

Retiree Drug Subsidy Consulting Agreement

This Consulting Agreement, hereinafter referred to as "Agreement" is between the City of West Allis, hereinafter referred to as "Client" and RDS Services, LLC hereinafter referred to as "Consultant."

WHEREAS, Client wishes to obtain the assistance of Consultant to perform services surrounding the implementation and maintenance of the Retiree Drug Subsidy (RDS) Program;

WHEREAS, Consultant has superior knowledge and expertise in assisting employers to secure subsidy monies available under the RDS Program; and

WHEREAS, the parties wish to set forth their respective expectations;

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, Consultant will deliver the following services as agreed to below:

1. Consultant will complete all the requirements for each RDS Application and submit subsidy "payment requests" no less than quarterly for each Application period.

In addition to the above, Consultant will provide the following services in the normal course of this engagement:

Description	
	<p>Assist in the preparation & completion of the RDS application</p> <ul style="list-style-type: none"> ▪ Evaluate savings options under Medicare Part D ▪ Identify staff roles and responsibilities ▪ Coordinate benefit option information w/Actuaries ▪ Become Vendor & Designee on RDS application ▪ Assist Account in establishing procedures to maintain/update "Retiree Lists" and provide to RDS Services, LLC ▪ Review and Upload "Retiree List" to RDS for approval ▪ Complete all parts of RDS Application ▪ Complete all retiree data transfers to carriers, if applicable ▪ Troubleshoot Application errors ▪ Complete Payment Setup requirement <p>Implementation variables after RDS application submission</p> <ul style="list-style-type: none"> ▪ Review & respond to CMS response/notification files ▪ Submit response/notification files to carriers as needed ▪ Maintain "retiree eligibility" records ▪ Coordinate direct with all carrier for Interim Cost Reporting to RDS ▪ Troubleshoot "cost reporting" submission problems ▪ Review & submit Cost Reports to RDS ▪ Complete submission of Payment Requests ▪ Prepare Annual Reconciliation for CMS ▪ Create work paper trail of activities & deliver "RDS Work Paper CD" upon completion of Reconciliation ▪ Oversee any CMS audit ▪ Identify "Creditable Coverage" requirements including development of letter(s) ▪ Design communication campaigns for retiree group ▪ Correct Cost Report inaccuracies, if needed ▪ Troubleshoot cost reporting submission problems ▪ "Backtest" Gross Cost data back to plan experience to assure maximum subsidy
Fee	\$27,420.00/ year (includes one actuarial attestation-no charge)

Disclosure and Record Keeping

- A. Full Disclosure.** Client has the right to approve any arrangements and/or the utilization of any intermediaries in connection with, or arising out of, or in any way related to Client's Retiree Drug Subsidy program. Consultant must seek approval from Client prior to the use of any of the above in connection with the Client's Retiree Drug Subsidy program.
- B. Record Keeping.** Consultant will maintain accurate and current files including, but not limited to, retiree data files and correspondence with CMS and actuaries in accordance with industry standard record retention practice or as otherwise directed by Client.

Term & Termination

Term. The initial term of this Agreement shall commence immediately and end 12/31/2009. This Agreement will be in effect for one year from the Effective Date, and after that will automatically renew for additional one-year terms unless and until terminated as provided herein. If neither party notifies the other in writing within 60 days of the RDS Application deadline, then the Agreement then in effect will continue in force and effect.

Termination. This Agreement may be terminated by either party only as follows:

- a) Effective upon thirty (30) days advance written notice to the other party stating that such other party is in breach of any of the provisions of this Agreement, provided such breach (if able to be cured) is not cured within fifteen (15) days after the notice is received;
- b) Effective upon sixty (60) days advance written notice to the other party given with or without reason; provided such notice is given after the Initial Term; or
- c) By mutual written agreement of the parties

Cost of Services

Consultant professional fees are based upon time expended by specific individuals. Client agrees to pay Consultant professional fee immediately upon execution of this agreement.

