

**CITY OF CHULA VISTA  
CONSULTANT SERVICES AGREEMENT  
WITH MARSH & MCLENNAN AGENCY, LLC.  
TO PROVIDE EMPLOYEE BENEFIT INSURANCE BROKER SERVICES**

This Agreement is entered into effective as of April 1, 2019 ("Effective Date") by and between the City of Chula Vista, a chartered municipal corporation ("City") and Marsh & McLennan Agency, LLC., ("Consultant") (collectively, the "Parties" and, individually, a "Party") with reference to the following facts:

**RECITALS**

WHEREAS, City is desirous of retaining a qualified employee benefit insurance broker to provide insurance broker services for the City's employee benefit program;

WHEREAS, Marsh & McLennan Agency, LLC. is a qualified and licensed insurance broker for employee benefit insurance services; and

WHEREAS, in order to procure these services City solicited proposals in accordance with Chula Vista Municipal Code Section 2.56.110 for professional services, received four proposals, and selected Marsh & McLennan Agency, LLC., as the most qualified amongst those submitting; and

WHEREAS, criteria used in evaluating the firms included: 1) specialized experience and technical competence; (2) expertise and strength of key personnel; and (3) compensation; and

WHEREAS, Consultant warrants and represents that it is experienced and staffed in a manner such that it can deliver the services required of Consultant to City in accordance with the time frames and the terms and conditions of this Agreement.

**[End of Recitals. Next Page Starts Obligatory Provisions.]**

## OBLIGATORY PROVISIONS

NOW, THEREFORE, in consideration of the above recitals, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, City and Consultant hereby agree as follows:

### 1. SERVICES

1.1 Required Services. Consultant agrees to perform the services, and deliver to City the “Deliverables” (if any) described in the attached Exhibit A, incorporated into the Agreement by this reference, within the time frames set forth therein, time being of the essence for this Agreement. The services and/or Deliverables described in Exhibit A shall be referred to herein as the “Required Services.”

1.2 Reductions in Scope of Work. City may independently, or upon request from Consultant, from time to time, reduce the Required Services to be performed by the Consultant under this Agreement. Upon doing so, City and Consultant agree to meet and confer in good faith for the purpose of negotiating a corresponding reduction in the compensation associated with the reduction.

1.3 Additional Services. Subject to compliance with the City’s Charter, codes, policies, procedures and ordinances governing procurement and purchasing authority, City may request Consultant provide additional services related to the Required Services (“Additional Services”). If so, City and Consultant agree to meet and confer in good faith for the purpose of negotiating an amendment to Exhibit A, to add the Additional Services. Unless otherwise agreed, compensation for the Additional Services shall be charged and paid consistent with the rates and terms already provided therein. Once added to Exhibit A, “Additional Services” shall also become “Required Services” for purposes of this Agreement.

1.4 Standard of Care. Consultant expressly warrants and agrees that any and all Required Services hereunder shall be performed in accordance with the highest standard of care exercised by members of the profession currently practicing under similar conditions and in similar locations.

1.5 No Waiver of Standard of Care. Where approval by City is required, it is understood to be conceptual approval only and does not relieve the Consultant of responsibility for complying with all laws, codes, industry standards, and liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of the Consultant or its subcontractors.

1.6 Security for Performance. In the event that Exhibit A Section 4 indicates the need for Consultant to provide additional security for performance of its duties under this Agreement, Consultant shall provide such additional security prior to commencement of its Required Services in the form and on the terms prescribed on Exhibit A, or as otherwise prescribed by the City Attorney.

1.7 Compliance with Laws. In its performance of the Required Services, Consultant shall comply with any and all applicable federal, state and local laws, including the Chula Vista Municipal Code.

1.8 Business License. Prior to commencement of work, Consultant shall obtain a business license from City.

1.9 Subcontractors. Prior to commencement of any work, Consultant shall submit for City’s information and approval a list of any and all subcontractors to be used by Consultant in the performance of the Required Services. Consultant agrees to take appropriate measures necessary to ensure that all subcontractors and

personnel utilized by the Consultant to complete its obligations under this Agreement comply with all applicable laws, regulations, ordinances, and policies, whether federal, state, or local. In addition, if any subcontractor is expected to fulfill any responsibilities of the Consultant under this Agreement, Consultant shall ensure that each and every subcontractor carries out the Consultant's responsibilities as set forth in this Agreement.

1.10 Term. This Agreement shall commence on the earlier to occur of the Effective Date or Consultant's commencement of the Required Services hereunder, and shall terminate when the Parties have complied with all their obligations hereunder; provided, however, provisions which expressly survive termination shall remain in effect.

## **2. COMPENSATION**

2.1 General. For satisfactory performance of the Required Services, City agrees to compensate Consultant in the amount(s) and on the terms set forth in Exhibit A, Section 4. Standard terms for billing and payment are set forth in this Section 2.

