

RESOLUTION NO. 98-18

A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING CONTRACT WITH MID-CENTRAL
VALLEY INSURANCE PRODUCERS AS THE
BROKER OF RECORD FOR THE CITY OF LODI
FOR EMPLOYEE BENEFITS

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BE IT RESOLVED, that the Lodi City Council hereby approves the contract with Mid-Central Valley Insurance Producers, as the Broker of Record for the City of Lodi for employee benefits in the amount of \$49,250.00, as shown on Exhibit A, attached hereto

BE IT FURTHER RESOLVED, that after a period of one (1) year, this contract will be re-evaluated.

Dated: January 21, 1998

I hereby certify that Resolution No. 98-18 was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 21, 1998 by the following vote:

AYES: Council Members - Land, Mann, and Sieglock (Mayor)
NOES: Council Members - Pennino, Warner
ABSENT: Council Members - None
ABSTAIN: Council Members - None


ALICE M. REIMCHE
City Clerk

AGREEMENT FOR BROKER OF RECORD
(Employee Benefits)

THIS AGREEMENT, made and entered in to this 1st day of February, 1998, by and between the City of Lodi, a municipal corporation of the State of California, hereinafter referred to as "City", and Mid-Central Valley Insurance Producers, Inc., hereinafter referred to as "Broker".

This Agreement is made with regard to the following recitals:

1. The City has determined that a Broker of Record should be designated for its employee group insurance coverage's.
2. Mid-Central Valley Insurance Producers, Inc., has been selected by the City as its Broker of Record.

NOW, THEREFORE, in consideration of this Agreement, and the mutual promises, covenants, and stipulations hereinafter contained, the parties agree as follows:

1. SCOPE OF SERVICE

The Broker agrees to provide broker/consulting services in accordance with the attached Request for Proposal. Other services may include, but are not limited to the following:

1. Assist the City in administering its life, vision, LTD, group-purchase medical and self-insured dental plans; responding to questions from and providing information to City staff, settling claims disputes and other oversight services during the course of the programs.

2. As required, to participate in the development of a cost containment strategy for the City of Lodi.
3. Provide on-going consultation and advice on City coverages, including implementation of any recommendation arising from Item 1.
4. Review each fiscal year's operations of the City's coverages, from the standpoint of loss ratio, analysis of claims, expense, and other factors, and report the results of such annual reviews to the Human Resources Director.
5. Conduct annual actuarial analysis of the City's self insured programs, including recommending appropriate premium rates and liability accounting data to meet GASB reporting requirements.
6. At the request of the Human Resources Director, prepare specifications and requests for proposals to be submitted to prospective carriers/providers of employee benefits including risk management services. Note: Consultants shall be prohibited from competing for the services to be covered by a request for proposal.
7. At the request of the Human Resources Director, analyze proposals received from carriers in terms of premium, retention, policy provisions, administrative services, claims services, capacity to handle the risk; and submit such analysis along with recommendations as to the carriers to the Human Resources Director.
8. Consult with the Human Resources Director when called upon through the year on any matters pertaining to the operation of the City's employee group insurance programs.

9. At the Human Resources Director's request, produce, at short notice, (24 hours or less) probable cost of actual or hypothetical changes in the insurance programs.
10. Advise the Human Resources Director on an on-going basis, on new trends and developments in the employee benefit field, including state and federal legislation.
11. Participate in negotiations with carriers regarding premium renewals and conditions.
12. Review and evaluate periodic reports of claims experience and other statistical reports submitted by insurance providers and report findings to the Human Resources Director.
13. Participate in the writing of insurance contracts in cooperation with the provider and the Human Resources Director.
14. Assist the City with the communication and education of existing programs to employees and implementation of new programs or changes to existing programs, which will include preparation of employee handbooks and/or descriptive literature and attending workshops and meetings as necessary and as determined by the City staff.
15. Appear as a subject matter expert upon the Human Resources Director's request at negotiating sessions between City management and labor organizations when the City's employee group insurance programs are being discussed.
16. Assist the City in obtaining, preparing and distributing employee benefits plan literature and materials and to maintain an inventory of same.

17. Provide monthly eligibility billing reconciliation services.
18. Provide such other services consistent with devising, adopting, administering or revising plans of insurance coverage for the City.
19. Start-up time shall be no more than ninety (90) days from the effective date of this agreement.

The Broker shall perform the services as described herein in a manner compatible with the standards of its profession and shall perform broker services that are acceptable to City.

2. TERM OF AGREEMENT

This Agreement is effective as of February 1, 1998 and will continue until January 31, 1999

3. COMPENSATION

This is a fixed price contract. Broker agrees to accept the annual \$49,250.00 as full remuneration for performing all services and furnishing all staffing and materials necessary for performance by Broker of all its duties and obligations under this Agreement. Whenever practical, all insurance placements will be net of commission. Whenever it is in the City's best interest to allow commissions to be paid to Broker, such commissions shall be utilized to reduce the fixed price or will be rebated back to the City. In no event, shall the Broker receive more than \$49,250 from the City and/or commissions from insurance carriers. Said fixed price shall be paid on a monthly pro-rata basis.

