



**RESOLUTION No. 20130122-06**

**AN AGREEMENT WITH WORKCARE, INC., WORKCARE MEDICAL GROUP, INC.**

**WHEREAS**, TexAmericas Center is a political subdivision of the State of Texas with the powers and authorities specified in Chapter 3503 of the Special District Local Laws Code of the State of Texas; and

**WHEREAS**, the Board of Directors deems it necessary to procure occupational health, safety and records management services to fulfill certain legal and contractual obligations and to protect the Authority from risk of loss;

**WHEREAS**, over the last three years, WorkCare, Inc., WorkCare Medical Group, Inc. has provided satisfactory services to the employees of TexAmericas Center; and

**WHEREAS**, the Executive Director/CEO has reviewed the agreement and recommends acceptance by the Board of Directors;

**NOW, THEREFORE**, be it resolved by the Board of Directors that the Executive Director/CEO, William V. Cork, shall be and is hereby authorized to enter into a contract with WorkCare, Inc., and WorkCare Medical Group, Inc. on terms substantially the same as those attached hereto.

**PASSED and APPROVED this 22nd day of January, 2013**



Denis Washington, Chairman of the Board

**ATTEST:**



Wayne Cranfill, Secretary-Treasurer

Attached: WorkCare, Inc., WorkCare Medical Group, Inc. Service Agreement  
Attached: Scope of Work and Fee Schedule / Pricing

## SERVICES AGREEMENT

This Services Agreement ("Agreement") is entered into as of the 3<sup>rd</sup> day of February 2013 by and among **WorkCare, Inc., WorkCare Medical Group, Inc.**, having its main place of business at 300 South Harbor Boulevard, Suite No. 600, Anaheim, California 92805; and **TexAmericas Center** having a place of business at 107 Chapel Lane, New Boston, TX 75570 (Herein after called "Company").

### RECITALS

- A. WorkCare, Inc. provides occupational health and safety programs for employers including, but not limited to, educational and prevention programs, risk management, drug and alcohol testing, incident intervention, case management, medical surveillance, and OSHA compliance.
- B. WorkCare Medical Group, Inc., a professional medical corporation, provides physical exams, medical care, and medical consulting services in conjunction with the occupational health and safety services provided by WorkCare, Inc. to employers.
- C. Company desires WorkCare, Inc. and WorkCare Medical Group, Inc. (hereinafter collectively "WorkCare") to provide occupational health and safety services subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### 1. DUTIES AND RESPONSIBILITIES OF WORKCARE

- 1.1 **General Description of Services.** Company hereby engages WorkCare to provide and perform those services described in Exhibit A (Scope of Service), which is attached hereto and incorporated herein by reference. WorkCare agrees that it will perform the services to be provided by it hereunder in a timely fashion and in compliance with all applicable federal, state, and local laws and regulations. WorkCare hereby accepts such engagement and agrees to furnish to Company such services.
- 1.2 **Maintenance of Records.** WorkCare shall maintain such records as are necessary to support its rendering of services hereunder. WorkCare shall retain and manage all medical records of Company in accordance with 29 C.F.R. 1910 in accordance with the state law of the state in which the records are maintained. WorkCare shall comply with all laws regarding confidentiality of medical records. All medical records are and shall remain at all times the property of Company. The parties agree that WorkCare is the custodian of the medical records during the term of this Agreement, and, upon termination of this Agreement, WorkCare shall turn over to Company all such medical records. In the event Company fails or refuses to take possession of such medical records upon termination of this Agreement, WorkCare shall have the right to place such records in storage and charge Company a reasonable and mutually agreed upon fee for such storage.
- 1.3 **Additional Services.** Company may request WorkCare to perform additional services not set forth in Exhibit A by submitting a written work statement to WorkCare of the services

desired. WorkCare shall have the right, in its sole discretion, to accept or reject such request. WorkCare shall notify Company within fifteen (15) days of receipt of the request whether the request is accepted or rejected. If the request is accepted, WorkCare shall notify Company of the charges for such services and WorkCare shall not perform any such additional services until Company agrees in writing to pay such charges. In the event Company is a general contractor, acts to coordinate the work of multiple contractors, maintains multiple worksites, or requires work of subsidiary companies, Company shall be responsible for the payment of any charges incurred by the performance of WorkCare of any services for such contractors or at such worksites that it directs WorkCare to perform.