Personnel

Consultant will assign its personnel according to the needs of Client and according to the disciplines required to complete the appointed task in a professional manner. Consultant retains the right to substitute personnel with reasonable cause. The Account Management Team consists of the following individuals:

Primary Service Team:

Mark A. Manquen, CPA, MST-- President

Jayne Brown, RDS Specialist

Melany Brown, Account Assistant

Client's Responsibilities

Client will make available such reasonable information as required for Consultant to conduct its services. Such data will be made available as promptly as possible. It is understood by Consultant that the time of Client's personnel is limited, and judicious use of that time is a requirement of this Agreement. Client will make timely payments of the service fees as set forth elsewhere in this Agreement.

Records and Information

Consultant understands and agrees to limit its use and disclosure of protected health information.

Independent Contractor.

It is understood and agreed that Consultant is engaged by Client to perform services under this Agreement as an independent contractor. Consultant shall use its best efforts to follow written, oral, or electronically transmitted (i.e., sent via facsimile or e-mail) instructions from Client as to policy and procedure.

Fiduciary Responsibility.

Client acknowledges that: (I) Consultant shall have no discretionary authority or discretionary control respecting the management of any of the employee benefit plans; (ii) Consultant shall exercise no authority or control with respect to management or disposition of the assets of Client's employee benefit plans; and (iii) Consultant shall perform services pursuant to this Agreement in a non-fiduciary capacity. Client agrees to notify Consultant as soon as possible of any proposed amendments to the plans' legal documents to the extent that the amendments would affect Consultant in the performance of its obligations under this Agreement. Client agrees to submit (or cause its agent, consultants, or vendors to submit) all information in its (or their) control reasonably necessary for Consultant to perform the services covered by this Agreement.

Hold Harmless.

To the fullest extent permitted by law Consultant agrees to indemnify and hold harmless Client, including any of its employees, officers, or agents, against any and all claims, demands, suits, costs, damages, expenses, or liability, including attorney fees, arising out of the performance of this Agreement and caused by the acts or omissions, negligent or otherwise, of Consultant.

Entire Agreement

This constitutes the entire Agreement between the parties, and any other warranties or agreements are hereby superseded. Subsequent amendments to this Agreement shall only be in writing signed by both parties.

CITY OF WEST ALLIS

Signature

Date

Printed Name

Title

RDS SERVICES, LLC

Signature

Date

Mark A. Manquen

Printed Name

President

Title

HIPAA Business Associate Contract

This Business Associate Contract (Agreement) is entered into by and between the City of West Allis (Covered Entity) and RDS Services, LLC (Business Associate) effective immediately (Effective Date).

WHEREAS, the Covered Entity is a group health plan as defined in the privacy rules adopted pursuant to the Health Insurance Portability and Accountability Act of 1996¹ (HIPAA);

WHEREAS, the Business Associate wishes to perform on behalf of the Covered Entity treatment, payment, or health care operations as defined by HIPAA;

WHEREAS, the parties wish to set forth their understandings with regard to the use and disclosure of Protected Health Information (PHI) by the Business Associate in performance of its obligations;

In consideration of the mutual promises set forth below, the parties hereby agree as follows:

A. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

1. Use of Protected Health Information (PHI). Business Associate shall not use or further disclose PHI other than as permitted or required by this Agreement or as required by law.
2. Safeguards. Business Associate agrees that it will implement all appropriate safeguards to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Agreement. Business Associate agrees that performance of its obligations to implement safeguards includes establishing procedures that limit its use and disclosure of PHI to the minimum necessary amount of information required for the intended purpose, including limiting access to PHI within its organization to those employees with a need to know.
3. Unauthorized Disclosures of PHI. Business Associate shall, within ten (10) days of becoming aware of a disclosure of PHI in violation of this Agreement by Business Associate, its officers, directors, employees, contractors, or agents or by a third party to which Business Associate disclosed PHI, report to Covered Entity any such disclosure. Business Associate agrees to mitigate, to the extent practicable, any harmful effect of the unauthorized disclosure.
4. Agreements With Third Parties. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of the Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
5. Access to Information. Within ten (10) days of a request by the Covered Entity for access to PHI about an individual contained in a Designated Record Set, Business Associate shall make available to the Covered Entity such PHI for so long as such information is maintained in a Designated Record Set. In the event any individual requests access to PHI directly from the Business Associate, Business Associate shall respond to the request for PHI within two (2) days. Any denials of access to the PHI requested shall be the responsibility of the Business Associate.
6. Availability of PHI for Amendment. Business Associate agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of the Covered Entity or an individual, and in the time and manner designated by Covered Entity.
7. Inspection of Books and Records. Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary of the U.S. Department of Health and Human Services or designee, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with HIPAA.