4. OWNERSHIP OF DOCUMENTS

All reports, drawings, designs, graphics and other incidental work or materials furnished hereunder shall become and remain the property of the City, and may be used by City as it may require without any additional cost to City. No reports shall be used by Broker without the express prior written consent of City.

If, as a part of this Agreement, Broker is required to produce data such as, but not limited to, drawings, plans, specifications, calculations, models, flow diagrams, visual aids, and other related materials, the originals of all such data generated under this Agreement shall be delivered to City.

All materials, documents, data or information obtained from the City data files or any City medium furnished to Broker in the performance of this Agreement shall at all times remain the property of city. Such data or information may not be used or copies for direct or indirect use by Broker after termination of this Agreement.

5. INTEREST OF BROKER

Broker warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Broker warrants that, in performance of this Agreement, Broker shall not employ any person having any such interest.

6. INDEPENDENT CONTRACTOR

All acts of Broker, its agents, officers, and employees and all others acting on behalf of Broker relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officer, or employees of City . Broker, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of City, save and except to bind insurance coverage for the City in its Broker's capacity as independent contractor. Broker has no authority or responsibility to exercise any rights or power vested in the City. No agent, officer, or employee of the City is to be considered an employee of Broker. It is understood by both Broker and City that this Agreement shall not under any circumstances be construed or considered to create an employer-employee relationship or a joint venture..

Broker, its agents, officer and employees are and, at all times during the terms of this Agreement, shall represent and conduct themselves as independent contractors and not as employees of City.

Broker shall determine the method, details and means of performing the work and services to be provided by Broker under this Agreement. Broker shall be responsible to City only for the requirements and results specified in this Agreement, and, except as expressly provided in this Agreement, shall not be subjected to City's control with respect of the physical action or activities of the Broker in fulfillment of this Agreement. Broker has control over the manner and means of performing the services under this Agreement. Broker is permitted to provide services to others during the same period service is provided to City under this Agreement. If necessary, Broker has the responsibility for employing other persons or firms to assist Broker in fulfilling the terms and obligations under the Agreement.

If in the performance of this Agreement any third persons are employed by Broker, such persons shall be entirely and exclusively under the direction, supervision and control of Broker. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirement of law, shall be determined by the Broker.

It is understood and agreed that as an independent contractor and not an employee of City neither the Broker or Broker's assigned personnel shall have any entitlement as a City employee, right to act on behalf of the City in any capacity whatsoever as an agent, or to bind the City to any obligation whatsoever, save and except for the ability to bind insurance noted above.

It is further understood and agreed that Broker must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Broker's personnel.

As an independent contractor, Broker hereby indemnifies and holds City harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

7. ASSIGNMENT

Neither this Agreement nor any portion thereof shall be subcontracted or assigned without the express prior written consent of the City in each and every instance.

Those areas agreed to be specifically subcontracted out are:

Actuarial Services

COBRA Administration

The provider of these services will be mutually selected by the City and Broker.

8. NOTICES

Any and all notices permitted or required to be given hereunder shall be deemed duly given and effective

- (1) upon actual delivery, if delivery is by hand; or
- (2) five (5) days after delivery into the United States mail if delivery is by postage pre-paid, registered or certified (return receipt requested) mail.

Each such notice shall be sent to the parties at the address respectively indicated below or to any other address as the respective parties may designate from time to time.

FOR BROKER: Mid-Central Valley Insurance Producers, Inc.
301 S. Ham Lane
Suite F
Lodi, CA. 95242
Attention: Jim Ehlers

Telephone: 209/334-4242

FOR CITY: City of Lodi
Human Resources Department
P.O. Box 3006
Lodi, CA 95241-1910
Attention: Joanne M. Narloch, Human Resources Director

Telephone: 209/333-6704

9. TERMINATION OF AGREEMENT

Termination on Occurrence of Stated Events

This Agreement shall terminate automatically on the date on which any of the following events occur:

- (1) bankruptcy or insolvency of Broker; or
- (2) legal dissolution of Broker.

Termination by City for Default of Broker

Should Broker default in the performance of this Agreement or materially breach any of its provisions, at its option City may terminate this Agreement by giving written notification to Broker. The termination date shall be the effective date of the notice. For the purposes of this section, material breach of this Agreement shall include but not be limited to any of the following: failure to perform required services or duties; willful destruction of City's property by Broker; dishonesty or theft.

Termination by Broker for Default of City

Should City default in the performance of this Agreement or materially breach any of its provisions, at its option Broker may terminate this Agreement by giving written notice to City. The termination date shall be the effective date of the notice. For the purposes of this section, material breach of this Agreement shall include but not be limited to any of the following: failure to cooperate reasonably with Broker; willful destruction of Broker's property by City; dishonesty or theft.

Termination for Failure to Make Agreed-Upon Payments

Should City fail to pay Broker all or any part of the payment set forth in this Agreement on the date due, at its option Broker may terminate this Agreement if the failure is not remedied within thirty (30) days after Broker notifies City in writing of such failure to pay. The termination date shall be the effective date of the notice.

