

## SERVICE AGREEMENT NO. 1262

### Section 125 Cafeteria Plan Administration

THIS **Section 125 Cafeteria Plan Administration Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and Application Software, Inc. dba ASIFlex ("Contractor"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Contractor has bid to provide Section 125 Cafeteria Plan Administration in response to Request for Bid/Proposal No. 1262 ("RFB/RFP"), which RFB/RFP includes the required scope of work and all specifications and which RFB/RFP and the Contractor's bid or proposal response, as applicable, are incorporated by reference in this Agreement as Exhibits 1 and 2, respectively, as if each were fully set out here in its entirety.

NOW, THEREFORE, City and Contractor agree as follows:

- 1. Scope.** Contractor will provide Section 125 Cafeteria Plan Administration ("Services") in accordance with the attached Scope of Work, as shown in Attachment A, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety, and in accordance with Exhibit 2.
- 2. Term.** This Agreement is for 12 months, with performance commencing upon the date of issuance of a notice to proceed from the Contract Administrator or Purchasing Division. The parties may mutually extend the term of this Agreement for up to four additional 12-month periods ("Option Period(s)"), provided, the parties do so in writing and prior to the expiration of the original term or the then-current Option Period. The City's extension authorization must be executed by the City Manager or designee.
- 3. Compensation and Payment.** The total value of this Agreement is not to exceed \$35,612.40, subject to approved extensions and changes. Payment will be made for Services completed and accepted by the City within 30 days of acceptance, subject to receipt of an acceptable invoice. All pricing must be in accordance with the attached Bid/Pricing Schedule, as shown in Attachment B, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.
- 4. Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement, including deductions for non-performance and authorizations for payment. The City's Contract Administrator for this Agreement is as follows:

Rose Bond  
Human Resources  
361-826-3878  
RoseB2@cctexas.com

**5. Insurance; Bonds.**

(A) Before performance can begin under this Agreement, the Contractor must deliver a certificate of insurance ("COI"), as proof of the required insurance coverages, to the City's Risk Manager and the Contract Administrator. Additionally, the COI must state that the City will be given at least 30 days' advance written notice of cancellation, material change in coverage, or intent not to renew any of the policies. The City must be named as an additional insured. The City Attorney must be given copies of all insurance policies within 10 days of the City Manager's written request. Insurance requirements are as stated in Attachment C, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.

(B) In the event a payment bond, a performance bond, or both, are required of the Contractor to be provided to the City under this Agreement before performance can commence, the terms, conditions, and amounts required in the bonds and appropriate surety information are as included in the RFB/RFP or as may be added to Attachment C, and such content is incorporated here in this Agreement by reference as if each bond's terms, conditions, and amounts were fully set out here in its entirety.

- 6. Purchase Release Order.** For multiple-release purchases of Services to be provided by the Contractor over a period of time, the City will exercise its right to specify time, place and quantity of Services to be delivered in the following manner: any City department or division may send to Contractor a purchase release order signed by an authorized agent of the department or division. The purchase release order must refer to this Agreement, and Services will not be rendered until the Contractor receives the signed purchase release order.
- 7. Inspection and Acceptance.** Any Services that are provided but not accepted by the City must be corrected or re-worked immediately at no charge to the City. If immediate correction or re-working at no charge cannot be made by the Contractor, a replacement service may be procured by the City on the open market and any costs incurred, including additional costs over the item's bid/proposal price, must be paid by the Contractor within 30 days of receipt of City's invoice.
- 8. Warranty.** The Contractor warrants that all products supplied under this Agreement are new, quality items that are free from defects, fit for their intended

purpose, and of good material and workmanship. The Contractor warrants that it has clear title to the products and that the products are free of liens or encumbrances. In addition, the products purchased under this Agreement shall be warranted by the Contractor or, if indicated in Attachment D by the manufacturer, for the period stated in Attachment D. Attachment D is attached to this Agreement and is incorporated by reference into this Agreement as if fully set out here in its entirety.

