



Travis County Commissioners Court Agenda Request

Meeting Date: Tuesday, September 3, 2013

Prepared By/Phone Number: C.W. Bruner, 854-9760

Elected/Appointed Official/Dept. Head: Cyd Grimes

Commissioners Court Sponsor: Judge Biscoe

Approve contract award for Consultant Services for RFP Development and Contract Transition for Third Party Administration, RFS NO. 1210-009-CW, to the highest ranked Proposer, Gallagher Benefit Services, Inc.

- **Purchasing Recommendation and Comments:** Purchasing concurs with department and recommends approval of requested action. This procurement action meets the compliance requirements as outlined by the statutes.

RFS No. 1210-009-CW was issued on December 14, 2012. A total of one hundred ninety-one (191) vendors were solicited and seven (7) proposals were received. After the evaluation process and receipt of the Best and Final Offers, the evaluation committee and Travis County HRMD recommends contract award to the highest ranked Proposer. Based on the total score, the evaluation committee and Travis County HRMD recommends contract award to Gallagher Benefit Services, Inc.

Under this Contract, Gallagher Benefit Services, Inc. will assist Travis County with the development and analysis of a separate solicitation to be issued by December 2013 for the third party administration of the County's self-funded employee benefits plans. The current third party administrator, United Healthcare (UHC), has been under contract with the County since October 1, 2001 and the contract expires September 30, 2014.

While UHC has been a great partner with the County, the Benefits Committee feels it is in the best interest of the Travis County Health Fund to receive proposals from other administrators and carriers to ensure the County is receiving the best service, rates and discounts in the marketplace. Due to the complexity of health plan design, premium structures, actuarial analysis of carrier discounts, and negotiating

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to Cheryl Aker in the County Judge's office, Cheryl.Aker@co.travis.tx.us by Tuesdays at 5:00 p.m. for the next week's meeting.

administrative rates, hiring a third-party consultant to assist with the development and analysis of a RFP can help the County realize substantial savings with the current or a new third-party administrator. The highest ranked Proposer, Gallagher Benefit Services, Inc., has been placing and servicing Third Party Administrator/Administrative Services Organization (TPA/ASO) plans in excess of twenty (20) years across the United States and beyond. Gallagher Benefit Services, Inc. will give Travis County the unique opportunity to review for consideration many varied and sometimes “cutting edge” opportunities offered by a TPA/ASO alternative, based on the group’s specific needs. This will include opportunities to discuss whether it is the TPA or Carrier Administrator, Reinsurance, optimizing Medical and Rx plan designs, and or even negotiating direct Hospital contracts in order to get the best value for the group plans. The partnership with Gallagher Benefit Services, Inc. will help Travis County realize all options are considered.

Phase One Services will be awarded at a firm-fixed price of \$40,000.00 in which Gallagher Benefit Services, Inc. shall collaborate with the County to provide the services below:

- Develop a Request for Proposal based on County specifications to provide Third Party Administration services for the County self-funded employee/retiree benefit plan.
- Work within the County purchasing procedures and with Purchasing Office, assist with solicitation for qualified offers, assist with a pre-proposal conference, if appropriate, and provide follow-up answers to Purchasing Office for proposer questions.
- Analyze and evaluate self-funded administration proposals submitted and prepare a written report of findings and recommendations in accordance with County specifications upon direction of County staff.
- Review and analyze current health plan costs and design. Provide reports, actuarial analysis and recommendations for plan changes to maintain sustainability of self-funded health plan.
- Work in conjunction with County to negotiate services and pricing with prospective TPA’s that have submitted proposals.

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to Cheryl Aker in the County Judge’s office, Cheryl.Aker@co.travis.tx.us by **Tuesdays at 5:00 p.m.** for the next week’s meeting.

- Operate in an advisory capacity; if requested by the County, participate in meetings to coordinate and review proposer finalist presentations and facilitate development of recommendations.
- Illustrate and define the advantages/disadvantages associated with each proposal along with the rate comparison using the requested format.
- Present recommendations as needed to County decision makers.

If the County exercises its option to implement Phase Two by requesting any one or more of the tasks listed below, they will be on an as needed basis and provided at an hourly rate of \$170.00/Hour. Gallagher Benefit Services, Inc. shall assist County in the transition and implementation of any of the following tasks:

- Assist in preparation of plan Summary of Benefits and Coverage and summary plan descriptions.
- Assist in review of new contract.
- Assist in eligibility, electronic upload set up, testing and auditing.
- Assist in employee/retiree training, and preparation of communication materials.
- Assist in review of pharmacy set up, including formulary, if any, and quantity limits and pre-authorizations.
- Assist in setting up standard and custom reports.
- Assist in review of plan set up with TPA.
- Assist with initial auditing of claims processing, for 30-60 days to ensure correct system set up.
- Assist in training TPA customer service on County plan's and processes.
- Gallagher shall provide additional recommended tasks based on their professional expertise and knowledge of similar projects.

➤ **Contract-Related Information:**

Award Amount: \$40,000.00 for Phase I Services, Firm Fixed Price, \$170.00/Hour for Phase II Services on an as needed basis.

Contract Type: Bilateral, Non-Term

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to Cheryl Aker in the County Judge's office, Cheryl.Aker@co.travis.tx.us by Tuesdays at 5:00 p.m. for the next week's meeting.

Contract Period: September 3, 2013 through September 30, 2014

➤ **Solicitation-Related Information:**

Solicitations Sent:	119	Responses Received:	7
HUB Information:	N/A	% HUB Subcontractor:	N/A

➤ **Funding Information:**

- Shopping Cart/Funds Reservation in SAP: 300000688
- Comments: Requisitions are processed at time of requirement.

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to Cheryl Aker in the County Judge's office, Cheryl.Aker@co.travis.tx.us by Tuesdays at 5:00 p.m. for the next week's meeting.



Human Resources Management

700 Lavaca Street, Suite 420

P.O. Box 1748

Austin, Texas 78767

(512) 854-9165 / FAX(512) 854-6677

June 24, 2013

TO: C.W. Bruner, Purchasing Agent

FROM: John Rabb, Benefits Manager *JR*
Shannon Steele, Benefits Administrator *SMS*

SUBJECT: Recommendation for Award, RFP # 1210-009-CW, Consultant Services for RFP Development and Contract Transition for Third Party Administrator

The evaluation committee recommends the award for RFP #1210-009-CW to the top ranked proposer, Gallagher Benefit Services, Inc.

Travis County issued a Request for Proposal (RFP) soliciting responses and bids from experienced consulting firms whose services will be utilized to assist the County with the development and analysis of a separate RFP for the third party administration of the County's self-funded employee benefit plans. The current third party administrator, United Healthcare (UHC), has been under contract with the County since October 1, 2001.

While UHC has been a great partner with the County, the Benefits Committee feels it is in the best interest of the Travis County Health Fund to receive quotes and proposals from all interested and qualified administrators and carriers to ensure the County is receiving the best services, rates, programs, and discounts in the marketplace. Due to the complexity of health plan design, premium structures, actuarial analysis of carrier discounts, and negotiating administrative rates, hiring a third-party consultant to assist with the development and then the analysis of a RFP can help the County realize substantial savings with the current or a new third-party administrator.

The five-person evaluation committee, all members of the Benefits Committee, along with Purchasing and County Attorney staff spent several months carefully reviewing, interviewing, discussing, evaluating and scoring all respondents to the initial Request for Proposal. The following criterion was used to evaluate and rank the respondents:

- Demonstrated Capabilities and Expertise of Personnel
- Demonstrated Experience of the Firm
- Fee Proposal
- Proposed Approach to Providing Services

The top ranked bidder, Gallagher Benefit Services, Inc., has been placing and servicing TPA/ASO plans in excess of twenty (20) years across the United States and beyond. Gallagher Benefit Services, Inc. gives the client the unique opportunity to review for consideration many varied and sometimes “cutting edge” opportunities offered by a TPA/ASO alternative, based on the group’s specific needs. Whether it is the TPA or Carrier Administrator, Reinsurance (Specific and/or Aggregate), optimizing Medical and Rx plan designs to get the best value and or even negotiating direct Hospital contracts, the client realizes that no stone is left unturned for their group.

The evaluation committee felt the expertise, experience and resources available at Gallagher Benefit Services, Inc. would provide the highest value to the County for developing an RFP and then reviewing, analyzing and negotiating a contract for Third Party Administration for the plan year beginning October 1, 2014. The evaluation committee was very impressed with all respondents to the RFP and the committee is very appreciative of the time and effort they put in to their proposals.

If you have any questions, please contact John Rabb at 512-854-2742 or Shannon Steele at 512-854-6046.

