

**CITY OF SAN JOSE
CONSULTANT AGREEMENT BETWEEN THE CITY OF SAN JOSE
AND FBMC BENEFITS MANAGEMENT, INC.**

STANDARD TERMS AND CONDITIONS

THIS AGREEMENT is made and entered into this ____ day of _____ 2011, by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY" or "Employer"), and FBMC BENEFITS MANAGEMENT, INC., a Florida Corporation authorized to do business in California as "Fringe Benefits Management Company" (hereinafter "FBMC").

RECITALS

The purpose for which this AGREEMENT is made, and all pertinent recitals, are listed in EXHIBIT A, entitled "Recitals," which is attached hereto and incorporated herein.

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. SCOPE OF SERVICES.

FBMC shall perform those support services specified in detail in EXHIBIT B, "SCOPE OF SERVICES" and EXHIBIT F, "FBMC MASTER SERVICE AGREEMENT" ("FBMC MASTER SERVICE AGREEMENT") attached hereto and incorporated herein.

SECTION 2. TERM OF AGREEMENT.

- A. Term of the AGREEMENT. The initial term of this AGREEMENT shall be retroactive from January 1, 2011 and shall extend through December 31, 2011, subject to the provisions of SECTIONS 1 and 11 of this AGREEMENT.

B. Options. The Director of Human Resources ("Director") may extend the initial term of the AGREEMENT in two (2) one-year periods to cover the 2012 and 2013 plan years, and one (1) twenty (20) month period, to cover the 2014 plan year plus eight (8) months for completion of all remaining claims and reimbursements, for a total Option Period ("Option Period") not to exceed forty-four (44) months ending on August 31, 2015.

If the Director declines to exercise the option to extend this AGREEMENT for any plan year, the parties agree that FBMC shall continue services for the previous plan year through August 31 of the next year in order to complete all claims adjudication through the run-off period and all reimbursements to Participants and CITY related to the previous year.

The Director shall exercise the option by written Notice of Exercise of Option in the form set forth in EXHIBIT H at least thirty (30) days prior to the expiration of this AGREEMENT or the expiration of the Option Period, whichever is applicable. All terms and conditions of this AGREEMENT shall remain in full force and effect during the Option Periods.

- C. The total term of this AGREEMENT shall not exceed fifty-six (56) months, from January 1, 2011 to August 15, 2015.
- D. Appropriation of Funds. CITY's funding of this AGREEMENT shall be on a calendar year basis (January 1 to December 31) and is subject to annual appropriations. CITY's exercise of any option to extend is contingent upon appropriation of funds by the CITY.

SECTION 3. SCHEDULE OF PERFORMANCE.

The services of FBMC are to be completed according to the schedule set out in EXHIBIT C, entitled "SCHEDULE OF PERFORMANCE", which is attached hereto and incorporated herein. Time is of the essence in this AGREEMENT.

SECTION 4. COMPENSATION.

- A. CITY agrees to compensate CONSULTANT as set forth in EXHIBIT D, entitled "COMPENSATION," which is attached hereto and incorporated herein.

- B. The "pre-funding" payments to be made to FBMC for the Health Care Reimbursement Flexible Spending Account ("FSA"), as set forth in EXHIBIT D, shall not exceed Fifteen Thousand Two Hundred Nineteen Dollars and Twenty-One Cents (\$15,219.21) for the initial term, Forty-Two Thousand Dollars (\$42,000) for any individual option period, and One Hundred and Forty-One Thousand Two Hundred Nineteen Dollars and Twenty-One Cents (\$141,219.21) in "pre-funding" for the full fifty-six (56) month term of this AGREEMENT. (No pre-funding is required on January 1, 2015.)

- C. FBMC waives all other payment by CITY in exchange for CITY's selection of FBMC as third party administrator for the CITY's voluntary insurance benefits program, as set forth in EXHIBIT D.

SECTION 5. METHOD OF PAYMENT.

The Method of Payment of CITY's "pre-funding" for the Health Care Reimbursement FSA is set forth in EXHIBIT D, entitled "COMPENSATION," which is attached hereto and incorporated herein.

SECTION 6. INDEPENDENT CONTRACTOR.