¹ The HIPAA Privacy Rules were originally published at 65 Fed. Reg. 82462 on December 28, 2000 and amended on August 14, 2002 as set forth at 67 Fed. Reg. 53182.

8. Accounting of Disclosures. Business Associate agrees to maintain and make available to the Covered Entity an accounting of disclosures of PHI as would be required for Covered Entity to respond to a request by an individual made in accordance with 45 CFR 164.528. Business Associate shall provide an accounting of disclosures made during the six years prior to the date on which the accounting is requested. At a minimum, the accounting of disclosures shall include the following information:
 - a. Date of disclosure,
 - b. The name of the person or entity who received the PHI, and if known, the address of such entity or person,
 - c. A brief description of the PHI disclosed, and
 - d. A brief statement of the purpose of such disclosure which includes an explanation of the basis of such disclosure.

In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall respond to the request within two (2) days. Any denials of a request for an accounting shall be the responsibility of the Business Associate.

Business Associate agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this Section.

B. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

1. Business Associate shall not use or disclose any PHI for any purpose other than performance of services for Covered Entity as provided for in the Consulting Agreement. Except as otherwise limited by this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified above, provided that such use or disclosure would not violate HIPAA if done by the Covered Entity.
2. Except as otherwise limited by this Agreement, Business Associate may provide PHI to Zywave, Inc., a subcontractor of Consultant, for the limited purpose of providing data analysis and data aggregation services on behalf of the Covered Entity as defined in 45 CFR Sec. 164.501.

C. OBLIGATIONS OF COVERED ENTITY

1. Covered Entity shall compensate Business Associate according to the terms set forth in the Retiree Drug Subsidy Consulting Agreement.
2. Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR 164.520, as well as any changes to such notice.
3. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
4. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522.

D. PERMISSIBLE REQUESTS BY COVERED ENTITY

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if done by the Covered Entity.

E. TERMINATION

1. Term. The term of this Agreement shall commence immediately and shall remain in effect until terminated under Section 2 of this Agreement.
2. Termination. This Agreement shall be terminated only as follows:
 - a. Termination For Cause

This Agreement may be terminated by the Covered Entity upon thirty (30) days written notice to the Business Associate in the event that the Business Associate breaches any provision contained in Paragraphs A or B of this Agreement and such breach is not cured within such

thirty (30) day period; provided, however, that in the event that termination of this Agreement is not feasible in the Covered Entity's sole discretion, Business Associate hereby acknowledges that the Covered Entity shall have the right to report the breach to the Secretary, notwithstanding any other provision of this Agreement to the contrary.

b. **Termination Due To Change in Law**

Either party may terminate this Agreement effective upon thirty (30) days advance written notice to the other party in the event that the terminating party has sought amendment of this Agreement pursuant to Paragraph G (1) and no amendment has been agreed upon.

3. **Return or Destruction of PHI**

Upon termination of this Agreement, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

Notwithstanding the above, to the extent that it is not feasible to return or destroy such PHI, the terms and provisions of Paragraphs 1 and 2 shall survive termination of this Agreement and such PHI shall be used or disclosed solely for such purpose or purposes which prevented the return or destruction of such PHI.

F. DEFINITIONS

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR 160.103 and 164.501. Capitalized terms within this Agreement are defined in the text or as follows:

1. **Designated Record Set** means a group of records maintained by or for the Covered Entity that is (a) medical records and billing records about individuals maintained by or for the Covered Entity, (b) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan, or (c) used, in whole or in part, by or for the Covered Entity to make decisions about individuals. As used herein the term "record" means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for the Covered Entity.
2. **Individually Identifiable Health Information** means information that is a subset of health information, including demographic information collected from an individual, and
 - a. is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
 - b. relates to the past, present, or future physical or mental health or condition of an individual; the provision of healthcare to an individual; or the past, present, or future payment for the provision of healthcare to an individual; and (1) identifies the individual or (2) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
3. **Protected Health Information (PHI)** means Individually Identifiable Health Information that is (a) transmitted by electronic media, (b) maintained in any medium constituting electronic media, or (c) transmitted or maintained in any other form or medium. PHI shall not include (a) education records covered by the Family Education Right and Privacy Act, as amended, 20 USC Sec. 1232g and (b) records described in 20 USC Sec. 1232g(a)(4)(B)(iv).