Funds Reservation 300000688

General Data			
Document type	FC	Document type	030
Company code	1000	Document date	08/23/2013
FM area	1000	Posting date	08/23/2013
Controlling area	1000	Currency	USD/ 1.00000
Statistics			
Entered by	MCREEN	Created on	08/23/2013
Last changed by		Last changed	
More Data			
Text	TPA for Health Contracts (Gallagher)		
Reference			
Overall Amount	40,000.00 USD		

Document item 001			
Text	Consulting services		
Commitment item	511890	Funds center	1110068956
Fund	8956	G/L account	511890
Cost center	1110068956	Due on	
Vendor		Customer	
Amount	40,000.00 USD		



Evaluation Matrix, Consultant Services for RFP Development and Contract Transition for TPA, BAFO

EVALUATION CATEGORY DESCRIPTION	Weight	Frost HR Consulting	Holmes Murphy & Associates, Inc.	Gallagher Benefit Services, Inc.	McGriff Seibels & Williams
1 Demonstrated Capabilities and Expertise of Personnel: Demonstrated training, expertise and experience of key personnel to provide the services proposed.	30.00%	102.23	99.58	119.03	109.23
2 Demonstrated Experience of the Firm: Demonstrated experience of the firm in providing the services requested in this RFS and previous similar projects. This includes a description of the Proposer's ability to meet all requirements of the RFS.	30.00%	103.73	106.50	126.00	116.33
3 Fee Proposal:	30.00%	90.64	60.00	86.11	95.00
4 Proposed Approach to Providing Services: Proposer shall have adequate current fulltime staff, both registered professionals in an applicable field and technical and administrative support staff, to competently and efficiently perform the work.	10.00%	36.40	22.10	43.00	28.10
OVERALL PROPOSER SCORE		333.00	288.18	374.14	348.66

Purchasing Representative Name

6/17/2013
Date

**CONTRACT BETWEEN
GALLAGHER BENEFIT SERVICES, INC AND TRAVIS COUNTY
FOR CONSULTANT SERVICES
FOR RFP DEVELOPMENT AND CONTRACT TRANSITION FOR
THIRD PARTY ADMINISTRATOR FOR COUNTY HEALTH CARE BENEFITS**

This Contract is entered into by the following parties:

Travis County, a political subdivision of Texas ("County"), and

Gallagher Benefit Services, Inc., a Delaware corporation ("Gallagher").

RECITALS

County needs professional consulting services for the development of a Request for Proposals ("RFP") for Third Party Administration of current county health care benefits. This includes development of the RFP, involvement in the solicitation, analyzing and evaluating responses, and providing recommendations to County staff as Phase One. In addition, County may elect to exercise its option to engage Gallagher to assist in the transition and implementation from the current third party administrator to the party or parties selected as a result of the Request for Proposals as Phase Two.

Gallagher will provide these professional services.

Commissioners Court of County may exempt personal and professional services from complying with the competitive procurement process under TEX. LOC. GOV'T CODE ANN., § 262 et seq.

AGREEMENT

The parties agree to the terms and conditions stated in this contract.

1.0 TERM OF CONTRACT: The contract shall be effective upon award by the Travis County Commissioners Court and, unless sooner terminated as provided in this contract, shall continue in full force and effect through successful completion and County's acceptance of Phase One, unless County exercises its option to implement Phase Two. If County exercises its option to implement any one or more of the tasks that are included in Phase Two, County and Gallagher shall amend this contract to specify the tasks to be performed and the maximum compensation due for these tasks and this contract shall continue in full force and effect through successful completion and County's acceptance of Phase Two. If Travis County Commissioners Court authorizes Gallagher to complete services in addition to those listed in this contract, County and Gallagher shall amend this contract to specify the additional services to be performed and the additional compensation due.

2.0 CONTRACT ADMINISTRATOR AND CONTRACT MANAGER

2.1 The Purchasing Agent is the chief procurement officer and acts as the overall contract administrator.

2.2 The contract manager oversees day to day work under this contract on behalf of the County, and has the authority to interpret and define in writing policies and make decisions about Gallagher's performance. For purposes of monitoring performance, establishing requirements, approving and coordinating schedules, users, and equipment, the county department named below shall act as contract manager on behalf of Travis County:

Travis County
Human Resources Management Department
700 Lavaca Street, Suite 420
Austin, Texas 78701

3.0 HIPAA, HITECH AND FINAL RULE COMPLIANCE

3.1 Simultaneously with this contract, Gallagher and County shall enter into a Business Associate Agreement that complies with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH Act) and other applicable state and federal laws, all as amended from time to time including as amended by the Final Rule issued by the Secretary of the Department of Health and Human Services on January 17, 2013.

3.2 Gallagher shall comply with its HIPAA Privacy Policy as stated in full and as described in part in Attachment C.

4.0 GALLAGHER PERFORMANCE OF SERVICES

4.1 During the term of the contract, Gallagher shall perform, in a timely manner, the services and activities described in Phase One of Attachment A of this contract in accordance with its terms and conditions. Gallagher shall perform all services and activities under this contract in a professional manner, at a standard acceptable for similar services in Travis County and in a prompt and efficient manner.

4.2 If County exercises its option for any of the services in Phase II, County and Gallagher shall amend this contract and state the services to be performed, the maximum payable for these services at the rate of \$170 per hour for the persons listed in Attachment D.

4.3 Delivery of all reports and services under this contract shall be FREE ON BOARD to final destination at the address for the Contract Manager. The Contract Manager is:

John Rabb
Benefits Manager

Human Resources Management Department
700 Lavaca Street, Suite 420
P.O. Box 1748
Austin, Texas 78767
Phone: (512) 854-9165/Fax: (512) 854-6677
Email: John.Rabb@co.travis.tx.us

4.4 Gallagher shall communicate all requests for direction relating to services performed under this contract to Contract Manager. However, Contract Manager shall not serve as the agent of Travis County or the Travis County Commissioners Court for any other purpose than conveying factual or statistical information. Gallagher may communicate requests for factual or statistical information relating to services performed pursuant to this contract to Contract Manager and may rely on all factual or statistical information supplied by Contract Manager in response to these requests.

4.5 Gallagher shall perform the services described in Phase One of Attachment A and Gallagher shall perform these services in a manner consistent with the representations made by it in Attachment B and use only the persons named and described in Attachment D in performing these services. Gallagher acknowledges that the completion of Phase One in compliance with the schedule in Attachment B is essential to preserve the value of the services and allow County to apply the information to the improvement of the county benefits in the fiscal year beginning October 1, 2014 and shall use its best efforts to complete the phase as specified.

4.6 All work products produced and delivered to the County under this contract including programming, reports, charts, schedules, or other appended documentation to any responses, inquiries, correspondence, and related material submitted by Gallagher shall become property of the County upon receipt; provided that Gallagher may retain copies of all work products

4.7 Gallagher performs services using the purchase order method. Gallagher references the contract number and the purchase order number on all invoices to the contract manager for payment.

4.8 If any services, functions or responsibilities not specifically described in this contract are required for the proper performance and provision of the services, they shall be deemed to be implied by and included within the scope of the services to the same extent and in the same manner as if specifically described in this contract. Except as otherwise expressly provided in the contract, Gallagher shall be responsible for providing the facilities, personnel and other resources as necessary to provide the services.

5.0 COUNTY OBLIGATIONS

5.1 After completion of the services in Phase I and submission of a final report on these services to County, County shall review the report and if, in the opinion of the Benefit Manager, it is satisfactory and complies with the requirements in the contract and Attachment A, County shall pay \$40,000 to Gallagher in compliance with the Texas Prompt Payment Act.

5.2 After completion of the services described in any amendment related to County's exercise of its option for services in Phase Two and submission of a final report on these services to County, County shall review the report and if, in the opinion of the Benefit Manager, it is satisfactory and complies with

the requirements in the contract and Attachment A, County shall pay Gallagher the amount stated in the amendment.

5.3 If County and Gallagher amend this contract to provide for services other than additional meetings that are outside the scope of this contract and the options provided in it when it is originally approved, Gallagher shall provide these services and invoice County at the rate of \$170 per hour based on the time that is required to provide these additional services by the persons listed in Attachment D, or the maximum amount stated in the amendment for these additional services, whichever is less.

