



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

1. Agenda Item Number:

20

2. Council Meeting Date:
September 24, 2015

TO: **MAYOR & COUNCIL**

3. Date Prepared: August 31, 2015

THROUGH: **CITY MANAGER**

4. Requesting Department: Human Resources

5. **SUBJECT:** Agreement with Flexible Benefit Administrators, Inc., for Flexible Spending Account Administration

6. **RECOMMENDATION:** Staff recommends City Council approve Agreement No. HR5-953-3517, with Flexible Benefit Administrators, Inc., for flexible spending account administration, in an amount not to exceed \$12,000 for one year, January 1, 2016, through December 31, 2016, with the option of up to four one-year extensions.

7. **BACKGROUND/DISCUSSION:** A Flexible Spending Account (FSA) enables employees to put aside a portion of their gross income on a pre-tax basis in an FSA in order to pay qualified health care and/or dependent care expenses. The proposal from Flexible Benefit Administrators, Inc., includes a rate of \$2.98 per employee per month and has been guaranteed for a five year contract period. This represents a significant savings of \$1.77 per employee per month as compared to the current provider. This benefit is paid by the City.

8. **EVALUATION:** On March 23, 2015, City Staff issued a Request for Proposal for flexible spending account administration. Notification was sent to all registered vendors. Eight proposals were received from the following offerors:

BASIC Corp.	Flexible Benefit Administrators, Inc.
Chard Snyder	PNC Bank
Payflex Systems(Current Provider)	Blue Cross Blue Shield
USBA Flex	Connect Your Care

The Evaluation Committee reviewed the proposals and recommends award to Flexible Benefit Administrators, Inc., who submitted the most advantageous offer to the City in accordance with the evaluation criteria.

The term of this agreement is January 1, 2016, through December 31, 2016, with the option of up to four one-year extensions.

9. FINANCIAL IMPLICATIONS:

Flexible Benefit Administrators, Inc. has guaranteed its rates for the first term and all four optional one-year extensions.

Cost: Not to Exceed \$12,000

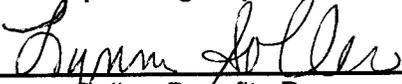
<u>Acct. No.:</u>	<u>Fund:</u>	<u>Program Name:</u>	<u>Amount:</u>
101.1290.5122	General Fund	Employee Benefits	\$12,000

10. **PROPOSED MOTION:** Move City Council approve Agreement No. HR5-953-3517, with Flexible Benefit Administrators, Inc., for flexible spending account administration, in an amount not to exceed \$12,000 for one year, January 1, 2016, through December 31, 2016, with the option of up to four one-year extensions.

ATTACHMENTS: Agreement

APPROVALS

11. Requesting Department



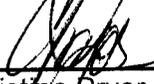
Lynna Soller, Benefits Program Manager

13. Department Head



Debra Stapleton, Human Resources Director

12. Purchasing and Materials Manager



Christina Pryor

14. Acting City Manager



Marsha Reed

**CITY OF CHANDLER SERVICES AGREEMENT
FLEXIBLE SPENDING ACCOUNT ADMINISTRATION
AGREEMENT NO.: HR5-953-3517**

THIS AGREEMENT is made and entered into this ____ day of _____, 2015, among Flexible Spending Account Sponsored by the City of Chandler, a Municipal Corporation of the State of Arizona, ("Covered Entity"), the City of Chandler ("Plan Sponsor"), and Flexible Benefit Administrators, Inc., hereinafter referred to as "Contractor".

WHEREAS, Contractor represents that Contractor has the expertise and is qualified to perform the services described in the Agreement.

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1. AGREEMENT ADMINISTRATOR:

- 1.1. Agreement Administrator.** Contractor shall act under the authority and approval of the Human Resources Director or designee (Agreement Administrator), to provide the services required by this Agreement.
 - 1.2. Key Staff.** This Agreement has been awarded to Contractor based partially on the key personnel proposed to perform the services required herein. Contractor shall not change nor substitute any of these key staff for work on this Agreement without prior written approval by City.
 - 1.3. Subcontractors.** During the performance of the Agreement, Contractor may engage such additional Subcontractor as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with Contractor.
 - 1.4. Subcontracts.** Contractor shall not enter into any Subcontract under this Agreement for the performance of this Agreement without the advance written approval of City. The subcontract shall incorporate by reference the terms and conditions of this Agreement.
- 2. SCOPE OF WORK:** Contractor shall provide flexible spending account administration services all as more specifically set forth in Exhibit A, attached hereto and made a part hereof by reference.
- 2.1 Non-Discrimination.** The Contractor shall comply with all applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.
 - 2.2 Licenses.** Contractor shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this agreement.
 - 2.3 Advertising, Publishing and Promotion of Agreement.** The Contractor shall not use, advertise or promote information for commercial benefit concerning this Agreement without the prior written approval of the City.
 - 2.4 Compliance with Applicable Laws.** Contractor shall comply with all applicable Federal, state and local laws, and with all applicable licenses and permit requirements.
 - 2.4.1** The Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("subcontractors") will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify, hereinafter "Contractor Immigration Warranty".

