RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE DIRECTOR OF GENERAL SERVICES TO ENTER INTO A SERVICES AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, WITH ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES, INC. FOR INSURANCE BROKERAGE SERVICES FOR A THREE (3) YEAR TERM WITH THE OPTION OF UP TO AN ADDITIONAL TWO (2) ONE (1) YEAR TERM EXTENSIONS.

_____

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Director of General Services be and is hereby authorized to enter into a Services Agreement, in substantially the form attached, with Arthur J. Gallagher Risk Management Services, Inc. for insurance brokerage services for a three (3) year term with the option of up to an additional two (2) one (1) year term extensions.

ADOPTED: _____, 2015

/mem

# City of Chattanooga

## Resolution/Ordinance Request Form

**Date Prepared: 10/27/2015**

**Preparer: Cary Bohannon** **Department: General Services**

**Brief Description of Purpose for Resolution/Ordinance:** **Res./Ord. #** **Council District #** **City-Wide**

A RESOLUTION AUTHORIZING THE DIRECTOR OF GENERAL SERVICES TO ENTER INTO A SERVICES AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, WITH ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES, INC. FOR INSURANCE BROKERAGE SERVICES FOR A THREE (3) YEAR TERM WITH THE OPTION OF UP TO AN ADDITIOINAL TWO (2) ONE (1) YEAR TERM EXTENSIONS.

| | | | |
|---|---|---|---|
| Name of Vendor/Contractor/Grant, etc. | Arthur J. Gallagher & Co. | New Contract/Project? (Yes or No) | NO |
| Total project cost | $ N/A | Funds Budgeted? (YES or NO) | YES |
| Total City of Chattanooga Portion | $ N/A | Provide Fund | VARIOUS |
| City Amount Funded | $ | Provide Cost Center | VARIOUS |
| New City Funding Required | $ | Proposed Funding Source if not budgeted | |
| City's Match Percentage | % | Grant Period (if applicable) | |

**List all other funding sources and amount for each contributor.**

| Amount(s) ($) | Grantor(s) |
|---|---|
| | |
| | |
| | |

**Agency Grant Number:**

**CFDA Number if known:**

**Other comments: (Include contingency amount, contractor, and other information useful in preparing resolution)**

Brokerage services proposals were solicited via RFP process prior to market assignments. Brokerage services fee is calculated on insurance premium amounts and is allocated out City - wide to departments based on department assets insured.

Reviewed by: FINANCE OFFICE

Approved by: DESIGNATED OFFICIAL/ADMINISTRATOR

Please submit completed form to @budget, City Attorney and City Finance Officer

Revised: 10/17/13 **GS-RRF1**

# SERVICES AGREEMENT
# FOR INSURANCE BROKERAGE SERVICES

THIS AGREEMENT is made and entered into this _____ day of _____, 2015 ("Effective Date"), by and between the CITY OF CHATTANOOGA, TENNESSEE, a municipal corporation ("City") and ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES, INC., a Florida Corporation ("Consultant").

**W I T N E S S E T H:**

WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to provide insurance brokerage services as more fully described in Consultant's Proposal attached as Exhibit "A"; and

WHEREAS, Consultant represents that it holds all necessary licenses to practice and perform the services herein contemplated; and

WHEREAS, City and Consultant desire to contract for the specific services described in Exhibit "A" and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

WHEREAS, no official or employee of City has a financial interest in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

## 1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Services. Consultant shall provide the services described in Consultant's Proposal, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference.

1.2. Practices. All services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by consultants in similar fields and circumstances in accordance with sound practices. It is understood that in the exercise of every aspect of its role, within the scope of work, Consultant will be representing the City, and all of its actions, communications, or other work, during its employment, under this Agreement is under the direction of the City. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant's performance of this Agreement.

1.3. Performance to Satisfaction of City. Consultant agrees to perform all the work to complete satisfaction of the City. Evaluations of the work will be done by the Director of General Services or his/her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

(a) Meet with Consultant to review the quality of the work and resolve the matters of concern;

(b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or

(c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and Tennessee employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the Services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description, including attorneys' fees and costs, presented, bought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

1.5. Non-discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation.

1.6. Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

1.8. Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

## 2.0. COMPENSATION AND BILLING

2.1. Compensation. As compensation for the provision of services outlined in Exhibit "A" and in accordance with this Agreement, Consultant's total compensation shall not exceed FOURTEEN PERCENT (14%) of the insurance premium.