## 2. RELATIONSHIP OF PARTIES AS INDEPENDENT CONTRACTORS

In the performance of the duties and obligations described hereunder, it is mutually understood and agreed that each party is at all times acting and performing as an independent contractor with respect to the other. Nothing contained herein shall be construed to create a joint venture, partnership, association, or other affiliation or like relationship between the parties to this Agreement, it being specifically agreed that the relationship is and shall remain that of independent parties to a contractual relationship as set forth in this Agreement. Accordingly, WorkCare shall have the right to exercise control, direction, or supervision over the methods and means by which WorkCare shall perform the duties and responsibilities of WorkCare as set forth in this Agreement. No party hereto, nor any other person performing services on behalf of any party pursuant to this Agreement, shall have any right or claim against any other party under this Agreement for withhold or payment of taxes, workers' compensation, unemployment compensation, health benefits, disability benefits, vacation pay, sick leave, retirement benefits, Social Security benefits, or any other employee benefits of any kind. Each party shall indemnify and hold the other harmless from any and all loss or liability arising with respect to such payments, withholdings and benefits, if any. The parties further agree that WorkCare Medical Group, Inc. will perform all medical services and that WorkCare, Inc. will not engage in any activity that would constitute the corporate practice of medicine. Should any function assigned to WorkCare, Inc. hereunder be construed to be within the practice of medicine such that, if performed by WorkCare, Inc. it would be violative of applicable prohibitions on the corporate practice of medicine in the state in which the services are performed, such function thereafter shall be assigned to and become the responsibility of WorkCare Medical Group, Inc. and any such prior activities which were undertaken by WorkCare, Inc. shall be considered to have been undertaken by WorkCare Medical Group, Inc.

## 3. INSURANCE

Company and WorkCare shall each obtain and maintain, during the Term of this Agreement and any renewal thereof, at its own expense, commercial general liability insurance (policy limits \$1,000,000 per occurrence at \$2,000,000 aggregate) and workers compensation insurance to insure it and its employees against liability for any damages directly or indirectly related to the performance of any activities or the use of any property. In addition, WorkCare Medical Group, Inc. shall, at its expense, obtain and maintain during the Term of this Agreement and any renewal thereof, professional liability insurance to cover physicians performing services pursuant to this Agreement with policy limits of \$1,000,000 per occurrence and \$3,000,000 aggregate. *(Please know WorkCare's current policy limits reflect \$5,000,000 per occurrence at \$5,000,000 aggregate for GL & PL).*

#### 4. INDEMNIFICATION

4.4.1 Each party shall indemnify, hold harmless and defend the other, its officers, directors, shareholders, employees, agents, attorneys, and representatives for, from, and against any and all liabilities, losses, damages, claims, causes of action and expenses (including, but not limited to, attorneys' fees and costs) arising from or in connection with any acts or omissions caused by the negligence or willful misconduct of the indemnifying party, its employees, agents, or representatives. The liability and amount of damages which may be assessed against Company shall be limited by and to the liability and damages for which Company may be held responsible under the Texas Tort Claims Act, Chapter 101, Texas Civil Practice and Remedies Code.

4.4.2 WorkCare Medical Group, Inc. shall indemnify, hold harmless and defend Company, its officers, directors, shareholders, employees, agents, attorneys, and representatives for, from, and against any and all liabilities, losses, damages, claims, causes of action and expenses (including, but not limited to, attorneys' fees and costs) arising from or in connection with the performance of medical services by WorkCare Medical Group, Inc. or any of its employed or contracted physicians during the Term of this Agreement.

4.4.3 Section 4 shall survive termination of this Agreement.

#### 5. COMPENSATION

Company shall pay WorkCare, and WorkCare shall accept, as payment in full for providing the services required by this Agreement, such compensation as set forth in Exhibit B which is attached hereto and made a part hereof. WorkCare shall bill Company for Medical Surveillance exams after each exam has been completed and the physician's opinion has been rendered. WorkCare shall bill Company monthly for consulting services, if requested, provided during the immediately preceding month. All services shall be itemized and medical services shall be set forth under WorkCare Medical Group, Inc. Company shall have fifteen (15) business days following receipt of the invoice to raise any objections to the charges stated therein. If no objection is made within fifteen (15) days, the parties agree that Company has agreed to the terms of the invoice and all objections to the charges will be deemed waived. Company shall pay WorkCare the charges set forth in the invoice no later than the sixty (60) days following receipt of the invoice. If any bill remains unpaid sixty (60) days after the invoice date, a late payment fee of one and a half percent (1.5%) per month will be charged on the unpaid balance. Payments received will be applied first against late fees and then to charges for services rendered. All payments shall be made in United States dollars. WorkCare reserves the right, at its option, upon notice to Company, to suspend the performance of services hereunder until payment has been made as set forth herein or to terminate this Agreement for failure to make such payment. Suspension of services shall not be deemed, construed or interpreted as a breach of this Agreement and Company agrees that it will not raise any claim to such action by WorkCare.