- 2.4.2 A breach of the Contractor Immigration Warranty shall constitute a material breach of this Agreement that is subject to penalties up to and including termination of the agreement.
- 2.4.3 The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Agreement to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.
- 2.4.4 The City may, at its sole discretion, conduct random verifications of the employment records of the Contractor and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The Contractor agrees to assist the City in performing any such random verification.
- 2.4.5 The provisions of this Article must be included in any agreement the Contractor enters into with any and all of its subcontractors who provide services under this Agreement or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.
3. **ACCEPTANCE AND DOCUMENTATION:** Each task shall be reviewed and approved by the Agreement Administrator to determine acceptable completion.
- 3.1. **Records.** The Contractor shall retain and shall contractually require each Subcontractor to retain all data and other "records" relating to the acquisition and performance of the Agreement for a period of five years after the completion of the Agreement.
- 3.2. **Audit.** At any time during the term of this Agreement and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Agreement or Subcontract. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.3. **New/Current Products.** All equipment, materials, parts and other components incorporated in the work or services performed pursuant to this Agreement shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.
- 3.4. **Property of City.** Any materials, including reports, computer programs and other deliverables, created under this Agreement are the sole property of City. Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. Contractor shall not use or release these materials without the prior written consent of City.
4. **PRICE:**
- 4.1. City shall pay Contractor the per-unit cost as set forth in Exhibit B, attached hereto and made a part hereof by reference.
- 4.2. **Taxes.** Contractor shall be solely legally responsible for any and all tax obligations, which may result out of Contractor's performance of this Agreement. City shall have no legal obligation to pay any amounts for taxes, of any type, incurred by Contractor. City agrees that Contractor may bill the City for applicable privilege license taxes which are paid for by Contractor and that the City will reimburse Contractor for privilege license taxes actually paid by Contractor. If Contractor obtains any refund of privilege license taxes paid, City will be entitled to a refund of such amounts.
- 4.3. Contractor shall be solely responsible for any and all tax obligations, which may result out of the Contractor's performance of this Agreement. The City shall have no obligation to pay any amounts for taxes, of any type, incurred by the Contractor.

- 4.4. Payment.** A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or completion of specified services and receipt of a correct invoice. Any quantities shown are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by City. City reserves the right to increase or decrease the quantities actually required.
- 4.5. IRS W9 Form.** In order to receive payment Contractor shall have a current I.R.S. W9 Form on file with City, unless not required by law.
- 4.6. Price Adjustment in Extension Terms.** All prices offered herein shall be firm against any increase for the initial five year term of the Agreement. Prior to commencement of subsequent renewal terms, City may approve a fully documented request for a price adjustment. City expects that all requested price increases will be directly correlated to a necessary cost increase to Contractor that was clearly unpredictable on the date Contractor executed the Agreement for the initial or earlier extension term. City shall determine whether any requested price increases for extension terms is acceptable to the City. If City approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon by the Parties a written Agreement Amendment shall be approved and executed by the Parties.
- 4.7. Price Reduction.** Contractor shall offer City a price reduction for its services concurrent with a published price reduction made to other customers.

5. TERM:

- 5.1.** The term of the Agreement is one year, commencing on January 1, 2016 and terminating on December 31, 2016 unless sooner terminated in accordance with the provisions herein. City reserves the right, at its sole discretion, to extend the Agreement for up to four additional terms of one year each.

- 6. USE OF THIS AGREEMENT:** The Agreement is for the sole convenience of the City of Chandler. City reserves the rights to obtain like services from another source to secure significant cost savings or when timely completion cannot be met by Contractor.

- 6.1. Cooperative Use of Agreement.** In addition to the City of Chandler and with approval of the Contractor, this Agreement may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

If required to provide services on a school district property at least five (5) times during a month, Contractor shall submit a full set of fingerprints to the school of each person or employee who may provide such service. The District shall conduct a fingerprint check in accordance with A.R.S. 41-1750 and Public Law 92-544 of all Contractors, subcontractors or vendors and their employees for which fingerprints are submitted to the District. Additionally, the Contractor shall comply with the governing body fingerprinting policies of each individual school district/public entity. Contractor, sub-contractors, vendors and their employees shall not provide services on school district properties until authorized by the District.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City shall not be responsible for any disputes arising out of transactions made by other agencies who utilize this Agreement.

- 6.2. Emergency Purchases:** City reserves the rights to purchase from other sources those items, which are required on an emergency basis and cannot be supplied immediately by the Contractor.

6.3 Non-Exclusive Agreement: This agreement is for the sole convenience of the City of Chandler. The City reserves the right to obtain like goods or services from another source when necessary.

6.4 Exclusive Possession: All services, information, computer program elements, reports and other deliverables created under this Agreement are the sole property of the City of Chandler and shall not be used or released by the Contractor or any other person except with prior written permission by the City.

7. CITY'S CONTRACTUAL REMEDIES:

7.1. Right to Assurance. If the City in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Agreement, the Agreement Administrator may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Agreement in addition to any other rights and remedies provided by law or this Agreement.

7.2. Stop Work Order. The City may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Agreement for period(s) of days indicated by the City after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

7.3. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Agreement Administrator shall make an equitable adjustment in the delivery schedule or Agreement price, or both, and the Agreement shall be amended in writing accordingly.

7.4. Non-exclusive Remedies. The rights and the remedies of the City under this Agreement are not exclusive.

7.5. Nonconforming Tender. Services and materials supplied under this Agreement shall fully comply with Agreement requirements and specifications. Services or materials that do not fully comply constitute a breach of agreement.