9. **Quality/Quantity Adjustments.** Any Service quantities indicated on the Bid/Pricing Schedule are estimates only and do not obligate the City to order or accept more than the City's actual requirements nor do the estimates restrict the City from ordering less than its actual needs during the term of the Agreement and including any Option Period. Substitutions and deviations from the City's product requirements or specifications are prohibited without the prior written approval of the Contract Administrator.
10. **Non-Appropriation.** The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30<sup>th</sup> annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council to determine whether or not to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.
11. **Independent Contractor.** Contractor will perform the work required by this Agreement as an independent contractor and will furnish such Services in its own manner and method, and under no circumstances or conditions will any agent, servant or employee of the Contractor be considered an employee of the City.
12. **Subcontractors.** Contractor may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Contractor must obtain prior written approval from the Contract Administrator if the subcontractors were not named at the time of bid or proposal, as applicable. In using subcontractors, the Contractor is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of the Contractor. All requirements set forth as part of this Agreement, including the necessity of providing a COI in advance to the City, are applicable to all subcontractors and their employees to the same extent as if the Contractor and its employees had performed the work.
13. **Amendments.** This Agreement may be amended or modified only by written change order signed by both parties. Change orders may be used to modify quantities as deemed necessary by the City.
14. **Waiver.** No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.

15. **Taxes.** The Contractor covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other related taxes. Upon request, the City Manager shall be provided proof of payment of these taxes within 15 days of such request.
16. **Notice.** Any notice required under this Agreement must be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand-delivered or on the third day after postmark if sent by certified mail. Notice must be sent as follows:

**IF TO CITY:**

City of Corpus Christi  
Attn: Rose Bond  
Health Benefits Manager  
1201 Leopard Street, Corpus Christi, TX 78401  
Fax: 361-826-3322

**IF TO CONTRACTOR:**

Application Software, Inc., dba ASIFlex  
Attn: John M. Riddick  
President/CEO  
201 West Broadway, Bldg 4C, Columbia, MO 65203  
Fax: 573-499-1840

17. **CONTRACTOR SHALL FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS, AND CAUSES OF ACTION OF WHATEVER NATURE, CHARACTER, OR DESCRIPTION ON ACCOUNT OF PERSONAL INJURIES, PROPERTY LOSS, OR DAMAGE, OR ANY OTHER KIND OF INJURY, LOSS, OR DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS' FEES AND EXPERT WITNESS FEES, WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH A BREACH OF THIS AGREEMENT OR THE PERFORMANCE OF THIS AGREEMENT BY THE CONTRACTOR OR RESULTS FROM THE NEGLIGENT ACT, OMISSION, MISCONDUCT, OR FAULT OF THE CONTRACTOR OR ITS EMPLOYEES OR AGENTS. CONTRACTOR MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL SATISFACTORY TO THE CITY ATTORNEY, AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING OR RESULTING FROM ANY SAID LIABILITY, DAMAGE,**

**LOSS, CLAIMS, DEMANDS, SUITS, OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.**

**18. Termination.**

(A) The City Manager may terminate this Agreement for Contractor's failure to perform the work specified in this Agreement or to keep any required insurance policies in force during the entire term of this Agreement. The Contract Administrator must give the Contractor written notice of the breach and set out a reasonable opportunity to cure. If the Contractor has not cured within the cure period, the City Manager may terminate this Agreement immediately thereafter.

(B) Alternatively, the City Manager may terminate this Agreement for convenience upon 30 days advance written notice to the Contractor. The City Manager may also terminate this Agreement upon 24 hours written notice to the Contractor for failure to pay or provide proof of payment of taxes as set out in this Agreement.

**19. Assignment.** No assignment of this Agreement by the Contractor, or of any right or interest contained herein, is effective unless the City Manager first gives written consent to such assignment. The performance of this Agreement by the Contractor is of the essence of this Agreement, and the City Manager's right to withhold consent to such assignment is within the sole discretion of the City Manager on any ground whatsoever.