#### 6. TERM

The "Term" of the Agreement shall be for a three year (3) period commencing **February 3<sup>rd</sup>, 2013** through **February 2<sup>nd</sup>, 2016**, and may be renewed upon the mutual written agreement of the parties unless sooner terminated as provided in Article 7 of this Agreement.

## 7. TERMINATION

This Agreement shall run for the Term unless earlier terminated as provided herein.

7.1 **Mutual Agreement.** This Agreement may be terminated at any time upon the written mutual consent of the parties.

7.2 **Termination Without Cause.** Either party may terminate this Agreement without cause upon ninety (90) days prior written notice to the other party.

7.3 **Termination With Cause.** Either party may terminate this Agreement with cause, which shall be defined as a breach of this Agreement. In the event of a breach, the nonbreaching party shall give written notice to the breaching party identifying the breach, and the breaching party shall have fifteen (15) days from the date of such notice to cure such breach. If the breaching party fails to cure the breach within the stated time period, the nonbreaching party shall so notify the breaching party and this Agreement shall terminate immediately following the notice of failure to cure the breach.

7.4 **Automatic Termination.** Notwithstanding anything to the contrary contained in this Article 7, this Agreement shall terminate automatically upon the occurrence of any one of the following events:

- (i) Conviction of any party of a felony;
- (ii) Any party applies for or consents to the appointment of a receiver, trustee or liquidator of all or a substantial part of its assets, files a voluntary petition in bankruptcy, allows an involuntary petition to remain for a period of more than ninety (90) days, makes a general assignment for the benefit of its creditors, files a petition or answer seeking reorganization or arrangement with its creditors, admits in writing its inability to pay its debts when due, or suffers any order, judgment or decree to be entered by any court of competent jurisdiction enjoining such party from the conduct of all or substantially all business operations for a period in excess of sixty (60) calendar days, adjudicating such party bankrupt or approving a petition seeking its reorganization or the appointment of a receiver, trustee, or liquidator of such party of all or a substantial part of its assets;
- (iii) Dissolution or liquidation of either party.

7.5 **Effect of Termination; Rights and Remedies.**

7.5.1 Upon expiration or termination of this Agreement, all obligations of each party toward the other under this Agreement shall cease except that termination of this Agreement shall not relieve any party of any obligation to the other in accordance with the terms of this Agreement with respect to services performed prior to termination. The various rights and remedies herein provided for will be cumulative and in addition to any other rights and remedies the parties may be entitled to pursue under the law. The exercise of one or more of such rights or remedies will not impair the rights of any party to exercise any other right or remedy at law or in equity.

7.5.2 Upon expiration or termination of this Agreement, WorkCare shall surrender to Company all medical records and any property of Company.

7.5.3 The obligations of the parties pursuant to Sections 4 and 10 shall survive any expiration or termination of this Agreement.

**8. NOTICE**

All notices under this Agreement shall be in writing and shall be delivered to the party to whom notice is to be given, either by personal delivery (in which case such notice shall be deemed given on the date of delivery) or by first class mail, registered or certified, return receipt requested, postage prepaid, and properly addressed to the addresses set forth on the signature page hereof (in which case such notice shall be deemed to have been duly given on the third day following the date of such mailing).

**9. PROPRIETARY RIGHTS**

All materials belonging to the Company, including documents, calculations, maps, sketches, notes, reports, data, models, and samples, (the "Materials") are the sole and exclusive property of Company subject to WorkCare's right to use such Materials to perform duties and responsibilities under this Agreement. Such Materials shall be delivered to Company upon request, and in any event upon expiration or earlier termination of this Agreement.