7.6. Right of Offset. The City shall be entitled to offset against any sums due Contractor, any expenses or costs incurred by the City, or damages assessed by the City concerning the Contractor's non-conforming performance or failure to perform the Agreement, including expenses to complete the work and other costs and damages incurred by City.

8. TERMINATION:

8.1.1 Termination for Convenience: City reserves the right to terminate this Agreement or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, Contractor shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subcontractors to cease such work. As compensation in full for services performed to the date of such termination, the Contractor shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the Contractor and City, based on the agreed Scope of Work. If there is no mutual agreement, the Management Services Director or designee shall determine the percentage of work performed under each task detailed in the Scope of Work and the Contractor's compensation shall be based upon such determination and Contractor's fee schedule included herein.

8.1.2 Termination for Cause: City may terminate this Agreement for Cause upon the occurrence of any one or more of the following events:

- 1) If Contractor fails to perform pursuant to the terms of this Agreement
- 2) If Contractor is adjudged a bankrupt or insolvent;
- 3) If Contractor makes a general assignment for the benefit of creditors;
- 4) If a trustee or receiver is appointed for Contractor or for any of Contractor's property;
- 5) If Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
- 6) If Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;

Where Agreement has been so terminated by City, the termination shall not affect any rights of City against Contractor then existing or which may thereafter accrue.

- 8.3. **Cancellation for Conflict of Interest.** Pursuant to A.R.S. § 38-511, City may cancel this Agreement after Agreement execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is or becomes at any time while this Agreement or an extension of this Agreement is in effect, an employee of or a consultant to any other party to this Agreement. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time.
- 8.4. **Gratuities.** City may, by written notice, terminate this Agreement, in whole or in part, if City determines that employment or a Gratuity was offered or made by Contractor or a representative of Contractor to any officer or employee of City for the purpose of influencing the outcome of the procurement or securing this Agreement, an amendment to this Agreement, or favorable treatment concerning this Agreement, including the making of any determination or decision about agreement performance. The City, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by Contractor.
- 8.5. **Suspension or Debarment.** City may, by written notice to the Contractor, immediately terminate this Agreement if City determines that Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of an agreement shall attest that the Contractor is not currently suspended or debarred. If Contractor becomes suspended or debarred, Contractor shall immediately notify City.
- 8.6. **Continuation of Performance Through Termination.** The Contractor shall continue to perform, in accordance with the requirements of the Agreement, up to the date of termination, as directed in the termination notice.
- 8.7. **No Waiver.** Either party's failure to insist on strict performance of any term or condition of the Agreement shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 8.8. **Availability of Funds for the next Fiscal Year.** Funds may not presently be available under this Agreement beyond the current fiscal year. No legal liability on the part of the City for services may arise under this Agreement beyond the current fiscal year until funds are made available for performance of this Agreement. The City may reduce services or terminate this Agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.
9. **FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.

10. DISPUTE RESOLUTION:

- 10.1. Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 10.2. Jurisdiction and Venue.** The parties agree that this Agreement is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.
- 10.3. Fees and Costs.** Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees.
- 11. INDEMNIFICATION:** To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City and any of its elected or appointed officials, officers, directors, commissioners, board members, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties and fines (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against the City by reason of this Agreement or the services performed or permissions granted under it, or related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Contractor, or any of its subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to the discharge of any duties or the exercise of any rights or privileges arising from or incidental to this Agreement, including but not limited to, any injury or damages claimed by any of Contractor's and subcontractor's employees.

The amount and type of insurance coverage requirements set forth in the Agreement will in no way be construed as limiting the scope of indemnity in this paragraph.

12. INSURANCE:

1. General.

- A. At the same time as execution of this Agreement, the Contractor shall furnish the City of Chandler a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona possessing a current A.M. Best, Inc. rating of A-7, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to City. Provided, however, the A.M. Best rating requirement shall not be deemed to apply to required Workers' Compensation coverage.
- B. The Contractor and any of its subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, the insurances set forth below.
- C. The insurance requirements set forth below are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.
- D. The City in no way warrants that the minimum insurance limits contained in this Agreement are sufficient to protect Contractor from liabilities that might arise out of the performance of the Agreement services under this Agreement by Contractor, its agents, representatives,

employees, subcontractors, and the Contractor is free to purchase any additional insurance as may be determined necessary.

- E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve the Contractor from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Agreement.
 - F. Use of Subcontractors: If any work is subcontracted in any way, the Contractor shall execute a written contract with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of the Contractor in this Agreement. The Contractor is responsible for executing the Agreement with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.
2. Minimum Scope And Limits Of Insurance. The Contractor shall provide coverage with limits of liability not less than those stated below.
- A. *Commercial General Liability-Occurrence Form.* Contractor must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$2,000,000 for each occurrence, \$4,000,000 aggregate. Said insurance must also include coverage for products and completed operations, independent contractors, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying insurance.
 - B. *Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles Vehicle Liability:* Contractor must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each accident on Contractor owned, hired, and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Agreement. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be "follow form" equal or broader in coverage scope than underlying insurance.
 - C. *Workers Compensation and Employers Liability Insurance:* Contractor must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor employees engaged in the performance of work or services under this Agreement and must also maintain Employers' Liability insurance of not less than \$1,000,000 for each accident and \$1,000,000 disease for each employee.
3. Additional Policy Provisions Required.
- A. *Self-Insured Retentions Or Deductibles.* Any self-insured retentions and deductibles must be declared and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.
 - B. *City as Additional Insured.* The policies are to contain, or be endorsed to contain, the following provisions:
 - 1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the Contractor including the City's general supervision of the Contractor;

Products and Completed operations of the Contractor; and automobiles owned, leased, hired, or borrowed by the Contractor.