2.2 Detailed Invoicing. Consultant agrees to provide City with a detailed invoice for services performed each month, within thirty (30) days of the end of the month in which the services were performed, unless otherwise specified in Exhibit A. Invoicing shall begin on the first of the month following the Effective Date of the Agreement. All charges must be presented in a line item format with each task separately explained in reasonable detail. Each invoice shall include the current monthly amount being billed, the amount invoiced to date, and the remaining amount available under any approved budget. Consultant must obtain prior written authorization from City for any fees or expenses that exceed the estimated budget.

2.3 Payment to Consultant. Upon receipt of a properly prepared invoice and confirmation that the Required Services detailed in the invoice have been satisfactorily performed, City shall pay Consultant for the invoice amount within thirty (30) days. Payment shall be made in accordance with the terms and conditions set forth in Exhibit A and section 2.4, below. At City's discretion, invoices not timely submitted may be subject to a penalty of up to five percent (5%) of the amount invoiced.

2.4 Retention Policy. City shall retain ten percent (10%) of the amount due for Required Services detailed on each invoice (the "holdback amount"). Upon City review and determination of Project Completion, the holdback amount will be issued to Consultant.

2.5 Reimbursement of Costs. City may reimburse Consultant's out-of-pocket costs incurred by Consultant in the performance of the Required Services if negotiated in advance and included in Exhibit A. Unless specifically provided in Exhibit A, Consultant shall be responsible for any and all out-of-pocket costs incurred by Consultant in the performance of the Required Services.

2.6 Exclusions. City shall not be responsible for payment to Consultant for any fees or costs in excess of any agreed upon budget, rate or other maximum amount(s) provided for in Exhibit A. City shall also not be responsible for any cost: (a) incurred prior to the Effective Date; or (b) arising out of or related to the errors, omissions, negligence or acts of willful misconduct of Consultant, its agents, employees, or subcontractors.

2.7 Payment Not Final Approval. Consultant understands and agrees that payment to the Consultant or reimbursement for any Consultant costs related to the performance of Required Services does not constitute a City final decision regarding whether such payment or cost reimbursement is allowable and eligible for payment under this Agreement, nor does it constitute a waiver of any violation by Consultant of the terms of

this Agreement. If City determines that Consultant is not entitled to receive any amount of compensation already paid, City will notify Consultant in writing and Consultant shall promptly return such amount.

### 3. INSURANCE

3.1 Required Insurance. Consultant must procure and maintain, during the period of performance of Required Services under this Agreement, and for twelve months after completion of Required Services, the policies of insurance described on the attached Exhibit B, incorporated into the Agreement by this reference (the "Required Insurance"). The Required Insurance shall also comply with all other terms of this Section.

3.2 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions relating to the Required Insurance must be disclosed to and approved by City in advance of the commencement of work.

3.3 Standards for Insurers. Required Insurance must be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of A V or better, or, if insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A X. For Workers' Compensation Insurance, insurance issued by the State Compensation Fund is also acceptable.

3.4 Subcontractors. Consultant warrants that it will require all sub-consultants/sub-contractors to have insurance policies that are sufficient to cover any liability resulting from their actions (or lack of action, as the case may be) in the performance of this Agreement and to indemnify and defend the City as set forth in Section 4 of this Agreement.

3.5 Additional Insureds. City, its officers, officials, employees, agents, and volunteers must be named as additional insureds with respect to any policy of general liability, automobile, or pollution insurance specified as required in Exhibit B or as may otherwise be specified by City's Risk Manager. The general liability additional insured coverage must be provided in the form of an endorsement to the Consultant's insurance using ISO CG 2010 (11/85) or its equivalent; such endorsement must not exclude Products/Completed Operations coverage.

3.6 General Liability Coverage to be "Primary." Consultant's general liability coverage must be primary insurance as it pertains to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers is wholly separate from the insurance provided by Consultant and in no way relieves Consultant from its responsibility to provide insurance.

3.7 No Cancellation. No Required Insurance policy may be canceled by either Party during the required insured period under this Agreement, except after thirty days' prior written notice to the City by certified mail, return receipt requested. Prior to the effective date of any such cancellation Consultant must procure and put into effect equivalent coverage(s).

3.8 Waiver of Subrogation. Consultant's insurer(s) will provide a Waiver of Subrogation in favor of the City for each Required Insurance policy under this Agreement. In addition, Consultant waives any right it may have or may obtain to subrogation for a claim against City.

3.9 Verification of Coverage. Prior to commencement of any work and to the extent such information is not proprietary to Consultant, Consultant shall furnish City with original certificates of insurance and any amendatory endorsements necessary to demonstrate to City that Consultant has obtained the Required



Insurance in compliance with the terms of this Agreement. The words “will endeavor” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives” or any similar language must be deleted from all certificates. The required certificates and endorsements should otherwise be on industry standard forms. The City reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications. If any document required in this section 3.9 is not provided to City because it is proprietary, Consultant warrants that Consultant has (and will maintain) the any and all insurance required by this Agreement.