6.0 ATTACHMENTS AND CONSTRUCTION OF CONTRACT PRIORITIES

6.1 The attachments lettered and named below are made a part of this contract, and constitute promised performances by Gallagher in accordance with 4.1 of this contract:

- 6.1.1 Attachment A, BAFO, Scope of Services
- 6.1.2 Attachment B, Proposal from Gallagher , including Schedule in Appendix 3
- 6.1.3 Attachment C, Executive Summary, Gallagher HIPAA Privacy Policy
- 6.1.4 Attachment D, List of Contractor Staff Authorized to Provide Services
- 6.1.5 Attachment E, County's General Contract Provisions
- 6.1.6 Attachment F, Affidavit

6.2 If there is a conflict between these documents:

6.2.1 The Business Associate Agreement overrides this document and all of its Attachments.

6.2.2 Attachment C overrides this document and Attachments A, B, D and E to it.

6.2.3 This document overrides Attachments A, B, D and E to it;

6.2.4 Attachment A overrides Attachments B, D and E.

6.2.5 Attachment B overrides Attachments D and E.

7. EXEMPTION FROM COUNTY PURCHASING ACT

7.1 Pursuant to TEX. LOC. GOV'T CODE ANN., § 262 *et seq.*, Commissioners Court hereby orders that this contract is exempt from the requirements of the County Purchasing Act because it is a contract for the purchase of personal or professional services.

TRAVIS COUNTY

GALLAGHER BENEFIT SERVICES, INC.

By: _____
Samuel T. Biscoe
County Judge

By:  _____
Name Bruce Romine
Title Area President

Date: _____

Date: _____

APPROVED AS TO FORM:

County Attorney

AVAILABILITY OF FUNDS CONFIRMED:

Nicki Riley, Travis County Auditor

Date: _____

COMPLIANCE WITH LAW AND POLICY CONFIRMED AND APPROVED:

Cyd V. Grimes, Travis County Purchasing Agent

Date: _____

ATTACHMENT A
BAFO

SCOPE OF SERVICES:

Gallagher shall provide the services in Phase One. Gallagher grants County the option to implement any one or more of the tasks that are included in Phase Two.

Phase One:

Gallagher shall collaborate with the Benefits Division of the Human Resources Management Department, Purchasing Office and any additional designated groups.

Gallagher shall:

- Develop a Request for Proposal based on County specifications to provide Third Party Administration (TPA) services for the County self-funded employee/retiree benefit plan.
- Work within the County purchasing procedures and with Purchasing Office, assist with solicitation for qualified offers, assist with a pre-proposal conference, if appropriate, and provide follow-up answers to Purchasing Office for proposer questions.
- Analyze and evaluate self-funded administration proposals submitted and prepare a written report of findings and recommendations in accordance with County specifications upon direction of County staff.
- Review and analyze current health plan costs and design. Provide reports, actuarial analysis and recommendations for plan changes to maintain sustainability of self-funded health plan.
- Work in conjunction with County to negotiate services and pricing with prospective TPA's that have submitted proposals.
- Operate in an advisory capacity; if requested by the County, participate in meetings to coordinate and review proposer finalist presentations and facilitate development of recommendations.
- Illustrate and define the advantages/disadvantages associated with each proposal along with the rate comparison using the requested format.
- Present recommendations as needed to County decision makers.

Phase Two:

If County exercises its option to implement any one or more of the tasks that are included in Phase Two, Gallagher shall assist County in the transition and implementation of any of the following tasks. Gallagher shall provide additional recommended tasks based on their professional expertise and knowledge of similar projects.

Gallagher shall:

- Assist in preparation of plan Summary of Benefits and Coverage and summary plan descriptions.
- Assist in review of new contract.
- Assist in eligibility, electronic upload set up, testing and auditing.
- Assist in employee/retiree training, and preparation of communication materials.
- Assist in review of pharmacy set up, including formulary, if any, and quantity limits and pre-authorizations.
- Assist in setting up standard and custom reports.
- Assist in review of plan set up with TPA.
- Assist with initial auditing of claims processing, for 30-60 days to ensure correct system set up.
- Assist in training TPA customer service on County plan's and processes.

ATTACHMENT D
LIST OF GALLAGHER STAFF AUTHORIZED TO PROVIDE SERVICES

Phase 1:

Bruce Romine – Area President
P. Todd Dorton - Consultant
Nancy Webster – Area Senior Vice President
Maurene Padilla – Benefits Analyst
Chris Stearns – Benefits Analyst
Kim Taylor – Marketing Unit Leader
Klara White – Account Manager
Megan Clark – Marketing Specialist
Erin Perry – Marketing Specialist
Christina Guerrero- Executive Assistant
Patricia (Trish) Cochran –Records Administrator
Brenda Flores- Internal Account Supervisor

Additional Staff for Phase 2:

Allison Vaughn – Project Manager
Alyson Williams – Health Management Coordinator
Cheri Fell – Health Management Consultant
Nina Guerrero – Account Coordinator
Blake Strotkamp- Account Coordinator
Jaime Bruhn – Technical Analyst
Shannon Kennedy – Director of Operations
Sherrie Johnson - Benefit Specialist Unit Leader

Benefit Specialists:

Christine Acheson
Harmony Campos
Letty De La Garza

ATTACHMENT E
PART IV - GENERAL PROVISIONS

1.0 GENERAL DEFINITIONS:

- 1.1 "Auditor" means the Travis County Auditor or her designee.
- 1.2 "Commissioners Court" means Travis County Commissioners Court.
- 1.3 "County Building" means any County owned buildings and does not include buildings leased by County.
- 1.4 "Is doing business" and "has done business" mean:
 - 1.4.1 Paying or receiving in any calendar year any money or other valuable thing which is worth more than \$250 in the aggregate in exchange for personal services or for purchase of any property or property interest, either real or personal, either legal or equitable; or
 - 1.4.2 Loaning or receiving a loan of money; or goods or otherwise creating or having in existence any legal obligation or debt with a value of more than \$250 in the aggregate in a calendar year;
 - 1.4.3 but does not include
 - 1.4.3.1 any retail transaction for goods or services sold to a Key Contracting Person at a posted, published, or marked price available to the general public.
 - 1.4.3.2 any financial services product sold to a Key Contracting Person for personal, family or household purposes in accordance with pricing guidelines applicable to similarly situated individuals with similar risks as determined by Contractor in the ordinary course of its business; and
 - 1.4.3.3 a transaction for a financial service or insurance coverage made on behalf of Contractor if Contractor is a national or multinational corporation by an agent, employee or other representative of Contractor who does not know and is not in a position that he or she should have known about the Contract.
- 1.5 "Key Contracting Person" means any person or business listed in Exhibit A to Affidavit.
- 1.6 "Purchasing Agent" means the Travis County Purchasing Agent or her designee.

- 1.7 "County" means Travis County, Texas, a political subdivision of the State of Texas.
- 1.8 "Historically Underutilized Business" or "HUB" means any entity or association formed to make a profit in which one (1) or more persons who are educationally or economically disadvantaged because of their identification as members of one of the following groups: African Americans, Hispanic Americans, Asian Pacific Americans, Native Americans or Women of any ethnicity have the following rights:
- 1.8.1 own at least fifty-one percent (51%) of all classes of shares or other equitable securities and have incidents of ownership, including an interest in profit and loss, equivalent to the percentage of capital, equipment or expertise contributed to the business where ownership is measured as though the community property interest of a spouse is the separate property of that spouse, if both spouses certify in writing that the non-participating spouse relinquishes control over his or her spouse, and his or her community property, and not as if it is subject to the community property interest of the other spouse; and
- 1.8.2 have a proportionate interest and demonstrated active participation in the control, operation and management of the business's affairs; where control means having recognized ultimate control over all day-to-day decisions affecting the business, and is be known to, and at least tacitly acknowledged in day-to-day operations by employees of the business and by those with whom business is conducted, and holding a title commensurate with that control.
- 1.9 "TPA" means Third Party Administrator.
- 1.10 "ASO" means Administrative Services Only
- 2.0 GENERAL CONDITIONS:** Gallagher represents that it has thoroughly examined the drawings, specifications, schedule, instructions and all other contract documents. Gallagher has made all investigations necessary to be thoroughly informed regarding plant and facilities for delivery of material, equipment and/or services as required by the proposal conditions.
- 3.0 GALLAGHER CERTIFICATIONS:**
- 3.1 Gallagher certifies that Gallagher is a duly qualified, capable, and bondable business entity, Gallagher is not in Receivership and does not contemplate it, and Gallagher has not filed for bankruptcy and does not contemplate it. Further Gallagher certifies that Gallagher is not currently delinquent with respect to payment of property taxes within Travis County.
- 3.2 Gallagher represents that none of the materials used in this contract are subject to any copyrights, patents or licenses. If Gallagher is incorrect, Gallagher warrants that all

applicable copyrights, patents, and licenses which may exist on materials used in this contract have been adhered to and further warrants that County shall not be liable for any infringement of those rights and any rights granted to County shall apply for the duration of the contract. Gallagher shall indemnify County, its officers, agents and employees from all claims, losses, damages, causes of action and liability of every kind including expenses of litigation, and court costs and attorney fees for damages to any person or property arising in connection with any alleged or actual infringement of existing licenses, patents, or copyrights applicable to materials used in this contract.