2. The Contractor's insurance must contain broad form contractual liability coverage and must not exclude liability arising out of explosion, collapse, or underground property damage hazards ("XCU") coverage.
 3. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Agreement.
 4. The Contractor's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by the Contractor and must not contribute to it.
 5. The Contractor's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 6. Coverage provided by the Contractor must not be limited to the liability assumed under the indemnification provisions of this Agreement.
 7. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the Contractor for the City.
 8. The Contractor, its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this Agreement for a minimum period of 3 years following completion and acceptance of the Work. The Contractor must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this 3 year period containing all the Agreement insurance requirements, including naming the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.
 9. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the required policies expire during the life of this Agreement, the Contractor must forward renewal or replacement Certificates to the City within 10 days after the renewal date containing all the necessary insurance provisions.
 10. By signing this Agreement, the Contractor certifies it is fully aware of Insurance Requirements contained in the Agreement and assures the City of Chandler that it is able to produce the Insurance coverage required.
 11. Should the Contractor become unable to produce the Insurance coverage specified within ten working days, the Contractor is fully aware and understands that it may not be considered for further projects by City of Chandler.
13. **NOTICES:** All notices or demands required to be given pursuant to the terms of this Agreement shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of the CITY
 Agreement Administrator: Debra Stapleton

Contact: Purchasing Division

Mailing Address: _____

Physical Address: 175 S. Arizona Ave.

City, State, Zip Chandler, AZ 85225

Phone: (480) 782-2400

FAX: (480) 782-2410

In the case of the CONTRACTOR

Firm Name: Flexible Benefit Administrators, Inc.

Contact: G. Landon Browning

Address: 509 Viking Dr., Ste. F

City, State, Zip Virginia Beach, VA 23452

Phone: (757) 340-4567

FAX: (757) 431-1155

lanny@flex-admin.com

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

14. CONFLICT OF INTEREST:

- 14.1. No Kickback.** Contractor warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the City has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests were disclosed in Contractor's proposal to the City.
- 14.2. Kickback Termination.** City may cancel any agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a Contractor to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from City is received by all other parties, unless the notice specifies a later time (A.R.S. §38-511).
- 14.3. No Conflict:** Contractor stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.

15. BUSINESS ASSOCIATE AGREEMENT

15.1 DEFINITIONS

A. In General. Terms used, but not otherwise defined, in this Section 15 shall have the same meaning as those terms in 45 CFR § 160.103 and § 164.501. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

B. Specific Definitions

"Applicable Law" shall mean any of the following items, including any amendments to any such item as such may become effective:

the Health Insurance Portability and Accountability Act of 1996 ("HIPAA");

the federal regulations regarding privacy and promulgated with respect to HIPAA, found at Title 45 CFR Parts 160 and 164 (the "Privacy Rule");

the federal regulations regarding electronic data interchange and promulgated with respect to HIPAA, found at Title 45 CFR Parts 160 and 162 (the "Transaction Rule");

the federal regulations regarding security and promulgated with respect to HIPAA, found at Title 45 CFR Parts 160 and 164 (the "Security Rule");

and the American Recovery and Reinvestment Act of 2009 ("ARRA"), §§ 13400-24.

"Business Associate shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Flexible Benefit Administrators, Inc.

"Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the City of Chandler.

"Effective Date" means the effective date of the Services Agreement, except as otherwise specified in this Agreement.

"ePHI" means electronic protected health information within the meaning of 45 CFR § 160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.

"HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and 164.

15.2 RIGHTS AND OBLIGATIONS OF COVERED ENTITY

A. Privacy Practices and Restrictions

Upon request, Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR § 164.520. If Covered Entity subsequently revises the notice, Covered Entity shall provide a copy of the revised notice to Business Associate.

Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

B. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

If Covered Entity requests PHI from Business Associate, Covered Entity will limit its request to the minimum necessary PHI required to fulfill the purpose of Covered Entity's use or further disclosure of such PHI.

15.3 OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

A. Business Associate agrees to: In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information.

B. Access to Books and Records by Covered Entity. Business Associate shall make its internal practices, books, and records relating to the use, disclosure, and security of PHI available to Covered Entity, in a time and manner designated by Covered Entity, for purposes of allowing Covered Entity to confirm Business Associate's compliance with HIPAA.

C. Access to Books and Records by Secretary. Business Associate shall make its internal practices, books, and records available to the Secretary for purposes of the Secretary determining Covered Entity's compliance with HIPAA.

D. Mitigation. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of (a) a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement, or (b) a Security Incident.

E. Compliance with Privacy Rule.

Business Associate shall not use or disclose PHI other than as permitted or required by this Agreement or as required by law.

Business Associate shall use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of the PHI other than as provided for by this Agreement.

Business Associate shall report to Covered Entity any use or disclosure of PHI, not provided for by this Agreement, of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR 164.410, and any security incident of which it becomes aware.

