

26.



City of West Allis Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number	Title	Status
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R-2010-0137 Resolution Introduced

Resolution relative to approving an agreement between RDS Services LLC and the City of West Allis for early retiree reinsurance program services.

Introduced: 6/1/2010

Controlling Body: Administration & Finance Committee

Sponsor(s): Administration & Finance Committee

COMMITTEE RECOMMENDATION

adopt

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
JUN 01 2010			Barczak				
			Czaplewski				
			Kopplin	✓			
		X	Lajsic	✓			
			Narlock	✓			
			Reinke	✓			
			Roadt				
		X	Sengstock				
			Vitale	✓			
			Weigel				
		TOTAL		5	-		-

SIGNATURE OF COMMITTEE MEMBER

West Kopplin
 Chair Vice-Chair Member

ADOPT

COMMON COUNCIL ACTION

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
JUN 01 2010			Barczak	✓			
			Czaplewski	✓			
			Kopplin	✓			
			Lajsic	✓			
			Narlock	✓			
			Reinke	✓			
			Roadt	✓			
			Sengstock	✓			
			Vitale	✓			
			Weigel	✓			
		TOTAL		10	-		



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

Resolution

File Number: R-2010-0137

Final Action:

Sponsor(s): Administration & Finance Committee

JUN 01 2010

Resolution relative to approving an agreement between RDS Services LLC and the City of West Allis for early retiree reinsurance program services.

WHEREAS, recent national health care legislation in the Patient Protection and Affordable Care of 2010 was passed; and,

WHEREAS, said legislation included an Early Retiree Reinsurance Program; and,

WHEREAS, said Early Retiree Reinsurance Program includes reimbursement funding for certain medical payments paid by the City for its early retirees; and,

WHEREAS, the City has the potential to receive significant reimbursement dollars through a successful application and implementation to the U.S. Department of Health and Human Services; and,

WHEREAS, said application and implementation of such reimbursement is very complicated, technical, and time consuming; and,

WHEREAS, the City does not have the expertise and time to apply for and follow through on said implementation; and,

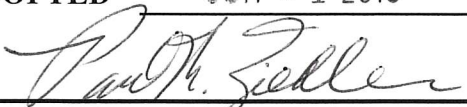
WHEREAS, the firm of RDS Services LLC has such expertise and time and is currently the city contractor for the Prescription Drug Reimbursement Program and is therefore familiar with the City health insurance program, policies, and procedures; and,

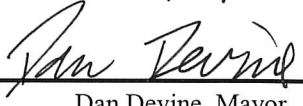
WHEREAS, the RDS proposed retainer fee and percentage of costs recovery fees are reasonable for said services.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis that the attached agreement be and is hereby approved.

BE IT FURTHER RESOLVED that the property City Officials are hereby authorized and directed to executive said agreement on behalf of the City.

ADM\ORDRES\ADMR392

ADOPTED JUN 01 2010

Paul M. Ziehler, City Admin. Officer, Clerk/Treas.

APPROVED 6/4/10

Dan Devine, Mayor

RDS SERVICES, LLC

AGREEMENT FOR EARLY RETIREE REINSURANCE PROGRAM SERVICES

THIS AGREEMENT FOR EARLY RETIREE REINSURANCE PROGRAM SERVICES ("Agreement") is entered into by and between RDS Services, LLC, a Michigan corporation ("RDS") and _____ ("Plan Sponsor") and shall be effective as of June 10, 2010 ("Effective Date").

Plan Sponsor maintains a group health program (hereinafter referred to as the "Plan") under which eligible individuals are able to obtain certain retiree health care benefits. Plan Sponsor desires to engage RDS to assist Plan Sponsor with certain requirements and opportunities with respect to the Early Retiree Reinsurance Program ("Reinsurance Program") under the Patient Protection and Affordable Care Act of 2010 ("PPACA of 2010"), and RDS desires to provide such assistance, all on the terms and subject to the conditions set forth in this Agreement.

NOW THEREFORE, the parties agree as follows:

**SECTION 1
SERVICES AND RESPONSIBILITIES**

1.01 RDS Services. During the term of this Agreement, RDS shall provide to Plan Sponsor the services described on **Exhibit A** to this Agreement (collectively, "RDS Services"). In performance of the RDS Services, RDS shall rely on any communication and/or data reasonably believed by it to be genuine, including necessary information received from Plan Sponsor, Members, providers, and any other source in a timely manner and in good order. For purposes hereof, "timely manner" means a reasonable period of time as may be necessary for sorting, processing, analyzing, entering and/or posting of information received.