3.10 Claims Made Policy Requirements. If General Liability, Pollution and/or Asbestos Pollution Liability and/or Errors & Omissions coverage are required and are provided on a claims-made form, the following requirements also apply:

a. The “Retro Date” must be shown, and must be before the date of this Agreement or the beginning of the work required by this Agreement.

b. Insurance must be maintained, and evidence of insurance must be provided, for at least three (3) years after completion of the work required by this Agreement.

c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a “Retro Date” prior to the effective date of this Agreement, the Consultant must purchase “extended reporting” coverage for a minimum of five (5) years after completion of the work required by this Agreement.

d. A copy of the claims reporting requirements must be submitted to the City for review.

3.11 Not a Limitation of Other Obligations. Insurance provisions under this section shall not be construed to limit the Consultant’s obligations under this Agreement, including Indemnity.

3.12 Additional Coverage. To the extent that insurance coverage provided by Consultant maintains higher limits than the minimums appearing in Exhibit B, City requires and shall be entitled to coverage for higher limits maintained.

#### 4. INDEMNIFICATION

4.1. General. To the maximum extent allowed by law, Consultant shall protect, defend, indemnify and hold harmless City, its elected and appointed officers, agents, employees and volunteers (collectively, “Indemnified Parties”), from and against any and all claims, demands, causes of action, costs, expenses, (including reasonable attorneys’ fees and court costs), liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence, or willful misconduct of Consultant, its officials, officers, employees, agents, and contractors, arising out of or in connection with the performance of the Required Services, the results of such performance, or this Agreement. This indemnity provision does not include any claims, damages, liability, costs and expenses arising from the sole negligence or willful misconduct of the Indemnified Parties. Also covered is liability arising from, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions of the Indemnified Parties which may be in combination with the active or passive negligent acts or omissions of the Consultant, its employees, agents or officers, or any third party.

4.2. Modified Indemnity Where Agreement Involves Design Professional Services. Notwithstanding the foregoing, if the services provided under this Agreement are design professional services, as defined by

California Civil Code section 2782.8, as may be amended from time to time, the defense and indemnity obligation under Section 1, above, shall be limited to the extent required by California Civil Code section 2782.8.

4.3 Costs of Defense and Award. Included in Consultant's obligations under this Section 4 is Consultant's obligation to defend, at Consultant's own cost, expense and risk, any and all suits, actions or other legal proceedings that may be brought or instituted against one or more of the Indemnified Parties. Subject to the limitations in this Section 4, Consultant shall pay and satisfy any judgment, award or decree that may be rendered against one or more of the Indemnified Parties for any and all related legal expenses and costs incurred by any of them.

4.4. Consultant's Obligations Not Limited or Modified. Consultant's obligations under this Section 4 shall not be limited to insurance proceeds, if any, received by the Indemnified Parties, or by any prior or subsequent declaration by the Consultant. Furthermore, Consultant's obligations under this Section 4 shall in no way limit, modify or excuse any of Consultant's other obligations or duties under this Agreement.

4.5. Enforcement Costs. Consultant agrees to pay any and all costs City incurs in enforcing Consultant's obligations under this Section 4.

4.6 Limitation of Liability. In no event shall Consultant be liable for any indirect, special, incidental, consequential or punitive damages or for any lost profits arising out of or relating to any services provided by Consultant or its affiliates. The aggregate liability of Consultant, its affiliates and its and their employees to the City arising out of or relating to the provision of services by Consultant or its affiliates shall not exceed \$10,000,000. This provision applies to the fullest extent permitted by applicable law and to all causes of action.

4.7 Waiver of Jury Trial. Each party, on behalf of itself and its affiliates, to the fullest extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a trial by jury in any action or other legal proceeding arising out of or relating to this Agreement or any services provided by Consultant or its affiliates. The waiver applies to any action or legal proceeding, whether sounding in contract, tort or otherwise.

4.8 Survival. Consultant's obligations under this Section 4 shall survive the termination of this Agreement.

## **5. FINANCIAL INTERESTS OF CONSULTANT.**

5.1 Form 700 Filing. The California Political Reform Act and the Chula Vista Conflict of Interest Code require certain government officials and consultants performing work for government agencies to publicly disclose certain of their personal assets and income using a Statement of Economic Interests form (Form 700). In order to assure compliance with these requirements, Consultant shall comply with the disclosure requirements identified in the attached Exhibit C, incorporated into the Agreement by this reference.