F. Compliance with Transaction Rule. To the extent that Business Associate, on behalf of Covered Entity or Plan Sponsor, conducts transactions that are subject to the Transaction Rule, Business Associate shall comply with the Transaction Rule. Business Associate agrees that it shall not require Plan Sponsor (or the members of its workforce) to communicate with Business Associate using the specifications set forth in the Transaction Rule.

G. Compliance with Security Rule.

Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI.

Business Associate shall report to Covered Entity any Security Incident of which Business Associate becomes aware.

H. Compliance with ARRA.

If Business Associate discovers that there has been a HIPAA Breach, Business Associate shall notify Covered Entity without unreasonable delay and in no event more than 10 business days of the discovery. Such notice shall include identification of each Individual whose PHI Business Associate reasonably believes to have been accessed, acquired, or disclosed during such HIPAA Breach. As soon as possible thereafter, and to the extent known, Business Associate shall also provide Covered Entity with a description of (i) what happened, including the date of the HIPAA Breach and the date of

the discovery, (ii) the types of unsecured PHI involved in the HIPAA Breach, (iii) any steps individuals should take to protect themselves from potential harm from the HIPAA Breach, and (iv) what Business Associate is doing to investigate the HIPAA Breach, to mitigate harm to individuals, and to protect against any further HIPAA Breaches. For purposes of this paragraph, a HIPAA Breach shall be treated as discovered as of the first day on which the HIPAA Breach is known or should reasonably have been known to Business Associate (including any person, other than the one committing the HIPAA Breach, that is an employee, officer, or other agent of the Business Associate).

Business Associate shall not receive remuneration, either directly or indirectly, in exchange for PHI, except as may be permitted by ARRA § 13405(d).

Business Associate shall not make any fundraising communication on behalf of Covered Entity or to Covered Entity's "participants and beneficiaries," "patients," etc.

Pursuant to the Privacy Rule, made applicable to Business Associate by ARRA, Business Associate shall adopt, implement, and follow privacy policies and procedures in the same manner and to the same extent as if it were a Covered Entity.

Pursuant to the Security Rule, made applicable to Business Associate by ARRA, Business Associate shall adopt, implement, and follow security policies and procedures in the same manner and to the same extent as if it were a Covered Entity.

I. Obligations Relating to Individual Rights.

1. Restrictions on Disclosures. Upon request by an Individual, Covered Entity shall determine whether an Individual is entitled to a restriction on disclosure of the PHI pursuant to 45 CFR § 164.522. If Covered Entity determines that an Individual is entitled to such a restriction, Covered Entity will communicate the decision to Business Associate. Business Associate will restrict its disclosures of the Individual's PHI in the same manner as would be required for Covered Entity. If Business Associate receives an Individual's request for restrictions, Business Associate shall forward such request to Covered Entity within 5 business days.

2. Access to PHI. Upon request by an Individual, Covered Entity shall determine whether an Individual is entitled to access his or her PHI pursuant to 45 CFR § 164.524. If Covered Entity determines that an Individual is entitled to such access, and that such PHI is under the control of Business Associate, Covered Entity will communicate the decision to Business Associate. Business Associate shall provide access to the PHI in the same manner as would be required for Covered Entity. Business Associate shall make available protected health information in a designated record set to the individual or the individual's designee as necessary to satisfy covered entity's obligations under 45 CFR 164.524. If Business Associate receives an Individual's request to access his or her PHI, Business Associate shall forward such request to Covered Entity within 5 business days.

3. Amendment of PHI. Upon request by an Individual, Covered Entity shall determine whether any Individual is entitled to amend his or her PHI pursuant to 45 CFR § 164.526. If Covered Entity determines that an Individual is entitled to such an amendment, and that such PHI is both in a designated record set and under the control of Business Associate, Covered Entity will communicate the decision to Business Associate. Business Associate shall provide an opportunity to amend the PHI in the same manner as would be required for Covered Entity. If Business Associate receives an Individual's request to amend his or her PHI, Business Associate shall forward such request to Covered Entity within 5 business days.

4. Accounting of non-EHR Disclosures. Upon request by an Individual, Covered Entity shall determine whether any Individual is entitled to an accounting pursuant to 45 CFR § 164.528. If Covered Entity determines that an Individual is entitled to an accounting, Covered Entity will communicate the decision to Business Associate. Business Associate will provide information to Covered Entity that will enable Covered Entity to meet its accounting obligations under 45 CFR 164.528. If Business Associate receives an Individual's request for an accounting, Business Associate shall forward such request to Covered Entity within 5 business days.

To the extent the business associate is to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, business associate shall comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s).

J. Permitted Uses and Disclosures by Business Associate

Except as otherwise limited in this Agreement or by Applicable Law, Business Associate may:

Except for the specific uses and disclosures set forth below Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity.

1. Use or disclose PHI to perform functions, activities, or services for or on behalf of Covered Entity, as specified in the Services Agreement between the parties and in this Agreement, *provided that* such use or disclosure is consistent with Covered Entity's Notice of Privacy Practices, *and provided that* such use or disclosure would not violate HIPAA or the Privacy Rule if done by Covered Entity;

2. Use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate;

3. Disclose PHI for the proper management and administration of Business Associate, *provided that* (i) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached or (ii) the disclosures are Required By Law; and

4. Use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B)

15.4 INDEMNIFICATION AND TERMINATION PROVISIONS AS TO BREACH OF PRIVACY OR SECURITY OBLIGATIONS

A. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Section 15 by Business Associate, Covered Entity and Plan Sponsor shall have the following rights:

If the breach is curable, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation. Alternatively, or if Business Associate fails to cure the breach or end the violation, Covered Entity and/or Plan Sponsor may terminate this Agreement and the Services Agreement.