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Consultant's Proposal unless the City, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Audit. City may audit all financial and related records (including digital) associated with the terms of the Agreement including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by Consultant. City may further audit any records associated with the terms of the Agreement to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the expenditure of any funds appropriated by City) or to identify conflicts of interest. Consultant shall at all times during the term of the Agreement and for a period of seven (7) years after the expiration or earlier termination of this Agreement, keep and maintain the foregoing records. Documents shall be maintained by Consultant necessary to clearly reflect all work done and actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. Consultant shall, at its own expense, make such records available for inspection and audit (including copies and extracts of records as required) by City at all reasonable times and upon reasonable prior notice.

The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between Consultant and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfillment of the Consultant's obligations to City under this Agreement.

Costs of any audits conducted in accordance with this Section and not addressed elsewhere will be borne by City unless the audit identifies significant findings that benefit City. Consultant shall reimburse City for the actual and reasonable costs of an audit that identifies significant findings that benefit City. This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit City may have by federal, state, or municipal law, whether those rights, powers, or obligations are express or implied.

## 3.0. COMMENCEMENT OF WORK

The services to be performed pursuant to this Agreement shall commence within ten (10) days from the Effective Date of this Agreement.

## 4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of three (3) years unless previously terminated as provided herein or as otherwise agreed to in a writing by the parties. At the end of the three (3) year term, this Lease shall not renew

automatically, but may be renewed for two additional one (1) year periods upon mutual agreement of the parties.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending, or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City.

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and services satisfactorily performed up to and including the date of City's written notice of termination. Compensation for work in progress shall be prorated as to the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

## 5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in Tennessee, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

(a) Commercial general liability, including premises-operations, products, completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars ($1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.

(b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars ($1,000,000.00), combined single limits per occurrence for bodily injury and property damage.

(c) Workers' compensation insurance as required by the State of Tennessee. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

(d) Errors and omissions ("E&O") liability insurance with policy, limits of not less than One Million Dollars ($1,000,000.00), combined single limits, per occurrence and aggregate. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for one (1) year following the expiration or sooner termination of this Agreement.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

(a) Additional insureds: "The City of Chattanooga and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant."

(b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be canceled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City.

(c) Other insurance: "The Consultant's insurance coverage shall be primary insurance as respects the City of Chattanooga, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Chattanooga shall be excess and not contributing with the insurance provided by this policy."

(d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Chattanooga, its officers, officials, agents, employees and volunteers.

(e) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self-Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance. Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement.

5.5. Non-limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

## 6.0. GENERAL PROVISIONS

6.1. Entire Agreement. This Agreement constitutes the entire Agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract documents appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The Mayor or his designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. City shall designate a Project Manager to work directly with Consultant in the performance of this Agreement.

Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination of meetings called by City.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is set by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

Arthur J. Gallagher Risk Management
Services, Inc.
200 South Orange Avenue, Suite 1350

IF TO CITY:

City of Chattanooga
101 E. 11th Street, Suite G4
Chattanooga, TN 37402

Orlando, FL 32801
Tel: (407) 563-3512
Attn: Richard Terlecki

Tel: (423) 643-7505
Fax: (423) 643-5079
Attn: Director of General Services

A copy to:

City Attorney's Office
100 E. 11th Street, Suite 200
Chattanooga, TN 37402
Tel: (423) 643-8250
Fax: (423) 643-8255

6.5. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.6. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Tennessee without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Hamilton County, Tennessee.

6.7. Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.8. Indemnification and Hold Harmless. Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions,

complaints or suits arising out of the sole active negligence or willful misconduct of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

6.9. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of the City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its employees are in any manner agents or employees of the City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable workers' compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.10. Cooperation. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

6.11. Responsibility of Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

6.12. Prohibited Employment. Consultant will not employ any regular employee of City while this Agreement is in effect.

6.13. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

6.14. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.15. No Third-Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third-party shall have any right in, under or to this Agreement.

6.16. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.17. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.18. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.19. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.20. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance.

6.21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.22. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

**IN WITNESS WHEREOF,** the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first written above.

CITY OF CHATTANOOGA, TENNESSEE

By:_____
Printed Name:_____
Title:_____

ARTHUR J. GALLAGHER RISK
MANAGEMENT SERVICES, INC.

By:_____
Printed Name:_____
Title:_____