5.2 Disclosures; Prohibited Interests. Independent of whether Consultant is required to file a Form 700, Consultant warrants and represents that it has disclosed to City any economic interests held by Consultant, or its employees or subcontractors who will be performing the Required Services, in any real property or project which is the subject of this Agreement. Consultant warrants and represents that it has not employed or retained any company or person, other than a bona fide employee or approved subcontractor working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants and represents that it has not paid or agreed to pay any company or person, other than a bona fide employee or approved subcontractor working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent

upon or resulting from the award or making of this Agreement. Consultant further warrants and represents that no officer or employee of City, has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, the proceeds hereof, or in the business of Consultant or Consultant's subcontractors. Consultant further agrees to notify City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement. For breach or violation of any of these warranties, City shall have the right to rescind this Agreement without liability.

## **6. REMEDIES**

6.1 Termination for Cause. If for any reason whatsoever Consultant shall fail to perform the Required Services under this Agreement, in a proper or timely manner, or if Consultant shall violate any of the other covenants, agreements or conditions of this Agreement (each a "Default"), in addition to any and all other rights and remedies City may have under this Agreement, at law or in equity, City shall have the right to terminate this Agreement by giving five (5) days written notice to Consultant. Such notice shall identify the Default and the Agreement termination date. If Consultant notifies City of its intent to cure such Default prior to City's specified termination date, and City agrees that the specified Default is capable of being cured, City may grant Consultant up to ten (10) additional days after the designated termination date to effectuate such cure. In the event of a termination under this Section 6.1, Consultant shall immediately provide City any and all "Work Product" (defined in Section 7 below) prepared by Consultant as part of the Required Services. Such Work Product shall be City's sole and exclusive property as provided in Section 7 hereof. Consultant may be entitled to compensation for work satisfactorily performed prior to Consultant's receipt of the Default notice; provided, however, in no event shall such compensation exceed the amount that would have been payable under this Agreement for such work, and any such compensation shall be reduced by any costs incurred or projected to be incurred by City as a result of the Default.

6.2 Termination or Suspension for Convenience of City. City may suspend or terminate this Agreement, or any portion of the Required Services, at any time and for any reason, with or without cause, by giving specific written notice to Consultant of such termination or suspension at least fifteen (15) days prior to the effective date thereof. Upon receipt of such notice, Consultant shall immediately cease all work under the Agreement and promptly deliver all "Work Product" (defined in Section 7 below) to City. Such Work Product shall be City's sole and exclusive property as provided in Section 7 hereof. Consultant shall be entitled to receive just and equitable compensation for this Work Product in an amount equal to the amount due and payable under this Agreement for work satisfactorily performed as of the date of the termination/suspension notice plus any additional remaining Required Services requested or approved by City in advance that would maximize City's value under the Agreement.

6.3 Waiver of Claims. In the event City terminates the Agreement in accordance with the terms of this Section, Consultant hereby expressly waives any and all claims for damages or compensation as a result of such termination except as expressly provided in this Section 6.

6.4 Administrative Claims Requirements and Procedures. No suit or arbitration shall be brought arising out of this Agreement against City unless a claim has first been presented in writing and filed with City and acted upon by City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may be amended, the provisions of which, including such policies and procedures used by City in the implementation of same, are incorporated herein by this reference. Upon request by City, Consultant shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.

6.5 Governing Law/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in San Diego County, State of California.

6.6 Service of Process. Consultant agrees that it is subject to personal jurisdiction in California. If Consultant is a foreign corporation, limited liability company, or partnership that is not registered with the California Secretary of State, Consultant irrevocably consents to service of process on Consultant by first class mail directed to the individual and address listed under "For Legal Notice," in section 1.B. of Exhibit A to this Agreement, and that such service shall be effective five days after mailing.

## 7. OWNERSHIP AND USE OF WORK PRODUCT

7.1 Work product/Intellectual Property. All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems and any other materials or properties produced in whole or in part under this Agreement in connection with the performance of the Required Services which is not Intellectual Property, as defined below, (collectively "**Work Product**") shall be the sole and exclusive property of City. City shall have unrestricted authority to publish, disclose, distribute, and otherwise use, copyright or patent, in whole or in part, any such Work Product, without requiring any permission of Consultant. With respect to computer files containing data generated as Work Product, Consultant shall make available to City, upon reasonable written request by City, the necessary functional computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

Consultant should retain all patent, copyright and other intellectual property rights in the methodologies, methods of analysis, ideas, concepts, know-how, models, tools, techniques, skills, knowledge and experience (collectively, "**Intellectual Property**") owned or possessed by Consultant before the commencement of, or acquired by Consultant during or after, the performance of the services. To the extent that any Intellectual Property is embodied in any Work Product, Consultant will grant to City a non-exclusive, non-transferable, royalty-free license to use the Intellectual Property for its internal use, but solely in connection with and to the extent necessary for use of the Work as contemplated by the Agreement. Unless Consultant provides its prior written consent, City will not use, or disclose to any third party, Consultant's advice or Work Product other than as mutually contemplated by the parties when Consultant first was retained to provide such advice or Work Product or as required by law.