If the breach is not curable, Covered Entity and/or Plan Sponsor may immediately terminate this Agreement and the Services Agreement.

If termination is not feasible, Covered Entity shall report the problem to the Secretary.

B. INDEMNIFICATION

Business Associate agrees to indemnify and hold Covered Entity and Plan Sponsor harmless from any and all liability, damages, costs (including reasonable attorneys' fees and costs) and expenses imposed upon or asserted against Covered Entity arising out of any claims, demands, awards, settlements or judgments relating to use or disclosure of PHI contrary to the provisions of this Agreement or applicable law by Business Associate, by any health care plan or plan sponsor to which Business Associate provides services (other than Covered Entity and Plan Sponsor), or by Business Associate's directors, officers, employees, agents, contractors, business associates, or trading partners.

C. Effect of Termination.

Except as provided in the following paragraph, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI within its possession or control, and all PHI that is in the possession or control of Business Associate's subcontractors or agents. Business Associate shall retain no copies of the PHI.

If Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

15.5 MISCELLANEOUS

Electronic Health Record. Business Associate shall not maintain any "electronic health record" or "personal health record," as those terms are defined in ARRA, for or on behalf of Covered Entity.

Regulatory References. A reference in this Agreement to a section in any Applicable Law means the section in effect or as amended, and for which compliance is required.

Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other Applicable Law. All amendments to this Agreement, except those occurring by operation of law, shall be in writing and signed by both parties.

Survival. The respective rights and obligations of Business Associate under Section 15.4.C. of this Agreement shall survive the term and termination of this Agreement.

Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with Applicable Law.

No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person, other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

Counterparts. This Agreement may be executed in counterparts, each of which may be deemed an original.

16. GENERAL TERMS:

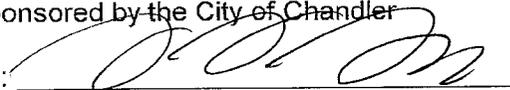
16.1. Ownership. All deliverables and/or other products of the Agreement (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by Contractor in performance of the Agreement) shall be the sole, absolute and exclusive

property of City, free from any claim or retention of right on the part of Contractor, its agents, sub-contractors, officers or employees.

- 16.2. **Entire Agreement.** This Agreement, including all Exhibits attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives or each party.
- 16.3. **Assignment:** Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the City.
- 16.4. **Amendments.** The Agreement may be modified only through a written Agreement Amendment executed by authorized persons for both parties. Changes to the Agreement, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the City in writing or made unilaterally by the Contractor are violations of the Agreement. Any such changes, including unauthorized written Agreement Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Agreement based on such changes.
- 16.5. **Independent Contractor.** The Contractor under this Agreement is an independent Contractor. Neither party to this Agreement shall be deemed to be the employee or agent of the other party to the Agreement.
- 16.6. **No Parole Evidence.** This Agreement is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 16.7. **Authority:** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this ____ day of _____, 2015.

Flexible Spending Account
Sponsored by the City of Chandler

By: 

Print Name: G. Landon Browning, III

Print Title: Vice President

Date: 8/4/15

CITY OF CHANDLER, ARIZONA

FOR THE CONTRACTOR

By: _____

Print Name: _____

Print Title: _____

Date: _____

By: _____
Signature

ATTEST:

SEAL

ATTEST: If Corporation

City Clerk

Secretary

Approved as to form:

City Attorney *CA*

EXHIBIT A SCOPE OF WORK

The Contractor will be responsible for the administration of the City's health care and dependent care flexible spending accounts. The Contractor will act as third-party administrator and shall be responsible for the following:

1. Setting up participants' accounts, issuing debit cards and providing participants with self-service access to accounts
2. Full service handling of all claims inquiries, including but not limited to account balances, account activity, allowable charges, claims approvals and denials, management and communication of incur/submission deadlines
3. Strict adherence to all plan and governmentally subscribed deadlines and eligibility rules.
4. Notification and education of participants of prescribed rules and laws in the event of claim denial; Contractor shall not give participants "false hope" by referring them to the City's HR Department, as the City strictly adheres to plan and federally prescribed rules and regulations.
5. Accepting claims requests via mail, email, fax and the Internet
6. Maintaining disbursement records
7. Processing reimbursement requests no less frequently than weekly
8. Offering all the following options for reimbursement: check by mail, direct deposit, and debit card
9. Paying claims with funds in an account maintained by the City, i.e., an automatic clearing house account, over which the administrator has no control of employee/employer funds
10. Paying claims incurred during the benefit year for which the contract is in force and during the grace period after the end of the plan year (the run out). The City has adopted the 2 ½ month post-Plan Year extension period for claims for the Health and Dependent Care FSAs.
11. Maintaining up-to-date records on enrollments, terminations and contribution amounts per an electronic file
12. Servicing debit card claims to ensure minimally necessary paper substantiation in accordance with standard coding for copays from vendors who participate in the Inventory Information Approval System (IIAS).
13. Linking copay information to each participant's debit card for the health care FSA
14. Making manual adjustments to participation information at the written direction of the City
15. Providing the City with biweekly discrepancy reporting detailing differences between expected contributions and actual contribution received (deducted from pay) on a per participant basis
16. Providing periodic accounting and statistical reports to the City
17. Performing any necessary discrimination testing
18. Producing, distributing and managing participant communications including but not limited to the following:
 - Annual statement prior to the beginning of each new plan year confirming FSA enrollment, amount of annual election, and deadlines for incurring and submitting claims
 - Notice of account balance and the deadlines for incurring and submitting claims, to be mailed quarterly and at least 60-90 days in advance of deadlines
 - Documentation describing FSAs to be included in new hire packets and posted on City's Benefit Intranet site
19. Preparing and modifying as needed all necessary plan documents and government reporting and tax filing forms
20. Complying with federal and state laws
21. Developing and implementing an employee education program and developing communication strategies and materials
22. Conducting work-site educational meetings in advance of the annual open enrollment to explain the plan and to respond to employee concerns and questions
23. Providing exceptional customer service support via phone, e-mail and website

