

AMENDMENT TO BROKER/CONSULTANT AGREEMENT DATED MAY 22, 2013

The San Luis Employee Benefit Trust, hereinafter referred to as “Client” and Susan Posada Agency, Inc., hereinafter referred to as “Broker/Consultant,” and in consideration of the mutual covenants contained herein, agree as follows:

1. The Client is the successor to the Broker/Consultant agreement between the City of San Luis and Susan Posada Agency dated May 22, 2013 (hereinafter referred to as the “Agreement”). The Client extended the Agreement to July 1, 2021, in the amendment dated June 12, 2019. Under the terms of said 2019 amendment, the Agreement renews automatically for two-year periods, unless at the end of any period of extension, a party gives the other party at least 60 days’ notice in writing of the intention to terminate. For the Client’s March 10, 2021, meeting, the Broker proposed a 3-year renewal. The item was continued to the May 5, 2021, meeting and was discussed in executive session. An open session vote was not possible because the executive session ran up to the City Council Work Session time.
2. All provisions of the Agreement, as previously amended, unless amended by the terms of this amendment shall remain unchanged and in full force and effect.
3. Paragraph number three (3) of the amendment dated June 12, 2019, is hereby amended as follows:
 - a. The parties hereto agree to extend the Agreement to July 1, 2024.
 - b. On or before June 30, 2023, the Client may give written notice to Broker of its intent to put out the Agreement for a request for qualifications and proposals or take such other action in its fiduciary responsibility. The selected broker firm will commence creating a benefits plan for the July 1, 2024, through June 30, 2025, fiscal year on October 1, 2023. If the selected broker firm is not the current Broker, then as a transition, the current Broker shall continue all aspects of this Agreement, including working with the selected broker in creating a benefits plan to the extent that proprietary property is protected and not infringed. The Client will compensate the current Broker through June 30, 2024, according to sections 4 and 5 below.
4. For the period of July 1, 2021, through June 30, 2024, the Broker/Consultant commission shall not exceed 5% of the fully insured equivalent as determined by the Third-Party Administrator (“TPA”) each year. This amount is calculated by the TPA and provided as a Per Employee Per Month (“PEPM”) format. The commission for the duration of the term of the Agreement will not exceed \$35 PEPM unless changed by written amendment executed by the parties hereto.

5. Any other ancillary fees as paid by the carrier are standard fees paid by the carrier, such as for coverage for vision, disability, and life coverage. Such payment shall be paid directly by such carrier and not by the Client.

6. This amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts, and such signature pages all attached to a single instrument so that the signature of all parties may be physically attached to a single document.

7. Time is of the essence of the Agreement as amended.

8. It is not intended by this amendment to the Agreement to, and nothing contained in the Agreement as amended shall create any partnership, joint venture or other similar arrangements between Client and Broker/Consultant. No term or provision of this Agreement as amended is intended to, or shall, be for the benefit of any person, firm, organization or corporation, not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

9. This amendment to the Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein.

10. No change or additions are to be made to the Agreement as amended except by a written amendment executed by the parties hereto.

11. This amendment to the Agreement is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona. In particular, the Agreement as amended is subject to the provisions of A.R.S. § 38-511.

12. Any legal action relating to the Agreement as amended shall be brought in either the Yuma County Superior Court or in the United States District Court for the District of Arizona at the election of the plaintiff in such legal action, provided, however, that nothing in this paragraph will be deemed to have authorized the bringing of any legal action in a court which does not otherwise have jurisdiction to adjudicate the legal action.

13. Every provision of this Agreement as amended is, and will be construed to be, a separate and independent covenant. If any provision of the Agreement as amended or the application of the same is, to any extent, found to be invalid or unenforceable, then the remainder of the Agreement as amended or the application of that provision to circumstances other than those to which it is invalid or unenforceable, will not be affected by that invalidity or unenforceability, and each provision of this Agreement as amended will be valid and will be enforced to the extent permitted by the law, and the parties will negotiate in good faith for such amendments of this Agreement which may be necessary to achieve its intent, notwithstanding such invalidity or unenforceability.

The parties have executed this amendment to the Agreement.

Susan Posada Agency Inc.

San Luis Employee Benefit Trust

Susan Posada, President & Owner

Gerardo Sanchez, Chair

Date: _____

Date: _____

APPROVED AS TO FORM:

Kay Marion Macuil
City Attorney-Attorney for
San Luis Employee Benefit Trust