7.2 Confidentiality. To the extent permitted by law, the City and Consultant will endeavor to keep Consultant's Intellectual Property confidential. However, the City, as a public entity, is subject to and required to comply with the California Public Records Act ("CPRA"; Government Code section 6250 *et. seq.*). Should the City receive a CPRA request which involves Consultant's Intellectual Property, the City shall provide notice of such request to Consultant. The City will respond to the CPRA request as it deems appropriate and lawful in its sole and unfettered discretion.

## 8. GENERAL PROVISIONS

8.1 Amendment. This Agreement may be amended, but only in writing signed by both Parties.

8.2 Assignment. City would not have entered into this Agreement but for Consultant's unique qualifications and traits. Consultant shall not assign any of its rights or responsibilities under this Agreement, nor any part hereof, without City's prior written consent, which City may grant, condition or deny in its sole discretion.

8.3 Authority. The person(s) executing this Agreement for Consultant warrants and represents that they have the authority to execute same on behalf of Consultant and to bind Consultant to its obligations hereunder without any further action or direction from Consultant or any board, principle or officer thereof.

8.4 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one Agreement after each Party has signed such a counterpart.

8.5 Entire Agreement. This Agreement together with all exhibits attached hereto and other agreements expressly referred to herein, constitutes the entire Agreement between the Parties with respect to the subject matter contained herein. All exhibits referenced herein shall be attached hereto and are incorporated herein by reference. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are superseded.

8.6 Record Retention. During the course of the Agreement and for three (3) years following completion of the Required Services, Consultant agrees to maintain, intact and readily accessible, all data, documents, reports, records, contracts, and supporting materials relating to the performance of the Agreement, including accounting for costs and expenses charged to City, including such records in the possession of sub-contractors/sub-consultants.

8.7 Further Assurances. The Parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the Parties.

8.8 Independent Contractor. Consultant is and shall at all times remain as to City a wholly independent contractor. Neither City nor any of its officers, employees, agents or volunteers shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents ("Consultant Related Individuals"), except as set forth in this Agreement. No Consultant Related Individuals shall be deemed employees of City, and none of them shall be entitled to any benefits to which City employees are entitled, including but not limited to, overtime, retirement benefits, worker's compensation benefits, injury leave or other leave benefits. Furthermore, City will not withhold state or federal income tax, social security tax or any other payroll tax with respect to any Consultant Related Individuals; instead, Consultant shall be solely responsible for the payment of same and shall hold the City harmless with respect to same. Consultant shall not at any time or in any manner represent that it or any of its Consultant Related Individuals are employees or agents of City. Consultant shall not incur or have the power to incur any debt, obligation or liability whatsoever against City, or bind City in any manner.

8.9 Notices. All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands and requests to be sent to any Party shall be deemed to have been properly given or served if personally served or deposited in the United States mail, addressed to such Party, postage prepaid, registered or certified, with return receipt requested, at the addresses identified in this Agreement at the places of business for each of the designated Parties as indicated in Exhibit A, or otherwise provided in writing.

8.10 No Third-Party Beneficiaries. Neither this Agreement nor the provision of the Services is intended to confer any right or benefit on any third party and the provision of Services under this Agreement cannot reasonably be relied upon by any third party. Except as otherwise specifically provided, this Agreement is made for the sole benefit of the parties. No other persons shall have any rights or remedies by



reason of this Agreement against either of the parties or shall be considered to be third-party beneficiaries of this Agreement in any way.

8.11 Disclaimers. The form of Consultant's compensation, whether by commission, fee, or both, shall not affect Consultant's role as insurance broker or the scope of the Services to be provided by Consultant. City agrees that all decisions regarding the amount, type or terms of coverage shall be City's ultimate responsibility. While Consultant may provide advice and recommendations, the City must decide the specific coverage that is appropriate for its particular circumstances and financial position. Consultant's service obligations to the City are solely contractual in nature. The City acknowledges that, in performing services, Consultant and its affiliates are not acting as a fiduciary for the City, except to the extent required by applicable law, and do not have a fiduciary or other enhanced duty to the City.

8.12 Compensation Disclosure. Consultant hereby provides (as set forth in Exhibit D.) its standard compensation disclosure which may be updated from time to time.

**(End of page. Next page is signature page.)**



**SIGNATURE PAGE  
CONSULTANT SERVICES AGREEMENT**

IN WITNESS WHEREOF, by executing this Agreement where indicated below, City and Consultant agree that they have read and understood all terms and conditions of the Agreement, that they fully agree and consent to bound by same, and that they are freely entering into this Agreement as of the Effective Date.

MARSH & MCLENNAN AGENCY, LLC.

BY: 

LUANN MCSWIGGEN

Director of Employee Health & Benefits – San Diego

CITY OF CHULA VISTA

BY: 

MARY CASILLAS SALAS  
MAYOR

ATTEST<sup>1</sup>

BY: 

Kerry K. Bigelow, MMC  
City Clerk

APPROVED AS TO FORM

BY: 

Glen R. Googins  
City Attorney

<sup>1</sup> Attestation signature only required if the Mayor signs the Agreement. If Mayor is not signing agreement, delete entire attestation signature block.