G. GENERAL PROVISIONS

1. **Amendment**. This Agreement may be amended only by the mutual written agreement of the parties. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Covered Entity to comply with the requirements of HIPAA.

2. Remedies. The parties acknowledge that breach of Paragraphs A or B of this Agreement may cause irreparable harm for which there is no adequate remedy at law. In the event of a breach, or if Covered Entity has actual notice of an intended breach, Covered Entity shall be entitled to a remedy of specific performance and/or injunction restraining Business Associate from violating or further violating this Agreement. The parties agree the election of the Covered Entity to seek injunctive relief and or specific performance of this Agreement does not foreclose or have any effect on any right the Covered Entity may have to recover damages.
3. Survival. Business Associate's obligation to limit its use and disclosure of Protection Information as set out in Paragraphs A and B survive the termination of this Agreement so long as Business Associate has PHI received during the performance of its services as described in this Agreement.
4. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Michigan.
5. Assigns. Neither this Agreement nor any of the rights, benefits, duties, or obligations provided herein may be assigned by any party to this Agreement without the prior written consent of the other party.
6. Third Party Beneficiaries. Nothing in this Agreement shall be deemed to create any rights or remedies in any third party.
7. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Covered Entity to comply with HIPAA.
8. Notices. Any notice given under this Agreement must be in writing and delivered via first class mail, via reputable overnight courier service, or in person to the following addresses, or to such addresses or facsimile numbers as the parties may specify by like notice:

If to Covered Entity: 7525 W. Greenfield Ave, West Allis, WI 53214

If to Business Associate: P.O. Box 183416, Shelby Twp., MI 48318

IN WITNESS WHEREOF, the undersigned have executed this Agreement.

RDS SERVICES, LLC

CITY OF WEST ALLIS

Signed: _____

Signed: _____

Date: _____

Date: _____

Name (Print): Mark Manquen

Name (Print): _____

Title: President

Title: _____

Gary Schmid

From: Jayne Brown [jbrown@cornerstonebenefits.com]
Sent: Monday, November 03, 2008 10:07 AM
To: Gary Schmid
Subject: RDS Consulting & HIPAA Agreements
Follow Up Flag: Follow up
Due By: Wednesday, November 05, 2008 7:00 AM
Flag Status: Red

Morning Gary,
Attached are the RDS Consulting Agreement & HIPAA Business Associate Agreement. Per my message, I spoke with Missy this morning and she let me know (I didn't ask) that they started charging a fee in 2008 of \$5,000 annually to provide "RDS ready" cost reports on a quarterly basis. She doesn't know if this fee will change for 2009 but will let us know if it does. This fee is less than the fee we would charge for this service. Contact me with any questions. Thank you for the opportunity.
Sincerely,
Jayne

Jayne Brown
RDS Specialist

Cornerstone Group
1450 W. Long Lake Rd., Suite 250 | Troy | MI 48098 | USA
Office direct 248-641-2892 | Fax 248-641-2699
jbrown@cornerstonebenefits.com | www.cornerstonebenefits.com

 **CornerstoneGroup**

Gary Schmid

From: Sara.Wendorf@willis.com
Sent: Thursday, November 20, 2008 6:37 PM
To: Gary Schmid
Subject: Re: RDS Consulting Overview

I'm glad I could help.

Sara Wendorf

----- Original Message -----

From: Gary Schmid <gschmid@ci.west-allis.wi.us>
To: Wendorf, Sara
Cc: Aschenbrener, Dan; Wright, Virginia; Paul Ziehler <pziehler@ci.west-allis.wi.us>
Sent: Thu Nov 20 13:35:42 2008
Subject: RE: RDS Consulting Overview

Thank you for all your help! Today we received notification that our 2009 application has been approved.

Gary Schmid
 City of West Allis
 Comptroller/Manager of Finance
 414-302-8252

From: Wendorf, Sara [<mailto:Sara.Wendorf@willis.com>]
Sent: Thursday, November 20, 2008 10:34 AM
To: Gary Schmid
Cc: Aschenbrener, Dan; Wright, Virginia; Wendorf, Sara
Subject: RDS Consulting Overview

Gary,

The vendors that play in this space are pretty limited. I marketed to Thomson Reuters and Part D Advisors with the same criteria established in the RDS Services agreement as indicated below.