**20. Severability.** Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.

**21. Order of Precedence.** In the event of any conflicts or inconsistencies between this Agreement, its attachments, and exhibits, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:

- A. this Agreement (excluding attachments and exhibits);
- B. its attachments;
- C. the bid solicitation document including any addenda (Exhibit 1); then,
- D. the Contractor's bid response (Exhibit 2).

**22. Certificate of Interested Parties.** Contractor agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement.

23. **Governing Law.** This Agreement is subject to all federal, State, and local laws, rules, and regulations. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such form and venue for such disputes is the appropriate district, county, or justice court in and for Nueces County, Texas.
24. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties.

(SIGNATURE PAGE FOLLOWS)

**CONTRACTOR**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY OF CORPUS CHRISTI**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Attached and Incorporated by Reference:**

Attachment A: Scope of Work

Attachment B: Bid/Pricing Schedule

Attachment C: Insurance and Bond Requirements

Attachment D: Warranty Requirements

**Incorporated by Reference Only:**

Exhibit 1: RFB/RFP No. 1262

Exhibit 2: Contractor's Bid/Proposal Response

## **Attachment A: Scope of Work**

### **1. General Requirements/Background Information**

- A. The Contractor shall provide Section 125 Plan Administration services, Flexible Spending Account and Dependent Care, as outlined in this Scope of Work. The City's Section 125 Plan is attached as Exhibit A and the current census is attached as Exhibit B.
- B. The City or agents reserves the right to audit Contractor's performance by reviewing pertinent records and documentation, including clinical records, subject to appropriate confidentiality requirements.
- C. Contractor must be able to implement the program with an effective date of October 1, 2017.

### **2. Scope of work**

- A. The Contractor shall provide the following services and access levels.
  - 1. Administration and reimbursement of eligible expenses of the Flexible Spending Account in compliance with all federal regulations, including paper and electronic submission of claims, as well as provision of a debit card.
  - 2. Administration and reimbursement of eligible expenses for the Dependent Care Assistance Program, including paper and electronic submission of claims.
  - 3. Standardized reporting to both members and administration regarding account balances.
  - 4. Toll free customer service access, as well as online member customer service access.
  - 5. Non-discrimination testing (if applicable).
  - 6. Creation of required Plan Documents and forms.



- B. The Contractor must be properly licensed to conduct Section 125 Cafeteria Plan Administration services.

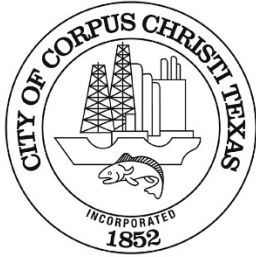
**3. Contractor Quality Control and Superintendence**

The Contractor shall establish and maintain a complete Quality Control Program that is acceptable to the Contract Administrator to assure that the requirements of the Contract are provided as specified. The Contractor shall provide supervision of the work to insure it complies with the contract requirements.

**4. Special Instructions**

- A. The Contractor shall conduct customer satisfaction surveys and provide a copy of most recent results.
- B. The Contractor shall provide in detail any subcontract portion of Section 125 Cafeteria Plan Administration services.

## Attachment B: Bid/Pricing Schedule



# CITY OF CORPUS CHRISTI

## BID FORM

### PURCHASING DIVISION

### RFB No. 1262

## Section 125 Cafeteria Plan Administration

PAGE 1 OF 1

Date: September 18, 2017

Authorized

Bidder: Application Software, Inc. dba ASIFlex

Signature: \_\_\_\_\_

1. Refer to "Instructions to Bidders" and Contract Terms and Conditions before completing bid.
2. Quote your best price for each item.
3. In submitting this bid, Bidder certifies that:
  - a. the prices in this bid have been arrived at independently, without consultation, communication, or agreement with any other Bidder or competitor, for the purpose of restricting competition with regard to prices.
  - b. Bidder is an Equal Opportunity Employer, and the Disclosure of Interest information on file with City's Purchasing office, pursuant to the Code of Ordinances, is current and true.
  - c. Bidder is current with all taxes due and company is in good standing with all applicable governmental agencies.
  - d. Bidder acknowledges receipt and review of all addenda for this RFB.