- 4.0 DISPUTES AND APPEALS:** The Purchasing Agent acts as the County representative in the issuance and administration of this contract in relation to disputes. Any document, notice, or correspondence not issued by or to the Purchasing Agent or other authorized County person, in relation to disputes is void unless otherwise stated in this contract. If Gallagher does not agree with any document, notice, or correspondence issued by the Purchasing Agent, or other authorized County person, Gallagher shall submit a written notice to the Purchasing Agent within ten (10) calendar days after receipt of the document, notice, or correspondence, outlining the exact point of disagreement in detail. If the matter is not resolved to Gallagher's satisfaction, Gallagher may submit a written Notice of Appeal to the Commissioners Court, through the Purchasing Agent, if the Notice is submitted within ten (10) calendar days after receipt of the unsatisfactory reply, Gallagher then has the right to be heard by Commissioners Court.
- 5.0 FUNDING OUT:** Despite anything to the contrary in this contract, if, during budget planning and adoption, Commissioners Court fails to provide funding for this Contract for the following fiscal year of County, County may terminate this contract after giving Gallagher thirty (30) days written notice that this contract is terminated due to the failure to fund it.
- 6.0 INVOICING/PAYMENTS:**
- 6.1 Gallagher shall use the electronic reporting system (Vendor Tracking System) implemented by Travis County and shall require all subcontractors to use this system for system reporting for tracking payments. County HUB staff shall provide training and additional information regarding the use of this system.
- 6.2 Gallagher shall provide County with an Internal Revenue Form W-9, Request for Taxpayer Identification Number and Certification, that is completed in compliance with the Internal Revenue Code and its rules and regulations before any contract funds are payable.
- 6.3 Payment shall be made by check or warrant by County upon satisfactory delivery and acceptance of products and services and submission of an invoice to the address below:

County Auditor
P.O. Box 1748

Austin, Texas 78767

County does not pay invoices that are in excess of the amount authorized by the Purchase Order.

- 6.4 Invoices shall include at least the following:
 - 6.4.1 name, address, and telephone number of Gallagher and similar information in the event payment is to be made to a different address;
 - 6.4.2 County Contract or Purchase Order number;
 - 6.4.3 identification of products or services as outlined in this contract;
 - 6.4.4 quantity or quantities, applicable unit prices, total prices, and total amount; and
 - 6.4.5 any additional payment information called for by this contract..

- 6.5 Payment shall be deemed to have been made on the date of mailing of the check or warrant. For purposes of payment discounts, time will begin upon satisfactory delivery of products and services and/or submission of acceptable invoice, whichever is later. Partial payments will not be made unless specifically requested and approved by County prior to contract award.

- 6.6 Accrual and payment of interest on overdue payments shall be governed by TEX. GOV'T CODE ANN., ch. 2251.

- 7.0 **DISCOUNTS:** In connection with any discount offered, time will be computed from the date of receipt of services or from the date a correct invoice is received, whichever is later. Payment is deemed to have been made on the date of mailing of the check or warrant.

- 8.0 **COVENANT AGAINST CONTINGENT FEES:** Gallagher warrants that no persons or selling agency has been retained to solicit this contract upon an understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial selling agencies maintained by Gallagher to secure business. For breach or violation of this warranty, County may terminate this contract without liability, or in its discretion, as applicable, add to or deduct from the contract price for consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

- 9.0 **ASSIGNMENT:**
 - 9.1 Assignment. The parties to this contract shall not assign any of the rights or obligations under this contract without the prior written consent of the other party. No official, employee, representative or agent of County has the authority to approve any assignment under this contract unless that specific authority is expressly granted by Commissioners Court.

- 9.2 **Successors Bound.** The terms, provisions, covenants, obligations and conditions of this contract are binding upon and inure to the benefit of the successors in interest and the assigns of the parties to this contract if the assignment or transfer is made in compliance with the provisions of this contract.
- 9.3 If a change of name is required, the Purchasing Agent shall be notified immediately. No change in the obligation of or to Gallagher will be recognized until it is approved by Commissioners Court.
- 10.0 FORCE MAJEURE:** If the performance by Gallagher of any of its obligations hereunder is interrupted or delayed by any occurrence not occasioned by its own conduct, whether such occurrence is an act of God or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not a party to this contract, then it shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects of it.
- 11.0 TERMINATION FOR CONVENIENCE:** County may terminate this contract upon thirty (30) calendar days' written notice for any reason deemed by Commissioners Court to serve the public interest, or resulting from any governmental law, ordinance, regulation, or court order. County shall not terminate this contract for Convenience when termination is authorized under any other provisions of this contract, or when County intends to award the same or similar contract requirements to another source. If such termination occurs, County shall pay Gallagher those costs directly attributable to work done in preparation for completion or compliance with contract prior to termination. County shall not pay any costs which are recoverable in the normal course of doing the business in which Gallagher is engaged. In addition, costs that can be mitigated through the sale of supplies or inventories shall not be paid. If County pays for the cost of supplies or materials obtained for use under this contract, those supplies or materials become the property of County and shall be delivered to the FOB point shown in the contract, or as designated by the Purchasing Agent. County shall not be liable for loss of any profits anticipated under this contract.
- 12.0 TERMINATION FOR DEFAULT:** Failure by either County or Gallagher to perform any provisions of this contract shall constitute a breach of contract. Either party may require corrective action within ten (10) calendar days after date of receipt of written notice citing the exact nature of the other's breach. Failure to take corrective action or failure to provide a satisfactory written reply excusing such failure within the ten (10) calendar days shall constitute a default. The defaulting party shall be given a twenty (20) calendar day period within which to show cause why the contract should not be terminated for default. Commissioners Court may take whatever action as its interest may appear, resulting from such notice. All notices for corrective action, breach, default or show cause, shall be issued by the Purchasing Agent or County legal representative only and all replies shall be made in writing to the County Purchasing Agent or County legal representative at the address shown on Paragraph 21. Notices issued by or to anyone other than the Purchasing Agent or County legal representative shall be null and void, and shall be considered as not having been issued or received. County may enforce the performance of this contract in any manner prescribed by law in case of default and may contract with another party with or without competition or

further notification to Gallagher. Gallagher shall pay at least any difference in the cost of securing the services covered by this contract, or compensate for any loss or damage to the County derived hereunder if it becomes necessary to contract with another source because of a default, plus reasonable administrative costs and attorney's fees. If County terminates this contract for default, County, its agents or representatives, shall not be liable for loss of any profits anticipated under this contract.

13.0 CHANGES:

13.1 Unless specifically provided otherwise in this contract, any change to the terms of this contract or any attachments to it shall be made by written change order signed by both parties. The Purchasing Agent may at any time, by written document, make changes within the general scope of this contract that do not result in price changes in any one of the following:

13.1.1 Description of services;

13.1.2 Place of delivery;

13.1.3 Any aspect of the contract to correct errors of a general administrative nature or other mistakes, the correction of which does not affect the scope of the contract and does not result in expense to Gallagher.

13.2 Gallagher acknowledges that no officer, agent, employee or representative of County has any authority to change the scope of this contract or any attachments to it unless expressly granted that specific authority by the Commissioners Court.

13.3 If any change under 13.1 causes an increase or decrease in the cost, or time required for performance of any part of the work under this contract, the Commissioners Court shall make an equitable adjustment in the contract price, the delivery schedule, or both, and modify the contract. Gallagher must submit any "proposal for adjustment" within 30 days after the date of receipt of the written order.

13.4 Gallagher shall submit all requests for alterations, additions or deletions of the terms of this contract or any attachment to it to the Purchasing Agent. The Purchasing Agent shall present Gallagher's requests to Commissioners Court for consideration.

14.0 COUNTY ACCESS: Gallagher shall maintain and make available all books, documents, and other evidence pertinent to the costs and expenses of this contract for inspection, audit or reproduction by any authorized representative of County to the extent this detail will properly reflect these costs and expense. These include all costs; both direct and indirect costs, cost of labor, material, equipment, supplies, and services, and all other costs and expenses of whatever nature for which reimbursement is claimed under this contract. All required records shall be maintained until an audit is completed and all required questions arising therefrom are resolved, or 3 years after completion of the contract term, whichever occurs first. However, the records shall be retained beyond the third year if an audit is in

progress or the findings of a completed audit have not been resolved satisfactorily.