Termination by City for Change of Broker's Tax Status

If City determines that Broker does not meet the requirements of federal and state tax laws for independent contractor status, City may terminate this Agreement by giving written notice to Broker. The termination date shall be the effective date of the notice.

Voluntary Termination

Either party may terminate this Agreement, upon written notice to the other, of not less than 30 days.

In the Event of Termination

If this Agreement is terminated pursuant to Paragraph 10, Broker shall cease all its work on the project as of the termination date and shall see to it that its employees, subcontractors and agents are notified of such termination and cease their work. If City so requests, and at City's cost, Broker shall provide sufficient oral or written status reports to make City reasonably aware of the status of Broker's work on the project. Further, if City so requests, and at City's cost, Broker shall deliver all draft or final work products that are the property of City to any person or agency requested by the City.

10. INSURANCE REQUIREMENTS

The Broker shall provide at its own expense and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the City as may be required . The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the City by registered mail, return receipt requested, for all of the following stated insurance policies.

- (1) Workers' Compensation - in compliance with the statutes of the State of California, plus employer's liability with a minimum limit of liability of \$500,000.
- (2) General Liability - insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage or \$1,000,000 combined single limit. This insurance shall indicate on the certificate of insurance the following coverages and indicate the policy aggregate limit applying to: premises and operations; broad form contractual; independent contractors and subcontractors; products and completed operations; and/or professional liability.
- (3) Automobile Liability - insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage of \$1,000,000 combined single limit. This insurance shall cover any automobile for bodily injury and property damage.

If at any time any of said policies shall be unsatisfactory to the City, as to form or substance or if a company issuing such policy shall be unsatisfactory to the City, the Broker shall promptly obtain a new policy, submit the same to the City for approval and submit a certificate thereof as herein above provided. Upon failure of the Broker to

furnish, deliver or maintain such insurance and certificates as above provided, this Agreement, at the election of the City, may be forthwith declared suspended, or terminated. Failure of the Broker to obtain and/or maintain any required insurance shall not relieve the Broker from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the Broker concerning indemnification. The City, its agents, officers, employees, and volunteers shall be named as an additional insured on all insurance policies required herein, except Workers' Compensation and professional liability. The Workers' Compensation insurer shall agree to waive all rights of subrogation against the City, its agents, officers, employees, and volunteers for losses arising from work performed by Broker for the City. The Broker's insurance policy(ies) shall include a provision that the coverage is primary as respects the City; shall include no special limitations to coverage provided to additional insured; and shall be placed with insurer(s) with acceptable Best's rating of A+.

11. STANDARD HOLD HARMLESS AGREEMENT

The Broker shall hold the City, its agents, officers, employees, and volunteers, harmless from and save, defend and indemnify them against any and all claims, losses, liabilities and damages from every cause, including but not limited to injury to person or property or wrongful death, with the indemnity to include reasonable attorney's fees, and all costs and expenses, arising directly or indirectly out of any act or omission of Broker, whether or not the act or omission arises from the sole negligence or other liability of Broker, or its agents, officers, employees, or volunteers relating to or during the performance of its obligations under this Agreement.

12. ENTIRE AGREEMENT

This Agreement contains the entire understanding between Broker and City. All previous proposals, offers and the communications relative to this Agreement, whether oral or written, are hereby superseded except to the extent that they have been incorporated into this Agreement. No future waiver of or exception to any of the terms, conditions, and provisions of this Agreement shall be considered valid unless specifically agreed to in writing by all the parties.

13. PARTIAL INVALIDITY

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

14. WAIVER

The waiver by any party to this Agreement of a breach of any provision hereof shall be in writing and shall not operate or be construed as a waiver of any other or subsequent breach hereof unless specifically stated in writing.

15. AUDIT

The City's duly authorized representative shall have access at all reasonable times to all reports, contract records, contract documents, contract files, and personnel necessary to audit and verify Broker's charges to City under this Agreement.

Broker agrees to retain reports, records, documents, and files related to charges under this Agreement for a period of four (4) years following the date of final payment for Broker services. City's representative shall have the right to reproduce any of the aforesaid documents.

16. GOVERNING LAW

This Agreement shall be governed according to the laws of the State of California.

17. HEADING NOT CONTROLLING

Headings used in this Agreement are for reference purposes only and shall not be considered in construing this Agreement.

18. COMPLIANCE WITH LAWS

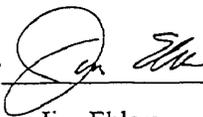
Broker shall insure compliance with all safety and hourly requirements for employees, in accordance with federal, state and county safety and health regulations and laws.

IN WITNESS WHEREOF, the parties have signed this Agreement this 11 day of February, 1998.

CITY OF LODI, a municipal corporation

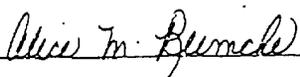
By 
H. Dixon Flynn, City Manager

MID-CENTRAL VALLEY INSURANCE PRODUCERS, INC.

By 
Jim Ehlers

APPROVED AS TO LEGAL FORM:


Randall Hays, City Attorney

ATTEST: 
Alice Reimche, City Clerk