

Amendment to contract
Dated January 1, 2006
Between The City of Fort Collins and
Mercer Health & Benefits LLC

RE: Amendment to Contract for P999 Benefits Consultant

Paragraph 2 – Contract Period - Amend to read as follows:

This Agreement shall commence as of January 1, 2011, and shall continue in full force and effect until December 31, 2011, unless sooner terminated as herein provided.

Paragraph 5 – Compensation - Amend to read as follows:

Compensation. In consideration of the services to be performed pursuant to this Agreement, the City agrees to pay Professional on a time and reimbursable direct costs basis with maximum compensation for 2011 not to exceed Seventy Five Thousand Dollars and no cents (\$75,000.00).

Monthly partial payments based upon the Professional's billings and itemized statements of reimbursable direct costs are permissible. The amounts of all such partial payments shall be based upon the Professional's City-verified progress in completing the services to be performed pursuant hereto and upon the City's approval of the Professional's reimbursable direct costs. Final payment shall be made following acceptance of the work by the City. Upon final payment, all designs, plans, reports, specifications, drawings and other services rendered by the Professional specifically for the City ("Work Product") shall become the sole property of the City. The Professional retains its rights in its own intellectual capital (such as methodologies, know how, models, tools and any graphic or digitized representation of any of these) now possessed, or subsequently developed by the Professional. To the extent Work Product contains Professional's proprietary information, trade secrets or confidential commercial information, the Professional may designate in writing to the City those portions of the Work Product it deems to be confidential. The City will notify Professional of any requests for the disclosure of Work

product designated by Professional as confidential in accordance with this paragraph 5. To the extent allowed by applicable law, the City will cooperate with Professional to prevent disclosure of information designated as confidential pursuant to this paragraph 5.

Paragraph 14 – *Law/Severability-Amend by deleting the last sentence and adding the following:*

It is the intent of the parties that the provisions of this Agreement shall be enforced to the fullest extent permitted by applicable law. To the extent that the terms set forth in this Agreement or any word, phrase, clause or sentence is found to be illegal or unenforceable for any reason, such word, phrase, clause or sentence shall be modified, deleted or interpreted in such a manner so as to afford the party for whose benefit it was intended the fullest benefit commensurate with making this Agreement as modified, enforceable and the balance of this Agreement shall not be affected thereby, the balance being construed as severable and independent.

Paragraph 15 – Special Provisions – Add Exhibit C

Special provisions or conditions relating to the services to be performed pursuant to this Agreement are set forth in Exhibit "B", consisting of three (3) pages, attached hereto and incorporated herein by this reference and Exhibit "C", consisting of one (1) page, attached hereto and incorporated herein by this reference.

Exhibit C - Limitation of Liability:

- A. The aggregate liability of the Professional, its Affiliates and any officer, director or employee of Professional and its Affiliates ("Professional Parties") to City, City's Affiliates, City's officers, directors or employees or those of City's Affiliates and any third party (including any benefit plan, its fiduciaries or any plan sponsor) for any and all Losses arising out of or relating to the provision of any Services at any time by any of the Professional Parties shall not exceed the greater of one times the Compensation for the Services giving rise to such Loss and \$100,000. Professional shall have no liability for the acts or omissions of any third party (other than our subcontractors).
- B. In no event shall either Party or its Affiliates be liable in connection with this Agreement or the Services to the other Party, its Affiliates or any third party for any loss of profit or incidental, consequential, special, indirect, punitive or similar damages. The provisions of this Section 7 shall apply to the fullest extent permitted by law. Nothing in this Section 7 limiting the liability of a Party shall apply to any liability that has been finally determined by a court to have been caused by the fraud of such Party.
- C. For purposes of this Agreement "Loss" means damages, claims, liabilities, losses, awards, judgments, penalties, third party claims, interest, costs and expenses, including reasonable attorneys' fees, whether arising under any legal theory including, but not limited to claims sounding in tort (such as for negligence, misrepresentation or otherwise), contract (whether express or implied), by statute, or otherwise, claims seeking any kind of damages and claims seeking to apply any standard of liability such as negligence, statutory violation or otherwise. For the avoidance of doubt, multiple claims arising out of or based upon the same act, error or omission, or series of continuous, interrelated or repeated acts, errors or omissions shall be considered a single Loss.
- D. Each of the Parties acknowledges that the Compensation for the Services to be provided under this Agreement and the applicable SOW reflects the allocation of risk set forth in this Section 7.

A new Paragraph 16 is hereby added as follows:

16. 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 professional or its affiliates. The waiver applies to any action or legal proceeding, whether sounding in contract, tort or otherwise.

A new Paragraph 17 is hereby added as follows:

17. No Third Party Beneficiaries. Neither this Agreement nor the provisions of the Services is intended to confer any right or benefit on any third party. The provision of Services under this Agreement cannot reasonably be relied on by any third party.

A new Paragraph 18 is hereby added as follows:

18. Entire Agreement. This Agreement is the complete, entire and fully integrated agreement between the Parties. This Agreement supersedes, revokes, cancels, extinguishes and replaces all prior or contemporaneous understandings, agreements, undertakings, negotiations and discussions, whether oral or written, between the parties. The parties agree that, except for the obligations under this Agreement, they have no obligations to one another and have not relied upon any promises, representations, warranties, agreements, covenants or undertakings, other than those expressly set forth in this Agreement. Because the parties are of equal commercial sophistication in negotiating contracts and have negotiated this Agreement at arms length, it shall not be construed for or against any party. Each party is entering into this Agreement voluntarily, has read and understands all provisions of this Agreement and has had the opportunity to seek and obtain the advice of counsel on its rights and responsibilities under, and the terms and conditions of, this Agreement.

THE CITY OF FORT COLLINS, COLORADO

By:


James B. O'Neill II, CPPO, FNIGP
Director of Purchasing & Risk Management

Date:

1/12/2011

MERCER HEALTH & BENEFITS LLC

By:

Wendy Stone

Title:

Principal

Date:

1-10-11

ATTEST:

Corporate Secretary

David Carey - Fwd: Re: Postpone Medical TPA and Benefits Consultant RFP

From: Jim O'Neill
To: Amy Sharkey; Gwen Feit; Janet Miller
Date: 4/27/2010 4:23 PM
Subject: Fwd: Re: Postpone Medical TPA and Benefits Consultant RFP
CC: David Carey

Amy, we would need to get fees from both vendors for services in 2011. Mercer is currently charging \$75,000. Will they want an additional amount to help with the bid process? Once we have fees for 2011, you would do an AIS with justification, which you have the basis for that now, and an ordinance. If we extend for 1 year what we would be saying is that by the end of 2011 we would have gone out for both a benefits consultant and a Medical TPA provider to start on 1/1/2012. Depending on when you need approval of fees for open enrollment we would be bidding the Medical TPA services starting this time next year. We could then do the benefits consultant rfp in August/September of 2011. Is that your take on this as well. Jim

>>> Amy Sharkey 04/27/2010 2:27 PM >>>
FYI.....

Jim,

What do I need to do to get the ball rolling soon?

thanks much, Amy