15.0 SUBCONTRACTS:

15.1 Gallagher shall not enter into any subcontracts for any service or activity relating to the performance of this contract without the prior written approval or the prior written waiver of this right of approval from County. It is acknowledged by Gallagher that no officer, agent, employee or representative of County has the authority to grant such approval or waiver unless expressly granted that specific authority by the Commissioners Court.

15.2 If a subcontract is approved, Gallagher must make a "good faith" effort to take all necessary and reasonable steps to insure HUBs maximum opportunity to be subcontractors under this contract. Gallagher must obtain County approval of all proposed HUB subcontractors through the Purchasing Agent. Failure by Gallagher to make a good faith effort to employ HUBs as subcontractors constitutes a breach of this contract and may result in termination of this contract.

16.0 MONITORING: County may perform periodic on-site monitoring of Gallagher's compliance with the terms of this contract, and of the adequacy and timeliness of Gallagher's performance under this contract. After each monitoring visit, County shall provide Gallagher with a written report of the monitor's findings. If the report notes deficiencies in Gallagher's performances under the terms of this contract, it shall include requirements and deadlines for the correction of those deficiencies by Gallagher. Gallagher shall take action specified in the monitoring report prior to the deadlines specified.

17.0 ASSIGNMENT OF CONTRACT OR MORTGAGE: Gallagher must not transfer or assign any part of or right or interest in this contract, directly or indirectly, voluntary or involuntary without the express written approval of the Commissioners Court. Gallagher must not execute any mortgage, or issue any bonds, shares of stock, or other evidence of interest in County buildings.

18.0 CIVIL RIGHTS/ADA COMPLIANCE: Gallagher shall provide all services and activities required in a manner that would comply with the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, Public Law 93-1122, Section 504, and with the provisions of the Americans With Disabilities Act of 1990, Public Law 101-336 [S.933] if Gallagher were an entity bound to comply with these laws. Gallagher shall not discriminate against any employee or applicant for employment based on race, religion, color, sex, national origin, age or handicapped condition.

19.0 GRATUITIES: County may terminate this contract if it is found that gratuities of any kind including entertainment, or gifts were offered or given by Gallagher or any agent or representative of Gallagher to any County Official or employee with a view toward securing favorable treatment with respect of this contract. If this contract is terminated by the County pursuant to this provision, County shall be entitled, in addition to any other rights and remedies, to recover from Gallagher at least three times the cost incurred by Gallagher in

providing the gratuities.

20.0 FORFEITURE OF CONTRACT: Gallagher shall forfeit all benefits of the contract and County shall retain all performance by Gallagher and recover all consideration or the value of all consideration paid to Gallagher pursuant to this contract if:

20.1 Gallagher was doing business at the time of submitting its proposal or had done business during the 365 day period immediately prior to the date on which its proposal was due with one or more Key Contracting Persons, if Gallagher has not disclosed the name of that Key Contracting Person in Exhibit A to Affidavit, which is expressly incorporated in this contract; or

20.2 Gallagher does business with a Key Contracting Person after the date on which the proposal that resulted in this contract was submitted and prior to full performance of the contract and fails to disclose the name of that Key Contracting Person in writing to each member of the Commissioners Court and to the County Clerk within ten (10) days after commencing business with that Key Contracting Person.

21.0 NOTICES:

21.1 Any notice required or permitted to be given under this contract by one party to the other shall be in writing. The notice is deemed to have been given immediately if delivered in person to the party to whom the notice is given. The notice is deemed to have been given on the third day following mailing if placed in the United States Mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the party to whom the notice is to be given at the address set forth in this section.

21.2 The address of County for all purposes under this contract shall be:

**Cyd Grimes, C.P.M., CPPO
Purchasing Agent
P.O. Box 1748
Austin, Texas 78767-1748**

21.3 The address of the Gallagher for all purposes under this contract shall be:

**Bruce Romine
Gallagher Benefit Services, Inc.
221 West Sixth Street, Suite 1980
Austin, Texas 78701**

21.4 Each party may change the address for notice to it by giving notice of the change in compliance with this section.

22.0 INTERPRETATION OF CONTRACT:

- 22.1 **Law and Venue.** This contract is governed by the laws of the United States of America and Texas and all obligations under this contract are performable in Travis County, Texas. Venue for any dispute arising out of this contract is in Travis County, Texas.
- 22.2 **Severability.** If any portion of this contract is ruled invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the remainder of it shall remain valid and binding.
- 22.3 **Headings.** Headings and titles at the beginning of the various provisions of this contract have been included only to make it easier to locate the subject matter covered by that provision or subsection and shall not be used in interpreting this contract.
- 22.4 **Computation of Time.** When computing a time period under this contract, the first day is excluded and the last day is included. If the last day is a Saturday, Sunday, or holiday designated by Travis County, these days are omitted from the computation. All hours are stated in Central Standard Time or Central Daylight Saving Time as applicable in Austin, Texas at that time of year.
- 22.5 **Gender and Number:** Words of any gender in this contract shall be construed to include any other gender and words in either number shall be construed to include the other unless the context in the contract clearly requires otherwise.
- 23.0 ENTIRE CONTRACT:** All oral and written agreements between the parties to this contract relating to the subject matter of this contract that were made prior to the execution of this contract have been reduced to writing and are contained in this contract.
- 24.0 LIABILITY, INDEMNIFICATION AND CLAIMS NOTIFICATION:**
Gallagher shall indemnify County, its officers, agents, and employees, from and against any and all third party claims, losses, damages, causes of action, suits, and liability of every kind whether meritorious or not and, including all expenses of litigation, court costs, and reasonable attorney's fees, arising out of or in connection with services provided by Gallagher under this contract.
- 25.0 INSURANCE AND LIABILITY:**
- 25.1 **Insurance Coverage.** Gallagher shall have, and shall require all subcontractors providing services under this contract to have, Standard Insurance sufficient to cover the needs of Gallagher and/or Subcontractor pursuant to applicable generally accepted business standards. Depending on services provided by Gallagher and/or subcontractor, Supplemental Insurance Requirements or alternate insurance options may be imposed. All of Gallagher's insurance and subcontractors' insurance shall meet the following General Requirements:

- 25.1.1 The minimum types and limits of insurance indicated below shall be maintained throughout the duration of the contract.
- 25.1.2 Insurance shall be written by companies licensed in the State of Texas with an A.M. Best rating of B+ VIII or higher.
- 25.1.3 Prior to commencing work under this contract, the required insurance shall be in force.
- 25.1.4 Certificates of Insurance shall include the endorsements outlined below.
- 25.1.5 General Liability Insurance required under this contract shall name Travis County as Additional Insured and that shall be considered primary for all claims.
- 25.1.6 Insurance limits shown below may be written as Combined Single Limits or structured using primary and excess or umbrella coverage that follows the form of the primary policy.
- 25.1.7 County reserves the right to review insurance requirements during any term of the contract and to require that Gallagher make reasonable adjustments when the scope of services has been expanded.
- 25.1.8 Gallagher shall not allow any insurance to be cancelled or lapse during any term of this Contract. Gallagher shall not permit the minimum limits of coverage to erode or otherwise be reduced. Gallagher shall be responsible for all premiums, deductibles and self-insured retention. All deductibles and self-insured retention shall be shown on the Certificates of Insurance.

25.2 Specific Requirements Gallagher and subcontractor(s) performing services or activities under this contract shall comply with all of the following specific insurance requirements:

25.2.1 Workers' Compensation and Employers' Liability Insurance Coverage shall be consistent with statutory benefits outlined in the Texas Workers' Compensation Act. Employers' Liability limits are:

\$500,000 bodily injury each accident
 \$500,000 bodily injury by disease
 \$500,000 policy limit

Policies under section 25.2.1 apply to the State of Texas and must include the following endorsements in favor of Travis County:

Waiver of Subrogation (Form 420304)

25.2.2 Commercial General Liability Insurance Minimum limit are \$500,000 per occurrence for coverages A and B with a \$1,000,000 policy aggregate.

Policies under 25.2.2 shall contain or be endorsed as follows:

Blanket contractual liability for this contract
 Independent Contractor's Coverage

Policies under 25.2.2 shall also include the following endorsements in favor of Travis County:

Waiver of Subrogation (Form CG 2404)
Travis County named as additional insured (Form CG 2010)

25.2.3 Business Automobile Liability Insurance If any form of transportation for clients is provided, coverage for all owned, non-owned, and hired vehicles shall be maintained with a combined single limit of \$300,000* per occurrence.

Policies under 25.2.3 shall also include the following endorsements in favor of Travis County:

Waiver of Subrogation (Form TE 2046A)

Alternative Automobile Liability Insurance Requirement: If NO transportation services of any type is provided, and use of a motor vehicle is strictly limited to travel to and from work or work sites, evidence of Personal Auto Policy coverage with limits of \$ 100,000/\$300,000/\$50,000 may be provided in lieu of Business Automobile Liability Insurance.