**EXHIBIT A**  
**SCOPE OF WORK AND PAYMENT TERMS**

**1. Contact People for Contract Administration and Legal Notice**

A. City Contract Administration:

Courtney Chase, Director of Human Resources  
276 Fourth Avenue (Bldg. C), Chula Vista, CA 91910  
(619) 409-5927  
cchase@chulavistaca.gov

For Legal Notice Copy to:

City of Chula Vista  
City Attorney  
276 Fourth Avenue, Chula Vista, CA 91910  
619-691-5037  
CityAttorney@chulavistaca.gov

B. Consultant Contract Administration:

**MARSH & MCLENNAN AGENCY, LLC.**  
9171 Towne Centre Drive, Suite 500, San Diego, CA 92122  
(858) 587-7585  
Dan.Murphy@MarshMMA.com

For Legal Notice Copy to:

LuAnn McSwiggen, Director of Employee Health & Benefits – San Diego  
9171 Towne Centre Drive, Suite 100, San Diego, CA 92122  
(858) 587-7168  
LuAnn.McSwiggen@MarshMMA.com

**2. Required Services**

A. General Description:

Responsibilities of Consultant. Consultant will provide Insurance Broker Services to the City of Chula Vista to perform the full range of services related to the design, implementation, maintenance, communication, maintenance, communication, and improvement of the City of Chula Vista's group medical, dental, vision, life insurance, STD/LTD and voluntary plans.

Responsibilities of the City. The City shall be solely responsible for the accuracy and completeness of information and other documents furnished to Consultant. The City recognizes and agrees that all services and deliverables provided by Consultant are based on data and information furnished by the City. Consultant will be under no obligation to investigate or verify the completeness or accuracy of any such data or information, nor will Consultant have any liability for any errors, deficiencies or omissions in any services, deliverables, evaluations, reports or recommendations provided to, or any insurance coverages placed on behalf of, the City that are based on such inaccurate or incomplete data or information."

B. Detailed Description:

Services as described in the Marsh & McLennan response to RFP P18-18/19, dated December 24, 2018; specifically, but not limited to:

1. Assist the City in long-range employee benefit goals and strategies.
2. Assist the City in administering all group insurance plans, Flex Plan, COBRA, responding to questions from and providing information to staff, and providing other consulting services during the course of the plan year.
3. Monitor ongoing contracts, including plan administration, provider compliance with contracts, booklets, employee communication, and educational materials. This includes assisting the City with the development of performance guarantees relating to providers' performance of services for the City and evaluate the performance of vendors.
4. Research and recommend to the City any new developments in the employee benefits law, employee benefit programs, wellness programs, and health insurance reform on an ongoing basis.
5. Notify providers of any benefit or administrative changes.
6. Assist City representatives on labor relations issues concerning group insurance and employee benefit programs.
7. Review claims experience, claim service, and claim administration to ensure maximum benefit to the City.
8. Determine and recommend the most economical funding methods for the benefit programs and assist in forecasting/budgeting by providing detailed rate increase projections.
9. Meet with and provide reports, as requested by City's Human Resources Departments, to various City representatives including City Council, City Manager, Human Resources, and the Health Insurance Committee made up of representatives from all bargaining groups.
10. Assist the City with the implementation and communication of new programs or changes to existing programs including during Benefits Open Enrollment, which will include attending and presenting information at employee meetings.
11. Conduct quarterly meetings with City Benefits staff to discuss any questions or issues with benefit providers, coordinate and prepare for upcoming employee informational meetings or benefits-related events.
12. As requested by the City, prepare bid specifications and solicit proposals from insurance markets, which specialize in group insurance plans as needed. Evaluate bids and bidders, including administration, claim payment procedures, customer service, network, reserve establishment policies, financial soundness, and identifying the most cost-beneficial package from among the various bidders. Provide the City with original documents from bid solicitations.
13. Represent and negotiate for the City on all provider negotiations on all issues including those related to premiums, benefit levels, plan design, and special terms and conditions.
14. Provide the City with annual surveys of benefits of San Diego City employers.

3. **Term:** In accordance with Section 1.10 of this Agreement, the term of this Agreement shall begin April 1, 2019 and end on December 31, 2020 for completion of all Required Services. The Parties may further exercise up to three (3) one-year extensions through December 31, 2023. Any extension of this agreement must be approved in writing by the Human Resources Director.

4. **Compensation:**

**A. Form of Compensation**

The compensation for the Service Provider shall be based on monthly broker commissions built into the employee benefit plans. The Benefits Broker/Consultant's commission is based upon percentages negotiated with the various insurance companies and paid directly to the Service Company by various insurance companies. The commission percentages and annual dollar equivalents shall be disclosed to City annually. The Service Company shall maintain all, documents, papers accounting records, and other evidence pertaining to commission received, and shall make such materials available to City at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment under this Agreement, for inspection by the City, and for furnishing of copies to the City, if requested.