1.02 Responsibilities of Plan Sponsor. Plan Sponsor (or its designee(s) other than RDS) shall serve as the administrator, fiduciary and primary decision maker for the Plan, with all of the rights and responsibilities for administering the Plan in connection with the Reinsurance Program, and RDS shall have no such authority or responsibility except as may be specifically provided in this Agreement. During the term of this Agreement, and as a condition to RDS' obligation to provide the RDS Services, Plan Sponsor's responsibilities shall include the responsibilities set forth on **Exhibit B** to this Agreement.

1.03 Compensation. The fees for the RDS Services are set forth on **Exhibit C** to this Agreement. RDS shall send a monthly invoice to Plan Sponsor for the current month's fees. Payment shall be due upon receipt of invoice. Plan Sponsor must notify RDS in writing within thirty (30) days of Plan Sponsor's receipt of each regular monthly invoice of any discrepancy; otherwise, RDS' fee shall be as reflected in the invoice. Accounts and invoices not paid by the later of the end of the month, or within 30 days of billing, are considered delinquent and are subject to a monthly service charge of 1.5 percent (1.5%) of the delinquent amount. Besides late fees and service charges, subsequent subsidy filings could be delayed at the sole discretion of RDS if accounts are beyond 30 days in arrears. Late fees and charges shall not apply where there is a bona fide dispute as to the amount owed.

1.04 Caveats. By its execution of this Agreement, Plan Sponsor is acknowledging its knowledge, understanding and agreement to the specific items set forth on **Exhibit D** to this Agreement regarding the RDS Services.

1.05 Disclaimer. EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, RDS DISCLAIMS TO THE FULLEST EXTENT PERMISSIBLE BY LAW ALL WARRANTIES, EXPRESS OR IMPLIED, AS TO

THE NATURE OR STANDARD OF THE RDS SERVICES HEREUNDER, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT WILL RDS OR PLAN SPONSOR BE LIABLE FOR SPECIAL, CONSEQUENTIAL OR INDIRECT DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR LOSS OF USE.

SECTION 2 RELATIONSHIP OF THE PARTIES

2.01 Independent Contractor. In performing services under this Agreement, RDS performs all acts as an independent contractor and not as an officer, employee or agent of the Plan. Nothing in this Agreement shall be construed to mean that Plan Sponsor (or any of its agents) retains any control over the manner and means of how RDS performs the services provided for herein, but only a right to review the results of the work performed.

2.02 Not a Fiduciary or Insurer. Plan Sponsor is the named fiduciary and/or primary decision maker of the Plan. As fiduciary and/or decision maker, Plan Sponsor maintains discretionary authority and responsibility in the administration and operation of the Plan, including, but not limited to, the determination of covered services, interpretation of the terms of the Plan, and the determination of eligibility for and entitlement to benefits under the Plan in accordance with the terms of the Plan. RDS does not assume any responsibility for any act, omission or breach by any fiduciary.

SECTION 3 TERM AND TERMINATION

3.01 Term. This Agreement shall be in effect for a period of one (1) year from the Effective Date (“Initial Term”) and thereafter shall renew automatically from year to year unless otherwise terminated in accordance with Section 3.02.

3.02 Termination. Subject to continuing obligations under Section 3.03, this Agreement may be terminated as specified below:

- (a) Following the Initial Term by either party with or without cause upon forty-five (45) days’ prior written notice;
- (b) By and at the election of RDS, upon Plan Sponsor’s failure to provide timely and adequate payment of service fees to RDS in accordance with the provisions of this Agreement;
- (c) By either party as of the date the other voluntarily or involuntarily files for bankruptcy protection for any or all portion of its business operations;
- (d) By mutual written agreement of the parties; or
- (e) Upon termination of the Reinsurance Program by the Department of Health & Human Services (“HHS”).
- (f) By Plan Sponsor if RDS breaches this Agreement in any material respect and fails to cure such breach within thirty (30) days following written notice of such breach from Plan Sponsor; or

3.03 Obligations After Contract Termination; Survival. All responsibilities of either party under this Agreement shall terminate upon the termination of this Agreement, except that the following rights and liabilities of the parties shall survive the termination of this Agreement for the specified time period as provided below or as otherwise agreed by the parties hereto:

- (a) Plan Sponsor's duty to pay RDS for amounts due to RDS hereunder, until such amounts are paid in full, specifically including all payments with respect to all Reinsurance Subsidies paid to Plan Sponsor as a result of the a "claim reimbursements" made by RDS to HHS.
- (b) Plan Sponsor's and RDS' respective duties hereunder that are predicated on, or reasonably contemplate continuation beyond, the termination of this Agreement, including, but not limited to, this Section 3.03 and Sections 3.04, 3.05, 3.06, and 5.02. Notwithstanding the foregoing, such duties shall not survive beyond the duration of any applicable statute of limitations.
- (c) Plan Sponsor's and RDS' indemnification duties and liabilities under Section 4 hereof with respect to events and claims arising before the termination of the Agreement, until the appropriate statute of limitations has run.