25.2.4 Professional Liability and/or E & O Insurance The Minimum Limit: \$ 1,000,000 per Occurrence.

If coverage is written on a claims made policy, the retroactive date shall be prior to the date services begin under this contract or the effective date of this contract, whichever comes first. Unless the definition of "continuous" in the policies provided is that the retroactive date of each additional year of the continuous policy remains the initiation date of the original policy, coverage shall include a three (3) year extended reporting period from the date this contract expires or is terminated. Certificate of Insurance shall clarify coverage is claims made and shall contain both the retroactive date of coverage and the extended reporting period date.

Additional insured status for Travis County is **not** required.

25.2.5 Blanket Crime Policy Insurance If an advance against Contract Funds is requested or received in an amount greater than \$5,000, a Blanket Crime Policy is required with limits of the contract funds allocated in the contract or the amount of scheduled advances.

If coverage is written on a claims made policy, the retroactive date shall be prior to the date services begin under this contract or the effective date of this contract, whichever comes first. Coverage shall include a three- (3) year extended reporting period from the date this contract expires or is terminated. Certificate

of Insurance shall clarify coverage is claims made and shall contain both the retroactive date of coverage and the extended reporting period date.

Additional insured status for Travis County is **not** required.

25.3 Delivery of Certificate of Insurance.

25.3.1 Within ten (10) days after execution of this contract by County or the effective date of the contract, whichever comes first, Gallagher shall provide original Certificates of Insurance issued by the writing agent or carrier to the Purchasing Agent which shows that Gallagher has insurance in compliance with section 25.

25.3.2 Gallagher shall provide replacement Certificates of Insurance issued by the writing agent or carrier insurance to the Purchasing Agent within ten (10) days of the each renewal of insurance during the term of this contract in compliance with section 25.

25.3.3 The address for the Purchasing Agent is in the Notice section.

25.4 The Certificate(s) shall show the Travis County contract number and all endorsements by number.

25.5 The Certificate of Insurance shall contain the following statements: "Travis County is named as an additional insured holder" and "Waiver of Subrogation in favor of Travis County". This language needs to be included in the Description of Operations block with the RFS # number listed.

25.6 Insurance coverage specified in this contract is not intended and shall not be interpreted to limit the responsibility or liability of Gallagher or subcontractor(s).

26.0 DISBURSEMENTS TO PEOPLE WITH OUTSTANDING DEBTS.

26.1 In this section, "Debt" includes delinquent taxes, fines, fees, and indebtedness arising from written agreements with the County.

26.2 In accordance with Texas Local Government Code, section 154.045, if a notice of Debt has been filed with the Travis County Auditor or Treasurer that provides evidence of Gallagher's Debt to the state, the County or a salary fund, the County does not draw a check or warrant on a County fund in favor of Gallagher, his agent or assignee until:

26.2.1 The Travis County Treasurer notifies Gallagher in writing that the Debt is outstanding; and

26.2.2 The Debt is paid.

26.3 County may apply any funds County owes Gallagher to the outstanding balance of

Debt for which notice is made under Subsection 26.1, if the notice states that the amount the County owes Gallagher may be applied to reduce the outstanding Debt.

26.4 Despite anything to the contrary in this contract, if Gallagher’s property taxes in Travis County are delinquent when Gallagher invoices the County, Gallagher assigns to the Travis County Tax Assessor-Collector the portion of what the County owes Gallagher under this contract that is equal to the amount of Gallagher’s delinquent County property taxes for payment of these taxes.

27.0 ADDITIONAL GENERAL PROVISIONS:

27.1 County may assign any of its obligations under this contract.

27.2 Gallagher must comply with all federal and state laws and regulations, city and county ordinances, orders, and regulations, relating in any way to this contract.

27.3 Gallagher must secure all permits and licenses, pay all charges and fees, and give all notices necessary for lawful operations.

27.4 Gallagher must pay all taxes and license fees imposed by the federal and the state governments and their agencies and political subdivisions upon the property and business of Gallagher.

28.0 DESIGNATED COUNTY HOLIDAYS 2013: No deliveries will be accepted on designated holidays, unless specific prior arrangements have been made. Below is the approved holiday schedule. Future schedules are expected to be similar.

HOLIDAY	2013
New Year’s Day.....	First day of January
Martin Luther King, Jr. Day	Third Monday in January
President’s Day.....	Third Monday in February
Memorial Day	Last Monday in May
Independence Day Observed	July 04
Labor Day	First Monday in September
Veteran’s Day	November 11
Thanksgiving Day	Last Thursday in November
Friday after Thanksgiving.....	Friday after last Thursday in November
Christmas Season.....	December 25 & day before or after it for 4 day weekend

29.0 MEDIATION: When mediation is acceptable to both parties in resolving a dispute arising under this contract, the parties agree to use a mutually agreed upon mediator, or a person appointed by a court of competent jurisdiction, for mediation as described in section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation must remain confidential as

described in section 154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree, in writing, to waive the confidentiality.

30.0 NON-WAIVER OF DEFAULT:

30.1 The waiver of a breach of any term or condition of this contract is not a waiver of a subsequent breach of that term or condition, or a breach or subsequent breach of any other term or condition. No official, agent, employee or representative of County may waive any breach of any term or condition of this contract unless expressly granted that specific authority by Commissioner Court.

30.2 All rights of County under this contract are specifically reserved and any payment, act or omission shall not impair or prejudice any remedy or right of County under it. Any right or remedy in this contract shall not preclude the exercise of any other right or remedy under this contract or under any law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

31.0 CERTIFICATION OF ELIGIBILITY: Gallagher certifies that at the time of submission of its offer, it was not on the Federal Government's list of suspended, ineligible, or debarred contractors and that Gallagher has not been placed on this list between the time that its offer was submitted and the time of execution of this contract. If Gallagher is placed on the list during the term of this contract, Gallagher shall notify the Travis County Purchasing Agent. False certification or failure to notify may result in termination of this contract for default.

32.0 CONFLICT OF INTEREST QUESTIONNAIRE: If required, Gallagher shall file and update a complete Conflict of Interest Questionnaire in compliance with Chapter 176 of the Texas Local Government Code. Gallagher should note that the law requires that the County provide access to a filed Questionnaire on the official Travis County Internet website. As between County and Gallagher, Gallagher shall be solely responsible for the preparation, accuracy and completeness of its Conflict of Interest Questionnaire, and ensuring compliance with all applicable requirements of Chapter 176, Local Government Code.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("**Agreement**") is entered into on this 3rd day of September, 2013 (the "**Effective Date**"), by and between the following parties: Travis County, Texas ("**Covered Entity**") and Gallagher Benefit Services, Inc. ("**Business Associate**").

RECITALS:

Covered Entity and Business Associate mutually desire to outline their individual responsibilities with respect to the use and/or disclosure of Protected Health Information ("**PHI**") as mandated by the Privacy Rule promulgated under the Administrative Simplifications subtitle of the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**") including all pertinent regulations issued by the U.S. Department of Health and Human Services as outlined in 45 C.F.R. Parts 160, 162 and 164; ("**HIPAA Privacy Rules and/or Security Standards**") as stated in the Final Rule issued January 17, 2013 and as further amended from time to time.

Covered Entity and Business Associate understand and agree that the HIPAA Privacy Rule and Security Rule require the Covered Entity and Business Associate enter into a Business Associate Agreement which governs the use and/or disclosure of PHI and ePHI and the security of PHI and ePHI.

Covered Entity and Business Associate are entering into a Contract between Gallagher Benefit Services, Inc. and Travis County for Consultant Services for RFP Development and Contract Transition for Third Party Administrator for County Health Care Benefits ("Underlying Agreement") simultaneously with this Business Associate Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Definitions.** When used in this Agreement and capitalized, the following terms have the following meanings:

(a) "**Breach**" has the same meaning as the term "Breach" in 45 C.F.R. §164.402 as further interpreted in 45 C.F.R. §164.504 (e)(1)(iii).

(b) "**Electronic Protected Health Information**" or "**ePHI**" means Protected Health Information transmitted by electronic media or maintained in electronic media.

(c) "**Individual**" has the same meaning as the term "Individual" in 45 C.F.R. §160.103 and includes a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).

(d) "**Privacy Rule**" means the Standards for Privacy of Individual Identifiable Health Information as set forth at 45 C.F.R. Parts 160 and 164 Subparts A, C, D, and E.

(e) "**Protected Health Information**" or "**PHI**" has the same meaning as the term "protected health information" in 45 C.F.R. §160.103, limited to the information received from or created or received by Business Associate on behalf of Covered Entity.