For performance of all of the Defined Services by Broker/Consultant as herein required, the Broker/Consultant shall be compensated for all the Defined Services by commissions from, but not limited to, the insurance companies that provide the following coverage to the City:

- Medical Insurance
- Dental Insurance
- Vision Insurance
- Life Insurance
- Short-Term/Long-Term Disability Insurance
- Voluntary Insurance Plans (such as Accident, Critical Illness, and/or Hospital Indemnity Insurance)

The Service Company's commission shall not exceed the amounts as described below:

For the period April 1, 2019 to December 31, 2019, compensation will be in accordance with the current commission schedules for each of the City's employee benefits insurance companies and benefits providers, not to exceed an annual total of \$152,546.

As stated in the Cost Proposal, commission percentages built into the premium rates each year will be reevaluated each year.

For the period of January 1, 2020 – December 31, 2020, the annual total is not to exceed \$154,500.

If the parties mutually agree to extend this Agreement for an additional one (1) year term as described in Exhibit A, Section 3., the Service Company's commission shall not exceed the amounts described below:

January 1, 2021 – December 31, 2021:      \$159,100 (annual total)

January 1, 2022 – December 31, 2022:      \$163,900 (annual total)

January 1, 2023 – December 31, 2023: \$168,800 (annual total)

**B. Reimbursement of Costs**

☒ None, the compensation includes all costs

**5. Special Provisions:**

☒ None

## EXHIBIT B INSURANCE REQUIREMENTS

Consultant shall adhere to all terms and conditions of Section 3 of the Agreement and agrees to provide the following types and minimum amounts of insurance, as indicated by checking the applicable boxes (x).

	Type of Insurance	Minimum Amount	Form
<input checked="" type="checkbox"/>	General Liability: Including products and completed operations, personal and advertising injury	\$2,000,000 per occurrence for bodily injury, personal injury (including death), and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this Agreement or the general aggregate limit must be twice the required occurrence limit  Additional Insured Endorsement or Blanket AI Endorsement for City*  Waiver of Recovery Endorsement	Insurance Services Office Form CG 00 01  <i>*Must be primary and must not exclude Products/Completed Operations</i>
<input checked="" type="checkbox"/>	Automobile Liability	\$1,000,000 per accident for bodily injury, including death, and property damage	Insurance Services Office Form CA 00 01 Code 1-Any Auto Code 8-Hired Code 9-Non Owned
<input checked="" type="checkbox"/>	Workers' Compensation Employer's Liability	\$1,000,000 each accident \$1,000,000 disease policy limit \$1,000,000 disease each employee Waiver of Recovery Endorsement	
<input checked="" type="checkbox"/>	Professional Liability (Errors & Omissions)	\$1,000,000 each occurrence \$2,000,000 aggregate	

Other Negotiated Insurance Terms: "NONE"



**EXHIBIT C**  
**CONSULTANT CONFLICT OF INTEREST DESIGNATION**

The Political Reform Act<sup>2</sup> and the Chula Vista Conflict of Interest Code<sup>3</sup> (“Code”) require designated state and local government officials, including some consultants, to make certain public disclosures using a Statement of Economic Interests form (Form 700). Once filed, a Form 700 is a public document, accessible to any member of the public. In addition, consultants designated to file the Form 700 are also required to comply with certain ethics training requirements.<sup>4</sup>

- ☒ A. Consultant IS a corporation or limited liability company and is therefore EXCLUDED<sup>5</sup> from disclosure.
- ☐ B. Consultant NOT a corporation or limited liability company and disclosure designation is as follows:

**APPLICABLE DESIGNATIONS FOR INDIVIDUAL(S) ASSIGNED TO PROVIDE SERVICES**  
(Category descriptions available at [www.chulavistaca.gov/departments/city-clerk/conflict-of-interest-code](http://www.chulavistaca.gov/departments/city-clerk/conflict-of-interest-code).)

<i>Name</i>	<i>Email Address</i>	<i>Applicable Designation</i>
Enter Name of Each Individual Who Will Be Providing Service Under the Contract – If individuals have different disclosure requirements, duplicate this row and complete separately for each individual	Enter email address(es)	<input type="checkbox"/> <b>A. Full Disclosure</b> <input type="checkbox"/> <b>B. Limited Disclosure</b> (select one or more of the categories under which the consultant shall file): <input type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. Justification:  <input type="checkbox"/> <b>C. Excluded from Disclosure</b>

**1. Required Filers**

Each individual who will be performing services for the City pursuant to the Agreement and who meets the definition of “Consultant,” pursuant to FPPC Regulation 18700.3, must file a Form 700.

**2. Required Filing Deadlines**

Each initial Form 700 required under this Agreement shall be filed with the Office of the City Clerk via the City's online filing system, NetFile, within 30 days of the approval of the Agreement. Additional Form 700 filings will be required annually on April 1 during the term of the Agreement, and within 30 days of the termination of the Agreement.