Assist in the preparation & completion of the RDS application

- Evaluate savings options under Medicare Part D
- Identify staff roles and responsibilities
- Coordinate benefit option information w/Actuaries
- Become Vendor & Designee on RDS application

11/25/2008

Assist Account in establishing procedures to maintain/update "Retiree Lists" and provide to RDS Services, LLC

Review and Upload "Retiree List" to RDS for approval

Complete all parts of RDS Application

Complete all retiree data transfers to carriers, if applicable

Troubleshoot Application errors

Complete Payment Setup requirement

Implementation variables after RDS application submission

Review & respond to CMS response/notification files

Submit response/notification files to carriers as needed

Maintain "retiree eligibility" records

Coordinate direct with all carrier for Interim Cost Reporting to RDS

Troubleshoot "cost reporting" submission problems

Review & submit Cost Reports to RDS

Complete submission of Payment Requests

Prepare Annual Reconciliation for CMS

Create work paper trail of activities & deliver "RDS Work Paper CD" upon completion of Reconciliation

Oversee any CMS audit

Identify "Creditable Coverage" requirements including development of letter(s)

Design communication campaigns for retiree group

Correct Cost Report inaccuracies, if needed

Troubleshoot cost reporting submission problems

"Backtest" Gross Cost data back to plan experience to assure maximum subsidy

I did not get a response back from Part D Advisors, but I have been told through various colleagues that they are typically 2x the cost of other vendors. The quote from Thomson Reuters came in at \$38,000, compared to the \$27,420 quote from RDS Services. This amount did not include rebate aggregation, creditable coverage notification or attestation.

Per your request, I went back to both vendors to see if they would offer a consulting arrangement on a retainer basis to allow for assistance and guidance in any area within the subsidy process, if needed. Both declined. It is essentially all or nothing. However, as a result of my discussions with RDS Services I was able to get the quote decreased to \$25,000.

11/25/2008

Please let me know if you need anything else.

Sincerely,

Sara Wendorf
Director of Pharmacy Benefits Consulting

Willis HRH
2323 N Mayfair Rd, Suite 600
Milwaukee, WI 53226
Sara.Wendorf@willis.com
Phone: 414-479-7566

(Please note email address change)

For information pertaining to Willis' email confidentiality and monitoring policy, usage restrictions, or for specific company registration and regulatory status information, please visit http://www.willis.com/email_trailer.aspx

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DEPARTMENT OF ADMINISTRATION & FINANCE
FINANCE DIVISION

Gary A. Schmid, CPA, CGFM
Manager of Finance/Comptroller
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Finance Supervisor
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Nicole O'Connor
Accountant
noconnor@ci.west-allis.wi.us
Kristen Victory
Accountant
kvictory@ci.west-allis.wi.us

To: Common Council

From: Gary Schmid, City Comptroller *MS*

Date: 11/12/08

RE: Communication requesting consulting services for the Medicare Part D program

I would like to request that I be permitted to solicit assistance from a third party to perform services surrounding the implementation and maintenance of the Retiree Drug Subsidy Program (RDS). The consultant would be available to address any concerns or issues surrounding the RDS program, to prepare a quarterly payment request, interact with the City's pharmacy administrator, maintain retiree records and address negative responses to the enrollment of the retirees, coordinate benefit option information with the actuary, maintain all retiree data transfer to carriers, review and respond to CMS notification files, prepare annual reconciliation for CMS, create a work paper trail in the event of an audit by Medicare, ensure that all the HIPPA rules are being followed and to review the gross cost data to assure the maximum reimbursement subsidy.

To demonstrate the complexity and specialization of the RDS Program, I would like to mention that even our health insurance carrier – Humana has made a company decision not to offer such services, so at this time I am having Willis Company (our health insurance consultant – formally know as Frank F Haack & Associates) investigate the cost and probability of hiring a firm to assist the City. I have only seen one official proposal, which quoted a price of approximately \$3.96 per month for the 577 individuals for a cost of \$27,420 annually and includes the actuarial attestation, but Willis Company believes we should be able to acquire such services for an amount less than what has been quoted.