3.04 Outstanding Fees; Records. Upon termination of this Agreement, Plan Sponsor agrees to remit to RDS any outstanding balances due (or which, under Section 3.03(a), becomes due) under this Agreement. Without limiting other available remedies, RDS shall have the right to retain all records in its possession with regard to its services pursuant to this Agreement until receipt of all outstanding monies due.

3.05 Cooperation with Successor. In the event Plan Sponsor appoints a successor to RDS for any or all of RDS' services described herein, RDS shall cooperate as reasonably necessary in transferring files, records, reports and the like, and RDS shall be entitled to reasonable compensation for its services in connection therewith. Notwithstanding any provision of this Agreement (including any exhibit or addendum hereto), to the contrary, RDS shall not, without prior written agreement with Plan Sponsor, be obligated to assist a successor to RDS or otherwise take or continue any action following termination of the Agreement if and to the extent such assistance or action may reasonably be viewed, as causing RDS to become a fiduciary with respect to the Plan in any manner.

3.06 Access to Information. Plan Sponsor shall have the right, upon providing reasonable notice, to periodically review, at its own expense, any records of RDS relating to the services provided herein; any examination of such records shall be carried out in a manner mutually agreeable to RDS and Plan Sponsor and to the extent permitted by applicable law.

SECTION 4 INDEMNIFICATION

4.01 Indemnification by Plan Sponsor. Plan Sponsor agrees to indemnify RDS, its officers, directors, employees and agents for and hold them harmless from any claim, liability, cost, loss, expense or damage (including reasonable attorney fees) which may be paid or incurred by RDS with respect to any Member or any other person or persons (including any governmental authority) resulting from or in connection with rendering of services by RDS under this Agreement or the design or operation of the Plan or any action or inaction by Plan Sponsor with respect to the Plan, unless such claim, liability, cost, loss, expense or damage results from RDS' negligence, willful misconduct or fraud.

4.02 Indemnification by RDS. RDS agrees to indemnify and hold harmless Plan Sponsor from any claim, liability, cost, loss, expense or damage (including reasonable attorney fees) which results from RDS' negligence, willful misconduct or fraud in carrying out its duties pursuant to this Agreement.

**SECTION 5
GENERAL PROVISIONS**

5.01 Amendment; Assignment. This Agreement may not be amended without the express written consent of both parties. No assignment by either party pertaining to this Agreement shall be valid without the express written consent of the other party, which consent will not be unreasonably withheld.

5.02 Confidentiality. RDS recognizes that it shall be provided with personal information regarding Members of Plan in the course of providing services under this Agreement. RDS shall safeguard such information to ensure that no person who does not need to know such information has access to such information. To the extent required by law, RDS will enter into a "Business Associate Agreement" with the Plan and/or Plan Sponsor, provided that no such Business Associate Agreement shall alter or amend the rights and responsibilities of the parties under this Agreement.

5.03 Entire Agreement. This Agreement (including any exhibits or addenda hereto) constitutes the complete and exclusive statement of the terms of the agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, promises, and arrangements, oral or written, between the parties with respect to the subject matter hereof.

5.04 Governing Law. To the extent not preempted by federal law, including ERISA, this Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin without regard to conflicts-of-law principles that would require the application of any other law. Any action concerning this Agreement shall be brought and maintained in the State or federal courts located in Milwaukee County, State of Wisconsin.

5.05 Headings. The headings of this Agreement are solely for the convenience of the parties and do not affect the meaning or interpretation of any provision of this Agreement.

5.06 Notice. Any notice required to be given hereunder between the parties shall be written, effective upon receipt and shall be served by facsimile or by personal delivery or certified mail, return receipt requested to the address cited in the signature block of this Agreement or to such other address as shall be specified by like notice by either party.

