

**AGREEMENT FOR CONSULTANT SERVICES BETWEEN
CITY OF SANTA ANA AND ARTUR J. GALLAGHER
INSURANCE BROKERS OF CALIFORNIA, INC.**

INSURANCE BROKER SERVICES

THIS AGREEMENT is made and effective as of July 1, 2022, between the City of Santa Ana, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California (hereinafter referred to as "City"), and Arthur J. Gallagher & Co. Insurance Brokers of California, Inc. a Corporation (hereinafter referred to as "Consultant"). Collectively, City and Consultant are also referred to as "party" or "parties." In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

This Agreement shall commence on July 1, 2022, and is subject to annual renewal at the mutual agreement in writing of both parties until June 30, 2025. Either party can cancel this Agreement with thirty (30) days' written notice to the other party.

2. SERVICES

Consultant shall perform insurance brokerage services for the placement of the City of Santa Ana's ancillary insurance programs as outlined in Exhibit A.

3. PERFORMANCE

Consultant shall at all times faithfully, competently and to the best of his or her ability, experience, and talent, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. PAYMENT

a. The City agrees to pay Consultant for insurance premiums invoiced for insurance placements.

b. Consultant will submit invoices for insurance premiums. Invoices shall be submitted once insurance coverage is bound. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of Consultant's fees, it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

5. LEGAL RESPONSIBILITIES

The Consultant shall keep itself informed of all local, State and Federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such ordinances, laws and regulations. The City, and its officers

and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this section.

6. RELEASE OF INFORMATION

a. All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents or subcontractors, shall not without written authorization from Risk Management Division of the Human Resources Department or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

b. Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

7. INSURANCE

Prior to undertaking work under this Agreement, Consultant shall maintain and shall require its subcontractors (if any) to obtain and maintain insurance as described below:

- a. Professional Liability or Errors and Omissions Insurance- appropriate to the consultant's profession with limits of no less than \$1,000,000 per occurrence or claim.
- b. If consultant maintains broader coverage and/or higher limits than the minimums required by this Agreement, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimums limits of insurance and coverage shall be available to the City.
- c. For any claims related to the services performed pursuant to this Agreement, the Consultant's insurance coverage shall be primary coverage at least as broad as ISO CG 20 0104 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- d. Each insurance policy required by this Agreement shall provide that coverage shall not be cancelled, except with notice to the City.
- e. Consultant hereby grants to the City and a waiver of any right to subrogation that any insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insure.

f. Claims made policies-

- I. The restorative date must be shown, and must be before the date of the Agreement or the beginning of work pursuant to this Agreement.
- II. Insurance must be maintained and evidence of insurance provided for at least five (5) years after completion of work specified in this Agreement.
- III. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

g. Verification of Coverage- Consultant shall furnish to the City original certificates for insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

h. Special Risks or Circumstances- City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

8. INDEMNIFICATION

Consultant agrees to defend, and shall indemnify and hold harmless the City, its officers, agents, employees, consultants, special counsel, and representatives from liability: (1) for personal injury, damages, just compensation, restitution, judicial or equitable relief arising out of claims for personal injury, including death, and claims for property damage, which may arise from the negligent operations of the Consultant or its Consultants, subcontractors, agents, employees, or other persons acting on their behalf which relates to the services described in Section 2 of this Agreement; and (2) from any claim that personal injury, damages, just compensation, restitution, judicial or equitable relief is due by reason of the terms of or effects arising from this Agreement. This indemnity and hold harmless agreement applies to all claims for damages, just compensation, restitution, judicial or equitable relief suffered, or alleged to have been suffered, by reason of the events referred to in this Section or by reason of the terms of, or effects, arising from this Agreement. The Consultant further agrees to indemnify, hold harmless, and pay all costs for the defense of the City, including fees and costs for special counsel to be selected by the City, regarding any action by a third party challenging the validity of this Agreement, or asserting that personal injury, damages, just compensation, restitution, judicial or equitable relief due to personal or property rights arises by reason of the terms of, or effects arising from this Agreement. City may make all reasonable decisions with respect to its representation in any legal proceeding. Notwithstanding the foregoing, to the extent Consultant's services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

9. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the

document delivery service or United States Mail as provided above.

City: City of Santa Ana
Attn: Clerk of Council
20 Civic Center Plaza, M-30
P.O. Box 1988
Santa Ana, CA 92701

With courtesy copies to: Risk Manager
City of Santa Ana
20 Civic Center Plaza, M-28
P.O. Box 1988
Santa Ana, CA 92701

City Attorney
City of Santa Ana
20 Civic Center Plaza, M-29
P.O. Box 1988
Santa Ana, CA 92701

To Consultant: Arthur J. Gallagher & Co., Insurance Brokers of
California, Inc.
Susan J. Blankenburg
San Francisco, CA 94111
415-536-8417
Susan_Blankenburg@ajg.com

10. ASSIGNMENT

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Upon termination of this Agreement, Consultant's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Consultant.

11. LICENSES

At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

12. GOVERNING LAW

The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in

the municipal, superior, or federal district court with geographic jurisdiction over the City of Santa Ana. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

13. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

14. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Consultant warrants and represents that he or she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder. The City Manager is authorized to enter into an amendment on behalf of the City to make the following non-substantive modifications to the agreement: (a) name changes; (b) extension of time not to exceed one year; (c) non-monetary changes in scope of work; (d) agreement termination.

This section intentionally left blank

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF SANTA ANA

By: _____
Kristine Ridge
City Manager

ATTEST: Arthur J. Gallagher & Co.

By: _____
Daisy Gomez
Clerk of the Council

By: _____
Riley Binford
Area President

APPROVED AS TO FORM:
SONIA R. CARVALHO
City Attorney

By: Laura A. Rossini
Laura A. Rossini
Chief Assistant City Attorney

RECOMMENDED FOR APPROVAL

Jason Motsick
Executive Director
Human Resources Department

CONSULTANT

Susan J. Blankenburg
1255 Battery Street, Suite 450
San Francisco, CA 94111
(415) 536-8417
Susan_Blankenburg@ajg.com

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| PM Initials: Date: |
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EXHIBIT A

- The following outlines services provided by Gallagher over the term of this Agreement:
- Use its best efforts to secure lines of insurance coverage on Client's behalf including but not limited to: General Liability Buffer, Workers' Compensation Buffer, Earth Movement & Flood and Difference in Coverage, Terrorism, and Underground Storage Tank and Environmental programs.
- Consult with the **City of Santa Ana** to formulate a marketing strategy that focuses on delivering a cost-effective risk management strategy and structure based upon current market conditions.
- Work with the **City of Santa Ana** to produce comprehensive underwriting data and criteria for insurance carrier negotiations.
- Formally present coverage submissions to agreed upon insurance carrier(s) and negotiate terms on behalf of the **City of Santa Ana**.
- Summarize the results of executing the marketing strategy developed with the **City of Santa Ana** and communicate program recommendations.
- Provide consultation to the **City of Santa Ana** on exposures, existing coverage, and the desirability and/or feasibility of potential program changes when recommended by Gallagher or when requested by the Client.
- Request change endorsements, when requested by the Client or when otherwise necessary, ensuring accuracy and delivery in a timely manner.
- Administration of insurance program, including policy review and issuance, invoicing, coordination and/or issuance of required documentation, i.e., certificates of insurance, and other program administration, as required by the Client.
- Review accounting and billing data received from insurance markets on Client's behalf to ensure accuracy.