Item	Description	UNIT	QTY	Unit Price	Total Price
1	Start Up Fee	LS	1	FREE	FREE
2	Annual Administrative Fee	EA	5	FREE	FREE
3	FSA Administration Fee – with Debit Card	EA	950	\$2.95	\$2,802.50 mo. \$33,630 ann.
4	FSA Administration Fee – without Debit Card	EA	20	\$2.95	\$59 mo. \$708 ann.
5	D.C.A.P Administration Fee	EA	36	\$2.95	\$106.20 mo. \$1,274.40 ann.
6	Non-Discrimination Testing (If applicable)	LS	1	FREE	FREE
7	Plan Document Creation & Maintenance	LS	1	FREE	FREE
8	Customized Reporting or Programming	LS	1	FREE	FREE
Optional Travel: Meetings \$250 per day/plus travel.				<b>Total</b>	\$2,967.70 mo. \$35,612.40 ann.

## Attachment C: Insurance Requirements

### A. PROPOSER'S LIABILITY INSURANCE

1. Proposer must not commence work under this agreement until all insurance required has been obtained and such insurance has been approved by the City. Proposer must not allow any subcontractor Agency to commence work until all similar insurance required of any subcontractor Agency has been obtained.
2. Proposer must furnish to the City's Risk Manager and Director Human Resources, 2 copies of Certificates of Insurance (COI) with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. The City must be listed as an additional insured on the General liability and Auto Liability policies **by endorsement**, and a waiver of subrogation is required on all applicable policies. **Endorsements** must be provided with COI. Project name and or number must be listed in Description Box of COI.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
<b>30-written day notice of cancellation, required on all certificates or by applicable policy endorsements</b>	<b>Bodily Injury and Property Damage</b> Per occurrence - aggregate
Commercial General Liability including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury	\$1,000,000 Per Occurrence
AUTO LIABILITY (including) 1. Owned 2. Hired and Non-Owned 3. Rented/Leased	\$1,000,000 Combined Single Limit
PROFESSIONAL LIABILITY (Errors and Omissions)	\$1,000,000 Per Claim (Defense costs not included in face value of the policy) If claims made policy, retro date must be prior to inception of agreement, have extended

	reporting period provisions and identify any limitations regarding who is insured.
CRIME/EMPLOYEE DISHONESTY  Contractor shall name the City of Corpus Christi, Texas as Loss Payee	\$1,000,000 Per Occurrence
WORKERS' COMPENSATION  EMPLOYER'S LIABILITY	Statutory  \$500,000 /\$500,000 /\$500,000

3. In the event of accidents of any kind related to this agreement, Proposer must furnish the Risk Manager with copies of all reports of any accidents within 10 days of the accident.

B. ADDITIONAL REQUIREMENTS

1. Applicable for paid employees, Proposer must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in an amount sufficient to assure that all workers' compensation obligations incurred by the Proposer will be promptly met.
2. Proposer shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Proposer's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII.
3. Proposer shall be required to submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Proposer shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

City of Corpus Christi  
Attn: Risk Manager  
P.O. Box 9277  
Corpus Christi, TX 78469-9277

4. **Proposer agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**
- List the City and its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations, completed operation and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation policy;
  - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
  - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
  - Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
5. Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, Proposer shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Proposer's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
6. In addition to any other remedies the City may have upon Proposer's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Proposer to remove the exhibit hereunder, and/or withhold any payment(s) if any, which become due to Proposer hereunder until Proposer demonstrates compliance with the requirements hereof.
7. Nothing herein contained shall be construed as limiting in any way the extent to which Proposer may be held responsible for payments of damages to persons or property resulting from Proposer's or its subcontractor's performance of the work covered under this agreement.

8. It is agreed that Proposer's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Corpus Christi for liability arising out of operations under this agreement.
9. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.

2017 Insurance Requirements  
Purchasing – HR Benefits  
Section 125 Plan Administration Services  
07/26/2017 sw Risk Management

## **Attachment D: Warranty Requirements**

Section 8. Warranty is null for this Service Agreement.