5.07 Other Service Providers; No Legal or Tax Advice. RDS may seek the services of others in performing its duties and obligations under this Agreement. Plan Sponsor acknowledges and agrees that RDS' services pursuant to this Agreement are in the nature of consulting, logistical and non-discretionary ministerial services and are not intended, and shall not be construed or characterized as, the provision of legal or tax advice or professional fiduciary services.

5.08 Successor and Assigns; Waiver. Subject to the provisions of Section 5.01 above, this Agreement shall be binding upon and inure to the benefit of and be enforceable against the parties hereto and their respective successors and assigns. Failure to enforce any provision of this Agreement shall not affect the rights of the parties to enforce such provision in another circumstance or their right to enforce any other provision of this Agreement at any time. If any provision of this Agreement is determined to be unenforceable or invalid, such determination shall not affect the validity of the other provisions contained in this Agreement.

5.09 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which together shall constitute a single agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, effective as of the Effective Date, by their duly authorized officers.

RDS Services, LLC

CITY OF WEST ALLIS, WI (Plan Sponsor)

By: _____

By: Paul M. Ziebler

Name: _____

Name: PAUL M. ZIEHLER

Title: _____

Title: City Administrator / elected Trustee

Address: _____

Address: 7525 W. Greenfield Ave.
W. Allis, WI 53214

Date: _____

Date: 10/10/10

EXHIBIT A

RDS SERVICES

1. RDS Services – Generally. During the term of this Agreement, RDS shall provide the following services, as more specifically detailed in Sections 2 through 4 below:
 - (a) Determine and assist in completion of Plan Sponsor’s “requirements to participate”, as defined under Section 1102(b) of the PPACA of 2010 (45 CFR 149.35), and summarized below.

Plan Sponsor’s employment-based plan must:

 - (i) Be certified by the Secretary of HHS
 - (ii) Include programs and procedures that have generated or have the potential to generate cost-savings for plan participants with chronic and high-cost conditions

A sponsor must:

 - (A) Make available information, data, documents, and records as specified in 45 CFR 149.350
 - (B) Have a written agreement with its health insurance issuer or employment-based plan regarding disclosure of pertinent plan information to comply with the program
 - (C) Ensure that policies and procedures to protect against fraud, waste and abuse under the program are in place
 - (D) Submit an application to the Secretary in the manner, and at the time, required by the Secretary.
 - (b) Assist Plan Sponsor in applying for the Reinsurance Program subsidy in connection with the Plan (as described in Section 1102 of the PPACA of 2010 and 45 CFR Part 149).
2. Specific RDS Services – Reinsurance Subsidy. During the term of this Agreement, RDS shall provide any or all of the following services as may be necessary to assist Plan Sponsor with respect to the Reinsurance Subsidies:
 - (a) General consultation regarding the Reinsurance Program and assist in determining the magnitude of potential Reinsurance Subsidies that may be available to Plan Sponsor;
 - (c) Assist in the identification of “qualifying claim” data which may include payments for medical, surgical, hospital and prescription drug costs, or other benefits as the HHS Secretary determines under Section 1102(a)(2)(A) of the PPACA of 2010;
 - (d) Assist in obtaining, compiling and documenting detailed expenditure information from third-party administrators, insurance companies and other sources;

- (e) Appoint a Reinsurance Subsidy Account Manager for Plan Sponsor and assist in the preparation of an application to Department of Health and Human Services (“HHS”) for the Reinsurance Subsidies, and assist with follow-up tasks as may be required by HHS, including the timely submission of plan information and claims detail to HHS; and
- (f) Assist in the design and establishment of a system for the proper retention of relevant data as may be proper and necessary for compliance with the Reinsurance Program and any audits by HHS in connection with the Reinsurance Subsidies.

3. Specific RDS Services – Ongoing Services. During the term of this Agreement, RDS shall provide the following ongoing services:

- (a) Maintain and update a database containing the eligibility of each Individual with coverage under the Plan and/or under the Reinsurance Program;
- (b) Maintain other appropriate records regarding the Plan in respect of the Reinsurance Program as may be required by federal law; and
- (c) Assist Plan Sponsor with submission of, or access to, the records in RDS’ database as may be required for HHS regulatory, audit, and/or other business purposes.

4. Additional Services. Additional general consulting services by RDS, if any, shall be provided upon request by Plan Sponsor and approval by RDS for the additional service fees as specified on **Exhibit C** to this Agreement.