PERFORMANCE REQUIREMENTS

General

Minimum participation is not required.

Pre-funding is not required.

The City may request to set a minimum for plan participants.

The Contractor will prepare and mail the dependent care W-2 forms to participants at no additional charge.

Deposits

Deposits are posted automatically by the system payroll calendar. This calendar is built based on the payroll cycles deductions taken by the City. In the event the Contractor receives a payroll file prior to the weekly reimbursement, the Contractor will import this to post deposits as reported by the City instead of utilizing an automatic calendar. If there are any discrepancies with the processing of a payroll file, the Contractor will provide a report of the errors in order to have them corrected prior to the next reimbursement cycle. These files can be provided to the Contractor as frequently as the City would like to provide them.

This file would also be able to provide updates for new hires, leave of absence events, and termination notices that would then be updated in the Contractor system. Interface files can be received as often as weekly. Monthly interface files are recommended.

Claims Processing and Reimbursement

Claims will be reviewed and entered daily in order to have reimbursements processed out weekly. The Contractor will accommodate adjustments to the reimbursement schedule for daily, semi-monthly and monthly reimbursement cycles.

If an existing account is able to be utilized to access funding for the plan, the Contractor will work with this funding option.

The City will maintain control over the funds until they are required for claim payments. The City will hold all payroll deduction funds for the flexible spending plan in an account for claims payment including card transactions. All card transactions would post as one daily transaction on the bank account each day. The paper claims will be front funded by a Contractor account alleviating the reconciliation of stop payments for check and discrepancies for direct deposits. On a weekly basis the Contractor will initial a draft only in the amount of the total week's reimbursements to replenish the Contractor account for paper claims. Prior to this transfer of funds, the Contractor would provide an email and detailed reporting to account for the funding amount needed and the claims that had been processed out for the given week.

Direct deposit is available as reimbursement option in addition to checks or it can be set as the mandatory reimbursement method.

Claim appeals and disputes should be submitted in writing for review by the Contractor's Department Manager. The City will be notified of all disputes and appeals in order to provide feedback on the situation as needed.

The Contractor system is built with the specific plan design chosen by the City reducing the opportunity for over/under payments to occur. Should an over / under payment occur, the Contractor will review the claim again against available funds to confirm the corrected amount. Once this is confirmed the Contractor will contact the participant directly for any underpayments and let them know when they can expect the difference owed.

In the case of an overpayment the Contractor will contact the participant and review the option to pay the funds back into the plan (i.e. sending in direct payment or offset with other out-of-pocket expenses).

Debit Cards, Substantiation and Account Balances

Debit cards will link to both the FSA Medical and the Dependent Care accounts.

There is no additional fee to replace lost/stolen or replacement cards.

Dependent care account deposits will be made available on the date of the payroll deduction provided the Contractor receive the deposit information 2 days prior to the payroll date.

All claims entered into the Contractor's system will receive a service category code that automatically assigns the claim to the appropriate plan type and plan year, thus avoiding the risk of creating incorrect transaction notices. The Contractor is able to auto-substantiate an average of 87% of all card transactions and notices will only be sent out when the Contractor is not able to completely identify the eligibility of card swipe transactions. Periodically the Contractor's department supervisors will perform random audits on all claims administrators to ensure the Contractor's internal processes and procedures for claims processing are being followed correctly.

Automatic card substantiation will be utilized when the dollar amount of the transaction is equal to any known copays up to five times the highest copay, when expenses are recurring and match the previously approved amount, and also for other services and charges when the provider is registered with the IIAS system allowing the charge to be substantiated at the approved merchant.

Participants will be notified by paper mailing or by email of the request to substantiate a benefits card. These notices are sent out in the instance that the card transaction is not automatically substantiated at the point of service.

Employees will receive an initial request notice within 2 days of the card transaction. If no response is received a reminder notice will be sent out 20 days after the transaction. If no response is received after 40 days a final notice will be sent out and will trigger the temporary deactivation of the benefits card until proper notice is received. These request dates can be adjusted at the City's request.

The Contractor will provide a year-end balance notice 60 days prior to the end of the plan year to participants with any available balance left in their account.

