of its employee benefits plans would have been responsible to pay irrespective of any act, error or omission by Contractor, including interest adjustments. The parties agree that each party's obligation to indemnify the other pursuant to this Section is subject to each party's agreement to use reasonable efforts to mitigate its own, as well as the other party's, liability, damages, and other losses suffered in connection with and arising out of this Agreement,

23. New Mexico Tort Claims Act

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

24. Invalid Term or Condition.

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

25. Enforcement of Agreement.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

26. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the City:
Human Resources
200 Lincoln Ave.
Santa Fe, New Mexico 87504

To the Contractor:
AON Risk Solutions
6501 Americas Parkway NE, Ste. 650
Albuquerque, New Mexico 87110

With a copy to:
Chief Counsel, ARS
200 East Randolph St.
Chicago, IL 60601

27. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

28. Third Party Beneficiaries

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

Jarel LaPan Hill

Jarel LaPan Hill (Jan 28, 2021 16:05 MST)

JAREL LAPAN HILL, CITY MANAGER

DATE: Jan 28, 2021

CONTRACTOR:

AON RISK SOLUTIONS

Eric Weinstein

NAME ERIC WEINSTEIN

EXECUTIVE VICE PRESIDENT
TITLE

DATE: 12/16/2020
CRS# 02-452382008

Registration # 226976

ATTEST:

Kristine Mihelcic

Kristine Mihelcic (Jan 28, 2021 16:07 MST)

YOLANDA Y. VIGIL, CITY CLERK YV
KIV

CITY ATTORNEY'S OFFICE:

Marcos Martinez

Marcos Martinez (Dec 14, 2020 13:15 MST)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR BUDGET:

Mary McCoy

MARY MCCOY, FINANCE DIRECTOR

The funding sources are:

6050232.510300

6050237.510400

6050232.561653

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