EXHIBIT B

RESPONSIBILITIES OF PLAN SPONSOR

Preparation and Provision of Eligibility List and Plan Information. Plan Sponsor shall:

- (a) Prepare a complete and accurate set of current enrollment records for all Members under the Plan. Such records shall be delivered to RDS in an electronic format acceptable to RDS as soon as practicable following the Effective Date. Thereafter, Plan Sponsor shall promptly update such enrollment records in an electronic format acceptable to RDS, notifying RDS of any and all changes in Member status, including the addition of new Members, termination from plan, changes in dependent status or any other changes that may affect the eligibility of a Member;
- (b) Make available, or cause to be made available to RDS, certain reports and information to which Plan Sponsor has access, as may be reasonably requested by RDS. Such reports and information may include, but shall not be limited to: (i) certification that a Member is eligible for benefits under the Plan; (ii) a description and identification of the types of benefits to which a Member is entitled; (iii) date of a Member's eligibility; and (iv) Member contribution rates (i.e., amounts) for single coverage, two-person coverage, and family coverage (or such other coverage units as may be applicable under the Plan) for all coverage's available under the Plan. Upon request, Plan Sponsor shall provide RDS with any other reasonable and necessary information regarding Members;
- (c) Provide RDS with a complete copy of the Plan Document (and summary plan description, if separate), including any amendments and summary of material modifications; and
- (d) Be solely responsible to inform RDS of any changes in the information it previously supplied RDS.

Reinsurance Subsidy Application and Related Tasks

- (a) To enable RDS to fulfill all of its duties regarding the Reinsurance Subsidy Plan Sponsor consents to and authorizes RDS' designation of an employee or a representative of RDS to be the "Account Manager" for purposes of the Reinsurance Subsidy application to HHS, with the necessary authority to (i) begin the Reinsurance Subsidy application process on behalf of Plan Sponsor, (ii) have and maintain full access to Plan Sponsor's Reinsurance Subsidy Application, and (iii) assign "Application Designees" and such other designees as may be necessary in the Reinsurance Subsidy application and any follow-up processes.
- (b) To enable RDS to fulfill all of its duties regarding the Reinsurance Program Plan Sponsors consents to and authorizes RDS' designation of employees or representatives of RDS to act as designees in connection with the Reinsurance Subsidy application to HHS, with the necessary authority to (i) gather, organize and submit appropriate information to HHS and (ii) request Reinsurance Subsidy payments from HHS.
- (c) Plan Sponsor shall provide its full and good faith cooperation in the procurement; access and/or review of such other reasonable information as may be determined by RDS to be reasonably necessary in order to perform its services hereunder.

Except as may be otherwise agreed to by RDS, Plan Sponsor specifically agrees that:

- (i) All electronic communications between HHS and Plan Sponsor or any of its employees or agents shall exclusively be conducted through the Server, URL address, email address and/or website established or approved by RDS for Plan Sponsor, and
- (ii) Any electronic communication related to this Agreement to HHS from Plan Sponsor or any of its employees or agents shall only be initiated with the knowledge and consent of the Reinsurance Subsidy Account Manager.

HIPAA Compliance.

Notwithstanding any provision in this Agreement to the contrary, Plan Sponsor shall, during the term of this Agreement, be solely responsible for ensuring that the Plan is and remains in full compliance with the privacy and security requirements under the Health Insurance Portability and Accountability Act (HIPAA) and implementing regulations. In particular, Plan Sponsor shall have in place all necessary business associate agreements, Plan amendments, and related documentation to the extent required under HIPAA in order to (i) permit the disclosure of protected health information (within the meaning of HIPAA) to Plan Sponsor and (ii) establish the permitted and required uses and disclosures of protected health information by Plan Sponsor.

EXHIBIT C

COMPENSATION

RDS' compensation for the services provided pursuant to the Agreement shall be:

1. Reinsurance Subsidy Services. For the RDS Services as described in Sections 1, 2 and 3 of **Exhibit A** to this Agreement, the fee for such RDS Services shall be equal to **a percent** (based on the sliding percent scale below) of the amount of each Reinsurance Subsidy payment received by Plan Sponsor from HHS as a result of any Reinsurance Subsidy Application prepared by RDS or reimbursement requests made by RDS pursuant to this Agreement.