Communications to participants will be sent by email or paper mail. Employees can also sign up for text message alerts for balance inquiries and deadline reminders. Both the Contractor's online portal and the Contractor's mobile app will also offer balance and filing deadline information.

The following notices will be available to provide available balance and plan deadlines:

- Enrollment Confirmation
- Quarterly Notices
- End of Plan Year Notice (60 days prior to the plan year end date)

The Contractor will send claim substantiation letters daily. The claims process will allow automation for claim rejection/substantiation requests with the use of category codes in the set-up of the claims reimbursement system.

The Contractor's substantiation processes are the same at year end as they are throughout the plan year. Participants are required to provide acceptable documentation to have a claim paid out. Reports will be provided at the close of the run-out period. Year-end reporting provided to the City will identify participants that have pending or eligible transactions at the close of the plan year. W-2 adjustment can be made to settle monies owed as in accordance with the IRS regulations.

Reports are sent out weekly however, the City can request them as often as it would like. Ad-hoc reports can be requested and will be quoted to the City at that time. In addition the City could generate these reports on-demand through the Contractor's employer portal.

Customer Service

Customer service hours are Monday - Friday from 8:30-5:00pm MST. All calls are fielded by a live receptionist and customer service representatives. Participants will not navigate through an automated system in order to speak with a live customer service agent.

Performance Guarantees**Performance Guarantee: 1% of Fees at Risk for Timely Implementation**

The implementation processes are based on the accuracy of information provide to the Contractor during the set-up of services. As a standard the Contractor will expect that all deadlines are met and communication responses are received within 24 business hours on all open items.

Performance Guarantee: 1% of Fees at Risk for Claim Accuracy

Claims are considered accurately processed if they are processed for the correct amount, for the correct participant and in the correct plan. This standard is self-reported however the City will have the right to audit this category. As a standard the Contractor will expect that a minimum of 98% of all claims will be processed correctly.

Performance Guarantee: 1% of Fees at Risk for Administration/Reporting

Reporting accuracy will be the measurement of providing all reports to participants and the City within the timeframes outlined for each report. The standard will be that 95% of all reports will be provided on time. This standard will be self-reported.

Performance Guarantee: 2% of Fees at Risk for Phone Response Time

The Contractor's average phone response time will be less than 10 seconds. This standard will be self-reported.

Performance Guarantee: 1% of Fees at Risk for Website Available Uptime

The Contractor's participant /employer portal will be available at least 99% of the time. This standard will be self-reported.

**EXHIBIT B
FEE SCHEDULE**

Implementation or Set-up Charges (one-time payment)	None				
Renewal Set-up (Annual Fee)		None	None	None	None
Monthly Fee Per Participant Fee:					
Health Care	\$2.98	\$2.98	\$2.98	\$2.98	\$2.98
Dependent Care	\$2.98	\$2.98	\$2.98	\$2.98	\$2.98
Both Accounts	\$2.98	\$2.98	\$2.98	\$2.98	\$2.98
Debit Card	Included	Included	Included	Included	Included
Minimum Monthly Fee	None	None	None	None	None
Total Annual Fees Without Debit Card (includes set up or renewal fee)	\$9,190.32	\$9,190.32	\$9,190.32	\$9,190.32	\$9,190.32
Total Annual Fees With Debit Card (includes set up or renewal fee)	\$9,190.32	\$9,190.32	\$9,190.32	\$9,190.32	\$9,190.32
Claims Processing/Payment	Included	Included	Included	Included	Included
2 Debit Cards	Included	Included	Included	Included	Included
Direct Deposit	Included	Included	Included	Included	Included
Employer Web Services – Enrollment	Included	Included	Included	Included	Included
Employer Web Services – Payment Lookup	Included	Included	Included	Included	Included
Hard Copy Enrollment and Communication Services	Included (up to 300 copies of 3 documents)	Included (up to 300 copies of 3 documents)	Included (up to 300 copies of 3 documents)	Included (up to 300 copies of 3 documents)	Included (up to 300 copies of 3 documents)
Attendance at Open Enrollment Meetings	1 st Year All Sessions Included	Included (2 consecutive days)			
Enrollment Materials	Included	Included	Included	Included	Included
Creation of a Flex Plan Document/SPD	Included	Included	Included	Included	Included
Amendments to the Flex Plan Document/SPD	Included	Included	Included	Included	Included
Nondiscrimination Testing:					
Health FSA - Eligibility Test	Included	Included	Included	Included	Included
Health FSA - Benefits Test	Included	Included	Included	Included	Included

DCAP - Eligibility Test	Included	Included	Included	Included	Included
DCAP -	Included	Included	Included	Included	Included
Contributions & Benefits Test	Included	Included	Included	Included	Included
DCAP - More Than 5% Owners Concentration Test	Included	Included	Included	Included	Included
DCAP - 55% Average Benefits Test	Included	Included	Included	Included	Included
Postage Costs	Included	Included	Included	Included	Included
Administration of run-out claims at the end of the contract	Included at PPM Fee				
<i>Employee Statement Mailings:</i>					
Enrollment Confirmation Statement	Included	Included	Included	Included	Included
Year End Statement of Account Balance	Included	Included	Included	Included	Included
Annual statement prior to the beginning of each new plan year confirming: FSA enrollment, amount of annual election and deadlines for incurring & submitting claims	Included	Included	Included	Included	Included
Quarterly Statement of Account Balance	Included	Included	Included	Included	Included