**3. Filing Designation**

The City Department Director will designate each individual who will be providing services to the City pursuant to the Agreement as *full disclosure*, *limited disclosure*, or *excluded from disclosure*, based on an analysis of the services the Consultant will provide. Notwithstanding this designation or anything in the Agreement, the Consultant is ultimately responsible for complying with FPPC regulations and filing requirements. If you have any questions regarding filing requirements, please do not hesitate to contact the City Clerk at (619)691-5041, or the FPPC at 1-866-ASK-FPPC, or (866) 275-3772 \*2.

Pursuant to the duly adopted City of Chula Vista Conflict of Interest Code, this document shall serve as the written determination of the consultant's requirement to comply with the disclosure requirements set forth in the Code.

**Completed by: Jennifer Abalos**

<sup>2</sup> Cal. Gov. Code §§81000 *et seq.*; FPPC Regs. 18700.3 and 18704.

<sup>3</sup> Chula Vista Municipal Code §§2.02.010-2.02.040.

<sup>4</sup> Cal. Gov. Code §§53234, *et seq.*

<sup>5</sup> CA FPPC Adv. A-15-147 (*Chadwick*) (2015); *Davis v. Fresno Unified School District* (2015) 237 Cal.App.4<sup>th</sup> 261; FPPC Reg. 18700.3 (Consultant defined as an “individual” who participates in making a governmental decision; “individual” does not include corporation or limited liability company).

## EXHIBIT D

### MARSH & MCLENNAN AGENCY LLC (“MMA”) COMPENSATION DISCLOSURE

Marsh & McLennan Agency LLC (“MMA”) prides itself on being an industry leader in the area of transparency and compensation disclosure. We believe you should understand how we are paid for the services we are providing to you. We are committed to compensation transparency and to disclosing to you information that will assist you in evaluating potential conflicts of interest.

As a professional insurance producer, MMA and its subsidiaries facilitate the placement of insurance coverage on behalf of our clients. As an independent insurance agent, MMA may have authority to obligate an insurance company on behalf of our clients and as a result, we may be required to act within the scope of the authority granted to us under our contract with the insurer. In accordance with industry custom, we are compensated either through commissions that are calculated as a percentage of the insurance premiums charged by insurers, or fees agreed to with our clients.

MMA receives compensation through one or a combination of the following methods:

- **Retail Commissions** – A retail commission is paid to MMA by the insurer (or wholesale broker) as a percentage of the premium charged to the insured for the policy. The amount of commission may vary depending on several factors, including the type of insurance product sold and the insurer selected by the client.
- **Client Fees** – Some clients may negotiate a fee for MMA’s services in lieu of, or in addition to, retail commissions paid by insurance companies. Fee agreements are in writing, typically pursuant to a Client Service Agreement, which sets forth the services to be provided by MMA, the compensation to be paid to MMA, and the terms of MMA’s engagement. The fee may be collected in whole, or in part, through the crediting of retail commissions collected by MMA for the client’s placements.
- **Contingent Commissions** – Many insurers agree to pay contingent commissions to insurance producers who meet set goals for all or some of the policies the insurance producers place with the insurer during the current year. The set goals may include volume, profitability, retention and/or growth thresholds. Because the amount of contingent commission earned may vary depending on factors relating to an entire book of business over the course of a year, the amount of contingent commission attributable to any given policy typically will not be known at the time of placement.
- **Supplemental Commissions** – Certain insurers and wholesalers agree to pay supplemental commissions, which are based on an insurance producer’s performance during the prior year. Supplemental commissions are paid as a percentage of premium that is set at the beginning of the calendar year. This percentage remains fixed for all eligible policies written by the insurer during the ensuing year. Unlike contingent commissions, the amount of supplemental commission is known at the time of insurance placement. Like contingent commissions, they may be based on volume, profitability, retention and/or growth.
- **Wholesale Broking Commissions** – Sometimes MMA acts as a wholesale insurance broker. In these placements, MMA is engaged by a retail agent that has the direct relationship with the insured. As the wholesaler, MMA may have specialized expertise, access to surplus lines markets, or access to specialized insurance facilities that the retail agent does not have. In these transactions, the insurer typically pays a commission that is divided between the retail and wholesale broker pursuant to arrangements made between them.

- **Other Compensation** – From time to time, MMA may be compensated by insurers for providing administrative services to clients on behalf of those insurers. Such amounts are typically calculated as a percentage of premium or are based on the number of insureds. Additionally, insurers may sponsor MMA training programs and/or events.

We will be pleased to provide you additional information about our compensation and information about alternative quotes upon your request. For more detailed information about the forms of compensation we receive please refer to our Marsh & McLennan Agency Compensation Guide at <https://www.marshmma.com/resource/compensation-guide-for-client.pdf>