(f) **"Required by Law"** has the same meaning as the term "required by law" in 45 C.F.R. §164.103.

(g) **"Secretary"** means the Secretary of the Department of Health and Human Services or his or her designee.

(h) **"Security Incident"** means any attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with systems operations in an electronic information system. (45 C.F.R. §164.304)

(i) **"Security Rule"** means the Standards for Security of PHI, including ePHI, as set forth at 45 C.F.R. Parts 160 and 164 Subparts A and C.

(j) **"Unsecured Protected Health Information"** means protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary.

Terms used but not defined in this Agreement have the same meaning as those terms in the Final Rule issued January 17, 2013, as amended in the future. .

2. Obligations and Activities of Business Associate Regarding PHI and ePHI.

(a) Business Associate shall comply with the requirements of the Privacy Rule and the Security Rule applicable to business associates and, to the extent that Business Associate is to carry out Covered Entity's obligations under 45 C.F.R. Part 164, Business Associate shall comply with the requirements of 45 C.F.R. Part 164 that apply to the Covered Entity in the performance of that obligation..

(b) Business Associate shall maintain the confidentiality of PHI and ePHI related to Covered Entity and its health plan, health care providers and related operations.

(c) Business Associate shall not use or further disclose PHI or ePHI other than as permitted or required by this Agreement or the Underlying Agreement as more specifically described in Exhibit A to this Agreement and Exhibit B to the Underlying Agreement or as Required by Law.

(d) Business Associate shall use appropriate safeguards and comply, where applicable, with 45 C.F.R. Part 164 subpart C with respect to ePHI and to prevent use or disclosure of the PHI and ePHI other than as provided for by this Agreement or the Underlying Agreement.

(e) Business Associate shall ensure by entering into a contract with them that any agents, including sub-contractors (excluding entities that are merely conduits), to whom it provides PHI and ePHI agree to comply with the requirements of the Privacy Rule and the Security Rule applicable to business associates and agree to the same restrictions and conditions that apply to Business Associate with respect to such information.

(f) Business Associate shall provide access, at the request of Covered Entity, and in a reasonable time and manner designated by Covered Entity, to PHI and ePHI in a Designated Record Set that is not also in Covered Entity's possession, to Covered Entity in order for Covered Entity to meet the requirements under 45 C.F.R. §164.524.

(g) Business Associate shall make available PHI and ePHI for amendment and incorporate any amendment to PHI and ePHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 in a reasonable time and manner designated by Covered Entity.

(h) Business Associate shall disclose PHI or ePHI

(1) When required by the Secretary under 45 C.F.R. Part 160, subpart C to investigate or determine Business Associate's compliance with the Privacy Rule and the Security Rule.

(2) To the Covered Entity or the Individual as necessary to satisfy the Covered Entity's obligation under 45 C.F.R., § 164.524(c)(2)(ii) and (3)(ii) regarding an Individual's request for an electronic copy of PHI or ePHI.

(i) Business Associate shall make internal practices, books, and records relating to the use and disclosure of PHI or ePHI received from or created by or received by Business Associate on behalf of Covered Entity available to the Secretary, in a reasonable time and manner as designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule. Business Associate shall immediately notify Covered Entity upon receipt or notice of any request by the Secretary to conduct an investigation with respect to PHI and ePHI received from the Covered Entity.

(j) Business Associate shall document any disclosures of PHI and ePHI that are not excepted under 45 C.F.R. § 164.528(a)(1) as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI and ePHI in accordance with 45 C.F.R. §164.528.

(k) Business Associate shall provide to Covered Entity or an Individual, in a time and manner designated by Covered Entity, information collected in accordance with paragraph (g) above, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI and ePHI in accordance with 45 C.F.R. §164.528.

(l) Business Associate shall use or disclose PHI and ePHI pursuant to the request of Covered Entity; provided, however, that Covered Entity shall not request Business Associate to use or disclose PHI or ePHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

3. Permitted Uses and Disclosures of PHI and ePHI by Business Associate.

(a) Business Associate may use or disclose PHI and ePHI to perform functions, activities or services related to the Underlying Agreement as more specifically listed in Exhibit A for, or on behalf of, Covered Entity provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

(b) Business Associate may use PHI and ePHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate.

(c) Business Associate may disclose PHI and ePHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate if:

(i) such disclosure is Required by Law, or

(ii) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that such information will remain confidential and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person agrees to notify Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.

(d) Business Associate shall limit the PHI and ePHI to the extent practicable, to the limited data set or if needed by the Business Associate, to the minimum necessary to accomplish the intended purpose of such use, disclosure or request subject to exceptions set forth in the Privacy Rule.

(e) Business Associate may use PHI and ePHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

4. Obligations of Covered Entity Regarding PHI and ePHI.

(a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. §164.520, as well as any changes to such notice.

(b) Covered Entity shall provide Business Associate with any changes in, or revocation of, authorization by an Individual to use or disclose PHI and ePHI, if such changes affect Business Associate's permitted or required uses and disclosures.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI or ePHI that Covered Entity has agreed to in accordance with 45 C.F.R. §164.522, if such restrictions affect Business Associate's permitted or required uses and disclosures.

(d) Covered Entity shall require all of its employees, agents and representatives to be appropriately informed of its legal obligations pursuant to this

Agreement and the Privacy Rule and Security Rule and will reasonably cooperate with Business Associate in the performance of the mutual obligations under this Agreement.

5. Security of Protected Health Information.

(a) Business Associate has implemented policies and procedures to ensure that its receipt, maintenance, or transmission of all PHI and ePHI, either electronic or otherwise, on behalf of Covered Entity complies with the applicable administrative, physical, and technical safeguards required protecting the confidentiality, availability and integrity of PHI and ePHI as required by the Privacy Rule and Security Rule. Business Associate shall ensure compliance with these policies and procedures by its employees and agents or subcontractors.

(b) Business Associate shall ensure that its agents or subcontractors agree to implement the applicable administrative, physical, and technical safeguards required to protect the confidentiality, availability and integrity of PHI and ePHI as required by the Privacy Rule and Security Rule. Business Associate shall ensure that the employees of its agents or subcontractors comply with these policies and procedures.

(c) Business Associate shall report to Covered Entity any Security Incident of which it becomes aware. Business Associate shall report the Security Incident to the Covered Entity as soon as reasonably practicable, but not later than 10 business days from the date the Business Associate becomes aware of the incident.

(d) Business Associate shall establish procedures to mitigate, to the extent possible, any harmful effect that is known to Business Associate of a use or disclosure of PHI or ePHI by Business Associate in violation of this Agreement. Business Associate shall ensure compliance with these procedures by its employees and agents or subcontractors

(e) Business Associate shall immediately notify Covered Entity upon discovery of any Breach of Unsecured Protected Health Information (as defined in 45 C.F.R. §§ 164.402 and 164.410) and provide to Covered Entity, to the extent available to Business Associate, all information required to permit Covered Entity to comply with the requirements of 45 C.F.R. Part 164 Subpart D.

(f) Covered Entity acknowledges that the Covered Entity is independently responsible for the security of all PHI and ePHI in its possession (electronic or otherwise), including all PHI and ePHI that it receives from outside sources including the Business Associate.

6. Term and Termination.

(a) *Term.* This Agreement is effective as of the Effective Date and remains in effect until the Underlying Agreement on which this Business Associate relationship with

the Covered Entity is based is terminated and all PHI and ePHI is returned, destroyed or is otherwise protected as set forth in Section 6(d).

(b) ***Termination for Cause by Covered Entity.*** If Covered Entity determines that Business Associate has violated a material term of this Agreement, Covered Entity may terminate this Agreement and the Underlying Agreement. If the, in Covered Entity's determination, circumstances allow for time to cure, Covered Entity shall provide an opportunity for Business Associate to cure the breach. If Business Associate does not cure the breach within 30 days from the date that Covered Entity provides notice of such breach to Business Associate, Covered Entity may immediately terminate this Agreement and the Underlying Agreement.

(c) ***Termination by Business Associate.*** This Agreement may be terminated by Business Associate upon 30 days prior written notice to Covered Entity in the event that Business Associate, acting in good faith, believes that the requirements of any law, legislation, consent decree, judicial action, governmental regulation or agency opinion, enacted, issued, or otherwise effective after the date of this Agreement and applicable to PHI or ePHI or to this Agreement, cannot be met by Business Associate in a commercially reasonable manner and without significant additional expense.