<i>SUBSIDY RECOVERED</i>	<i>FEE %</i>	<i>FEE MAXIMUM OVER LIFE OF PROGRAM (THROUGH 1/1/2014)</i>
<i>\$0 to \$100,000</i>	<i>20%</i>	<i>NA</i>
<i>100,001 to 500,000</i>	<i>10%</i>	<i>NA</i>
<i>\$500,001 to \$2,000,000</i>	<i>5%</i>	<i>\$100,000</i>
<i>Over \$2,000,000</i>	<i>2%</i>	<i>\$175,000</i>

Upon receipt by RDS of payment of the above fee from Plan Sponsor, RDS shall have no obligation to refund any portion of such fee to Plan Sponsor in the event that any subsidy payment received by Plan Sponsor is later subject to revocation, forfeiture, surrender or modification, including as a result of any audit of Plan Sponsor or the Plan, unless such revocation, forfeiture, surrender or modification is the direct result of RDS' negligence, willful misconduct or fraud in carrying out its duties pursuant to this Agreement.

2. General Consulting Services. In the event Plan Sponsor requests RDS to provide consulting services that are in addition to the Reinsurance Subsidy Services identified in paragraph 1 above, such services shall be provided based on the time spent at the following hourly rates:

- a. \$250/hour for professional staff of RDS
- b. \$100/hour for paraprofessional staff of RDS
- c. \$50/hour for all other staff of RDS

3. Retainer. Upon execution of this Agreement, Plan Sponsor shall pay a one-time payment, as set forth below, as a retainer, to be applied against compensation due RDS under the terms of this Agreement. In the event Plan Sponsor terminates this Agreement before RDS has earned the entire amount of the retainer, RDS shall be entitled to retain any remaining balance. If Plan Sponsor's Application is denied or receives limited or no subsidy because funds under the Program have been exhausted, Plan sponsor shall be entitled back 50% of, the net retainer minus subsidy received. The one-time retainer will be established by the number of estimated "early retirees" at the commencement of this Agreement. The retainer amount will be as follows:

<u>Number of "early retirees"</u>	<u>Retainer</u>
Up to 100	\$2,000
101 to 500	\$5,000
501 to 1000	\$10,000
1001 and over	\$15,000

EXHIBIT D

CAVEATS

Plan Sponsor acknowledges, understands and agrees to the following with respect to Reinsurance Subsidy services:

1. RDS may conclude that the Plan does not qualify for the Reinsurance Subsidy because it fails a Reinsurance Program test or for some other reason. Unless there is a straightforward fix (which RDS will inform Plan Sponsor of), RDS' Reinsurance Subsidy engagement will end, with no residual duty or obligation for RDS. (RDS will try and make this determination as soon as possible following the signing of this Agreement);
2. Plan Sponsor has been given a written copy of the HHS Reinsurance Subsidy Application, has reviewed the Plan Sponsor Agreement and has determined that it is willing to sign the Plan Sponsor Agreement;
3. Plan Sponsor understands that the Reinsurance Program is a temporary program administered by HHS and that only limited funds have been made available for Plan Sponsors applying. Applicants are not guaranteed reinsurance subsidy upon submission of Application. Moreover, the amounts will vary substantially and it is not possible to accurately predict either the amount or even the frequency of such payments. Plan Sponsor's actual Reinsurance Subsidy payments are calculated one eligible retiree ("ER") at a time, based on that retiree's qualifying claim utilization;
4. In generating benefit cost information for purposes of requesting Reinsurance Subsidy payments, RDS may need to filter out certain claims that may not qualify under the Reinsurance Program and are therefore ineligible for Reinsurance Subsidy payments. Due to impracticalities that are inherent in any filtering process (e.g., whether a claim should or should not be filtered out in this process may depend on factual circumstances that could not be known by RDS or any other vendor), RDS will adopt, unless instructed otherwise by Plan Sponsor, a conservative approach that errs in favor of excluding claims that potentially may NOT be covered under Section 1102 of the PPACA of 2010 and any regulations forthcoming. This conservative approach is intended to minimize the possibility of Plan Sponsor improperly receiving more payments than is legally permitted under the Reinsurance Subsidies program;
5. In generating benefit cost information for purposes of requesting Reinsurance Subsidy payments, RDS will need to report to HHS any rebates or other provider discounts, credits or like amounts received by the Plan Sponsor or the Plan.
6. The Subsidy Application must be filed in a timely manner to ensure a greater likelihood of success receiving subsidy. For this reason, it is critical that Plan Sponsor and vendors provide RDS with necessary information in a timely manner; and
7. While RDS will keep Plan Sponsor up-to-date on progress, the only "report" provided under this Agreement will be the deposit of Electronic Fund Transfers by HHS in Plan Sponsor's designated bank account.