**10. CONFIDENTIALITY**

WorkCare acknowledges that in performance of services hereunder, WorkCare will gain knowledge of, have access to, and otherwise have disclosed to it, information that is confidential or proprietary to Company. WorkCare agrees that it shall not, nor shall any of its directors, officers, employees, agents, or contractors, at any time during the Term of this Agreement and for three (3) years following expiration or termination of this Agreement, without the express prior written consent of Company, except as may be required by law, either directly or indirectly divulge, disclose or communicate in any manner whatsoever to any person not employed by or affiliated with Company, any confidential or proprietary information regardless of the form or format, or the means by which WorkCare becomes aware of such information, nor shall WorkCare use such information for WorkCare's own personal use or for the benefit of any third party. Said information shall be used solely in connection with WorkCare's performance of services to Company hereunder and shall not be used in any other manner whatsoever. Confidential and proprietary information shall be defined as any matters relating to the business, operations, or future plans of Company including, but not limited to, products, processes, procedures, programs, protocols, technical information, trade secrets, personnel, quality assurance, and risk management records, or other data. Notwithstanding anything to the contrary stated herein, confidential and proprietary information shall not include (i) information which at the time of disclosure by Company to WorkCare is in the public domain, (ii) information, which becomes generally available to and known by the public through no fault of WorkCare, (iii) information which WorkCare can show was in WorkCare's possession at the time of "Company's disclosure to WorkCare and which was not acquired, directly or indirectly, from Company, and (iv) information which was received by WorkCare before or after the time of disclosure hereunder from a third party who did not require WorkCare to hold such information in confidence and who, to the best of WorkCare's knowledge and belief, did not acquire it, directly or indirectly, from Company under an obligation of confidence.

## 11. MISCELLANEOUS PROVISIONS

- 11.1 **Governing Law.** This Agreement shall be construed under and enforced in accordance with the laws of the State of Texas, and it shall be construed in a manner so as to conform to all federal, state, and local laws and regulations.
- 11.2 **Severability.** The provisions of this Agreement shall be deemed severable and if any portion shall be held invalid, unlawful or unenforceable for any reason, the remainder of this Agreement shall be effective and binding upon the parties.
- 11.3 **Entire Agreement; Amendment.** This Agreement contains the final and entire agreement between the parties, and supersedes all other agreements, written or oral, heretofore made by the parties. Any terms, conditions, statements, or representations, oral or written, shall not bind the parties not herein contained. This Agreement may be amended by mutual written agreement of the parties.
- 11.4 **Headings.** Headings used in this Agreement are solely for the convenience of the parties and shall be given no effect in the construction or interpretation of this Agreement.
- 11.5 **Waiver.** No waiver of any breach shall be valid or binding unless approved in writing by the nonbreaching party. Forbearance or indulgence by the nonbreaching party shall not constitute a waiver of the covenant or condition to be performed by the breaching party or of any remedy available to the nonbreaching party. No waiver of any breach of this Agreement shall constitute or be deemed a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative to every other remedy provided hereby or at law.
- 11.6. **Changes in Law.** In the event there are changes to or clarifications of federal, state or local statutes, regulations or rules that would materially affect the intent of the parties hereunder, the parties agree to amend this Agreement to accommodate the changes in the law.
- 11.7 **Assignment, Subcontract.** No party will, without the prior written consent of the other party, assign any rights or delegate any duties arising out of this Agreement except as contemplated by the express terms of this Agreement. Nothing stated in this provision shall prohibit WorkCare from subcontracting any of its duties provided that it obtains prior written consent of Company, and such consent shall not be unreasonably withheld. Subcontractors shall be held to the terms and conditions of this agreement.
- 11.8. **Gender and Number.** Whenever the context hereof requires, the gender of all words shall include the masculine, feminine, and neuter, and the number of all words shall include the singular and plural.
- 11.9 **Interpretation.** No provision of this Agreement shall be interpreted for or against either party because that party's legal representative drafted such provision.
- 11.10 **No Third Party Beneficiary.** The parties intend none of the provisions herein contained, nor shall they be deemed, to confer any benefit on any person not a party to this Agreement.
- 11.11 **Representations.** Each of the parties hereto acknowledges and agrees (i) that no representation or promise not expressly contained in this Agreement has been made by any

other party hereto or by any of its agents, employees, representatives or attorneys; (ii) that this Agreement is not being entered into on the basis of, or in reliance on, any promise or representation, express or implied, other than such as are set forth expressly in this Agreement; and (iii) that each party has been represented by counsel of its own choice in this matter or has affirmatively elected not to be represented by counsel.

11.12 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, WorkCare, Inc., WorkCare Medical Group, Inc. and Company have caused this Agreement to be executed in their respective behalf as of the date first above written.

**WorkCare, Inc.**  
**WorkCare Medical Group, Inc.**

**Address**

300 S. Harbor Boulevard  
Suite No. 600  
Anaheim, CA. 92805

  
By: William E. Nixon  
Officer Title: Chief Financial Officer

Date 02/13/13

**TexAmericas Center**

107 Chapel Lane  
New Boston, TX 75570

By: Will V. Cook  
Officer Title CEO

Date 1/23/13