(d) ***Effect of Termination.*** Upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI and ePHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity that the Business Associate still maintains in any form. Business Associate shall not retain any copies of the PHI or ePHI unless return or destruction is deemed infeasible. If the return or destruction of PHI or ePHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and ePHI and limit further uses and disclosures of such PHI and ePHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI and ePHI. For purposes of illustration only and not to limit the set of circumstances that could potentially make return or destruction infeasible, it would be infeasible for Business Associate to return or destroy certain PHI and ePHI that is part of work product that must be retained for document retention/archival purposes, as well as PHI and ePHI that is stored as a result of backup e-mail systems that store e-mails for emergency backup purposes.

7. **Amendment.**

The parties may agree to amend this Agreement from time to time in any other respect that they deem appropriate as long as it is not contrary to the Privacy Rule or the Security Rule. This Agreement shall not be amended except by written instrument executed by the parties.

8. **Indemnification.**

Business Associate shall indemnify and hold harmless Covered Entity from and against any and all costs, expenses, claims, demands, causes of action, damages, attorneys' fees and judgments that arise out of or that may be imposed upon, incurred by, or brought against

Covered Entity to the extent directly resulting from a breach of this Agreement or any violation by Business Associate of the Privacy Rule or the Security Rule in relation to PHI or ePHI related to Covered Entity . The indemnification obligations provided for in this Section will commence on the Effective Date of this Agreement and will survive its termination.

9. Severability.

The parties intend this Agreement to be enforced as written. However, (i) if any portion or provision of this Agreement is to any extent declared illegal or unenforceable by a duly authorized court having jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, will not be affected thereby, and each portion and provision of this Agreement will be valid and enforceable to the fullest extent permitted by law; and (ii) if any provision, or part thereof, is held to be unenforceable because of the duration of such provision, the Covered Entity and the Business Associate agree that the court making such determination will have the power to modify such provision, and such modified provision will then be enforceable to the fullest extent permitted by law.

10. Notices.

All notices, requests, consents and other communications hereunder will be in writing, will be addressed to the receiving party's address set forth below or to such other address as a party may designate by notice hereunder, and will be either (i) delivered by hand, (ii) made facsimile transmission, (iii) sent by overnight courier, or (iv) sent by registered mail or certified mail, return receipt requested, postage prepaid.

If to the Covered Entity:

Cyd Grimes,
Travis County Purchasing Agent
P. O. Box 1748
Austin, Texas 78767

If to the Business Associate:

P. Todd Dorton
Gallagher Benefit Services, Inc.
221 West Sixth Street, Suite 1980
Austin, Texas 78701

11. Regulatory References.

A reference in this Agreement to a section in the Final Rule issued January 17, 2013 means the referenced section or its successor, and for which compliance is required.

12. Headings and Captions.

The headings and captions of the various subdivisions of the Agreement are for convenience of reference only and will in no way modify or affect the meaning or construction of any of the terms or provisions hereof.

13. Entire Agreement.

This Agreement sets forth the entire understanding of the parties with respect to the subject matter in it and supersedes all prior agreements, arrangements and communications, whether oral or written, pertaining to that subject matter.

14. Binding Effect.

The provisions of this Agreement are binding upon and inure to the benefit of both parties and their respective successors and assigns.

15. No Waiver of Rights, Powers and Remedies.

No failure or delay by a party hereto in exercising any right, power or remedy under this Agreement, and no course of dealing between the parties hereto, will operate as a waiver of any such right, power or remedy of the party. No single or partial exercise of any right, power or remedy under this Agreement by a party hereto, nor any abandonment or discontinuance of steps to enforce any such right, power or remedy, will preclude such party from any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The election of any remedy by a party hereto will not constitute a waiver of the right of such party to pursue other available remedies. No notice to or demand on a party not expressly required under this Agreement will entitle the party receiving such notice or demand to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of the party giving such notice or demand to any other or further action in any circumstances without such notice or demand. The terms and provisions of this Agreement may be waived, or consent for the departure therefrom granted, only by written document executed by the party entitled to the benefits of such terms or provisions. No such waiver or consent will be deemed to be or will constitute a waiver or consent with respect to any other terms or provisions of this Agreement, whether or not similar. Each such waiver or consent will be effective only in the specific instance and for the purpose for which it was given, and will not constitute a continuing waiver or consent.

16. Governing Law.

This Agreement will be governed by and construed in accordance with the laws of the State of Texas.

17. Interpretation.

It is the Parties' intent to comply strictly with all applicable laws, including without limitation, HIPAA, state statutes, or regulations (collectively, the "Regulatory Laws"), in connection with this Agreement. If there is a change in the Regulatory Laws, or in the reasoned interpretation of any of the Regulatory Laws or the adoption of new federal or state legislation, any of which are reasonably likely to materially and adversely affect the manner in which either Party may perform or be compensated under this Agreement or which makes this Agreement unlawful, the Parties shall immediately enter into good faith negotiations regarding a new arrangement or basis for compensation pursuant to this Agreement that complies with the law, regulation or policy and that approximates as closely as possible the economic position of the Parties prior to the change. In addition, the Parties hereto have negotiated and prepared the terms of this Agreement in good faith with the intent that each and every one of the terms, covenants and conditions herein be binding upon and inure to the benefit of the respective Parties. To the extent this Agreement is in violation of applicable law, then the Parties agree to negotiate in good faith to amend this Agreement, to the extent possible consistent with its purposes, to conform to law.

The parties have executed this Business Associate Agreement as of the Effective Date.

BUSINESS ASSOCIATE:

GALLAGHER BENEFIT SERVICES, INC.

By: 

Name: Bruce Romine

Title: Area President

COVERED ENTITY:

Travis County, Texas

By: _____

Samuel T. Biscoe
County Judge

EXHIBIT A

The following services to be performed by Business Associate require Business Associate to access, create and use PHI or ePHI on behalf of Covered Entity in accordance with the Agreement and the Underlying Agreement:

Initial Term:

- Develop a request for proposal based on county specifications to provide third party administration (TPA) services for the county self-funded employee/retiree benefit plan.
- Work within the County purchasing procedures and with Purchasing Office, assist with solicitation for qualified offers, assist with a pre-proposal conference, if appropriate, and provide follow-up answers to Purchasing Office for proposer questions.
- Analyze and evaluate self-funded administration proposals submitted and prepare a written report of findings and recommendations in accordance with County specifications upon direction of County staff.
- Review and analyze current health plan costs and design. Provide reports, actuarial analysis and recommendations for plan changes to maintain sustainability of self-funded health plan.
- Work in conjunction with County to negotiate services and pricing with prospective TPA's that have submitted proposals.
- Operate in an advisory capacity; if requested by the County, participate in meetings to coordinate and review proposer finalist presentations and facilitate development of recommendations.
- Illustrate and define the advantages/disadvantages associated with each proposal along with the rate comparison using the requested format.
- Present recommendations as needed to County decision makers.

- Assist in review of new contract.

- Maintain records of services performed and financial transactions.

- Meet, as needed, with representatives of Covered Entity to discuss results, problems and recommendations.

- Facilitate proper security of confidential information and proper shredding of disposed materials containing such information.
- Respond to any Covered Entity inquiry or questions promptly.
- Provide reasonable access to Covered Entity for requested information in order for Covered Entity to perform appropriate and periodic audits.
- Maintain responsibility for obtaining missing or incomplete insurance information.
- Maintain records in an electronic format that is readily accessible by Covered Entity's personnel and that meets federal and state requirements for maintaining patient medical records.

During Option, if exercised

- Assist in preparation of plan Summary of Benefits and Coverage and summary plan descriptions.
- Assist in eligibility, electronic upload set up, testing and auditing.
- Assist in employee/retiree training, and preparation of communication materials.
- Assist in review of pharmacy set up, including formulary, if any, and quantity limits and pre-authorizations.
- Assist in setting up standard and custom reports.
- Assist in review of plan set up with TPA.
- Assist with initial auditing of claims processing, for 30-60 days to ensure correct system set up.
- Assist in training TPA customer service on County plan's and processes.
- Maintain records of services performed and financial transactions.
- Meet, as needed, with representatives of Covered Entity to discuss results, problems and recommendations.
- Provide reasonably necessary training periodically, as requested by Covered Entity, to Covered Entity's emergency medical personnel regarding the gathering of the necessary information and proper completion of run reports.

- Facilitate proper security of confidential information and proper shredding of disposed materials containing such information.
- Respond to any Covered Entity inquiry or questions promptly.
- Provide reasonable access to Covered Entity for requested information in order for Covered Entity to perform appropriate and periodic audits.
- Provide timely reports facilitating required aspects of monitoring, evaluating, auditing and managing the services provided.
- Maintain responsibility for obtaining missing or incomplete insurance information.
- Maintain records in an electronic format that is readily accessible by Covered Entity's personnel and that meets federal and state requirements for maintaining patient medical records.