RDS SERVICES, LLC

AGREEMENT FOR EARLY RETIREE REINSURANCE PROGRAM SERVICES

THIS AGREEMENT FOR EARLY RETIREE REINSURANCE PROGRAM SERVICES ("Agreement") is entered into by and between RDS Services, LLC, a Michigan corporation ("RDS") and City of West Allis ("Plan Sponsor") and shall be effective as of June 10, 2010 ("Effective Date").

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1.05 Disclaimer. EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, RDS DISCLAIMS TO THE FULLEST EXTENT PERMISSIBLE BY LAW ALL WARRANTIES, EXPRESS OR IMPLIED, AS TO

THE NATURE OR STANDARD OF THE RDS SERVICES HEREUNDER, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT WILL RDS OR PLAN SPONSOR BE LIABLE FOR SPECIAL, CONSEQUENTIAL OR INDIRECT DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR LOSS OF USE.

SECTION 2 RELATIONSHIP OF THE PARTIES

2.01 Independent Contractor. In performing services under this Agreement, RDS performs all acts as an independent contractor and not as an officer, employee or agent of the Plan. Nothing in this Agreement shall be construed to mean that Plan Sponsor (or any of its agents) retains any control over the manner and means of how RDS performs the services provided for herein, but only a right to review the results of the work performed.

2.02 Not a Fiduciary or Insurer. Plan Sponsor is the named fiduciary and/or primary decision maker of the Plan. As fiduciary and/or decision maker, Plan Sponsor maintains discretionary authority and responsibility in the administration and operation of the Plan, including, but not limited to, the determination of covered services, interpretation of the terms of the Plan, and the determination of eligibility for and entitlement to benefits under the Plan in accordance with the terms of the Plan. RDS does not assume any responsibility for any act, omission or breach by any fiduciary.

SECTION 3 TERM AND TERMINATION

3.01 Term. This Agreement shall be in effect for a period of one (1) year from the Effective Date ("Initial Term") and thereafter shall renew automatically from year to year unless otherwise terminated in accordance with Section 3.02.

3.02 Termination. Subject to continuing obligations under Section 3.03, this Agreement may be terminated as specified below:

- (a) Following the Initial Term by either party with or without cause upon forty-five (45) days' prior written notice;
- (b) By and at the election of RDS, upon Plan Sponsor's failure to provide timely and adequate payment of service fees to RDS in accordance with the provisions of this Agreement;
- (c) By either party as of the date the other voluntarily or involuntarily files for bankruptcy protection for any or all portion of its business operations;
- (d) By mutual written agreement of the parties; or
- (e) Upon termination of the Reinsurance Program by the Department of Health & Human Services ("HHS").
- (f) By Plan Sponsor if RDS breaches this Agreement in any material respect and fails to cure such breach within thirty (30) days following written notice of such breach from Plan Sponsor; or

3.03 Obligations After Contract Termination; Survival. All responsibilities of either party under this Agreement shall terminate upon the termination of this Agreement, except that the following rights and liabilities of the parties shall survive the termination of this Agreement for the specified time period as provided below or as otherwise agreed by the parties hereto:

- (a) Plan Sponsor's duty to pay RDS for amounts due to RDS hereunder, until such amounts are paid in full, specifically including all payments with respect to all Reinsurance Subsidies paid to Plan Sponsor as a result of the a "claim reimbursements" made by RDS to HHS.
- (b) Plan Sponsor's and RDS' respective duties hereunder that are predicated on, or reasonably contemplate continuation beyond, the termination of this Agreement, including, but not limited to, this Section 3.03 and Sections 3.04, 3.05, 3.06, and 5.02. Notwithstanding the foregoing, such duties shall not survive beyond the duration of any applicable statute of limitations.
- (c) Plan Sponsor's and RDS' indemnification duties and liabilities under Section 4 hereof with respect to events and claims arising before the termination of the Agreement, until the appropriate statute of limitations has run.

3.04 Outstanding Fees; Records. Upon termination of this Agreement, Plan Sponsor agrees to remit to RDS any outstanding balances due (or which, under Section 3.03(a), becomes due) under this Agreement. Without limiting other available remedies, RDS shall have the right to retain all records in its possession with regard to its services pursuant to this Agreement until receipt of all outstanding monies due.

3.05 Cooperation with Successor. In the event Plan Sponsor appoints a successor to RDS for any or all of RDS' services described herein, RDS shall cooperate as reasonably necessary in transferring files, records, reports and the like, and RDS shall be entitled to reasonable compensation for its services in connection therewith. Notwithstanding any provision of this Agreement (including any exhibit or addendum hereto), to the contrary, RDS shall not, without prior written agreement with Plan Sponsor, be obligated to assist a successor to RDS or otherwise take or continue any action following termination of the Agreement if and to the extent such assistance or action may reasonably be viewed, as causing RDS to become a fiduciary with respect to the Plan in any manner.

3.06 Access to Information. Plan Sponsor shall have the right, upon providing reasonable notice, to periodically review, at its own expense, any records of RDS relating to the services provided herein; any examination of such records shall be carried out in a manner mutually agreeable to RDS and Plan Sponsor and to the extent permitted by applicable law.

SECTION 4 INDEMNIFICATION

4.01 Indemnification by Plan Sponsor. Plan Sponsor agrees to indemnify RDS, its officers, directors, employees and agents for and hold them harmless from any claim, liability, cost, loss, expense or damage (including reasonable attorney fees) which may be paid or incurred by RDS with respect to any Member or any other person or persons (including any governmental authority) resulting from or in connection with rendering of services by RDS under this Agreement or the design or operation of the Plan or any action or inaction by Plan Sponsor with respect to the Plan, unless such claim, liability, cost, loss, expense or damage results from RDS' negligence, willful misconduct or fraud.

4.02 Indemnification by RDS. RDS agrees to indemnify and hold harmless Plan Sponsor from any claim, liability, cost, loss, expense or damage (including reasonable attorney fees) which results from RDS' negligence, willful misconduct or fraud in carrying out its duties pursuant to this Agreement.

**SECTION 5
GENERAL PROVISIONS**

5.01 Amendment; Assignment. This Agreement may not be amended without the express written consent of both parties. No assignment by either party pertaining to this Agreement shall be valid without the express written consent of the other party, which consent will not be unreasonably withheld.

5.02 Confidentiality. RDS recognizes that it shall be provided with personal information regarding Members of Plan in the course of providing services under this Agreement. RDS shall safeguard such information to ensure that no person who does not need to know such information has access to such information. To the extent required by law, RDS will enter into a "Business Associate Agreement" with the Plan and/or Plan Sponsor, provided that no such Business Associate Agreement shall alter or amend the rights and responsibilities of the parties under this Agreement.

5.03 Entire Agreement. This Agreement (including any exhibits or addenda hereto) constitutes the complete and exclusive statement of the terms of the agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, promises, and arrangements, oral or written, between the parties with respect to the subject matter hereof.

5.04 Governing Law. To the extent not preempted by federal law, including ERISA, this Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin without regard to conflicts-of-law principles that would require the application of any other law. Any action concerning this Agreement shall be brought and maintained in the State or federal courts located in Milwaukee County, State of Wisconsin.

5.05 Headings. The headings of this Agreement are solely for the convenience of the parties and do not affect the meaning or interpretation of any provision of this Agreement.

5.06 Notice. Any notice required to be given hereunder between the parties shall be written, effective upon receipt and shall be served by facsimile or by personal delivery or certified mail, return receipt requested to the address cited in the signature block of this Agreement or to such other address as shall be specified by like notice by either party.

5.07 Other Service Providers; No Legal or Tax Advice. RDS may seek the services of others in performing its duties and obligations under this Agreement. Plan Sponsor acknowledges and agrees that RDS' services pursuant to this Agreement are in the nature of consulting, logistical and non-discretionary ministerial services and are not intended, and shall not be construed or characterized as, the provision of legal or tax advice or professional fiduciary services.

5.08 Successor and Assigns; Waiver. Subject to the provisions of Section 5.01 above, this Agreement shall be binding upon and inure to the benefit of and be enforceable against the parties hereto and their respective successors and assigns. Failure to enforce any provision of this Agreement shall not affect the rights of the parties to enforce such provision in another circumstance or their right to enforce any other provision of this Agreement at any time. If any provision of this Agreement is determined to be unenforceable or invalid, such determination shall not affect the validity of the other provisions contained in this Agreement.

5.09 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which together shall constitute a single agreement.


[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, effective as of the Effective Date, by their duly authorized officers.

RDS Services, LLC

CITY OF WEST ALLEN, WI (Plan Sponsor)

By: 

By: 

Name: Mark A. Manguen

Name: PAUL M. ZIEBLER

Title: President

Title: City Administrator / elected Trustee

Address: 1450 W Long Lake Rd Ste 250
Troy, MI 48098

Address: 7525 W. Greenfield Ave
W. Allen, WI 53214

Date: 6/11/10

Date: 6/10/10