It is understood and agreed that FBMC, in the performance of the work and services agreed to be performed by FBMC, shall act as and be an independent contractor and not an agent or employee of CITY; and as an independent contractor, FBMC shall obtain no rights to retirement benefits or other benefits which accrue to CITY's employees, and FBMC hereby expressly waives any claim it may have to any such rights.

SECTION 7. ASSIGNABILITY.

The parties agree that the expertise and experience of FBMC are material considerations for this AGREEMENT. FBMC shall not assign or transfer any interest in this AGREEMENT nor the performance of any of FBMC's obligations hereunder, without the prior written consent of CITY, and any attempt by FBMC to so assign this AGREEMENT or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 8. INDEMNIFICATION.

FBMC shall defend, indemnify and hold harmless CITY, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this AGREEMENT due to the willful or negligent acts (active or passive) or omissions by FBMC's officers, employees or agents. The acceptance of said services and duties by CITY shall not operate as a waiver of such right of indemnification.

SECTION 9. INSURANCE REQUIREMENTS.

FBMC agrees to have and maintain the policies set forth in EXHIBIT E, entitled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of

Human Resources or the Director's authorized designee ("Risk Manager") of the City of San José as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. Upon request, FBMC agrees to provide CITY with evidence of said policies, certificates and/or endorsements.

SECTION 10. NONDISCRIMINATION.

FBMC shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

SECTION 11. TERMINATION.

- A. CITY shall have the right to terminate this AGREEMENT, without cause, by giving not less than thirty (30) days' written notice of termination.
- B. If FBMC fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, CITY may terminate this AGREEMENT immediately upon written notice.
- C. CITY's Director of Human Resources is empowered to terminate this AGREEMENT on behalf of CITY.
- D. FBMC may terminate this AGREEMENT for CITY's failure to sufficiently fund the CITY bank account from which reimbursements to Participants will be made, as set forth in the EXHIBIT F, "FBMC MASTER SERVICE AGREEMENT," attached hereto.

- E. In the event of termination, CONSULTANT shall deliver to CITY copies of all reports, documents, and other work performed by CONSULTANT under this AGREEMENT, subject to applicable federal or state law, including state insurance law or restrictions on use or disclosure of information meeting the definition of protected health information as set forth in federal regulations at 45 CFR Section 160.103 and medical information as defined in the California Civil Code Section 56.05(g) (collectively "PHI").

SECTION 12. GOVERNING LAW.

CITY and FBMC agree that the law governing this AGREEMENT shall be that of the State of California.

SECTION 13. COMPLIANCE WITH LAWS.

FBMC shall comply with all applicable laws, ordinances, codes and regulations of the federal and state governments.

SECTION 14. CONFIDENTIAL INFORMATION.

- A. All data, documents, discussions or other information developed or received by or for FBMC from CITY in performance of this AGREEMENT are confidential and not to be disclosed to any person except as authorized by CITY, or as required by law.
- B. FBMC shall enter into a written agreement with CITY that meets all requirements of a Business Associate Agreement ("BAA") pursuant to 45 CFR Section 164.504 to ensure protection of employees', retirees' and dependents' PHI as required under the Health Insurance Portability and Accountability Act of 1996 as subsequently amended ("HIPAA") and all other applicable federal and California

state law. The BAA is incorporated herein as Appendix B (“HIPAA Confidentiality”) to EXHIBIT F, “FBMC MASTER SERVICE AGREEMENT.” All PHI that is used or disclosed by, for, or to FBMC from any source is confidential and not to be disclosed to any person except as authorized by law.

- C. FBMC shall not use or disclose any PHI provided by CITY for any “marketing” purposes as defined under California Civil Code Section 56.10(d) or for any other purpose not provided for under federal or state privacy laws, except to the extent expressly authorized by the individual Participant or beneficiary. Marketing activities include but are not limited to intentionally sharing, selling, using for marketing or using PHI for a purpose not necessary to provide health care services to the Participant or beneficiary.
- D. Except as expressly authorized by the Participant or beneficiary, FBMC may only disclose CITY-provided PHI to the CITY’s selected insurance carrier or other third parties for such purposes set forth in this AGREEMENT and subject to a BAA or other agreement between FBMC and the third party to ensure full compliance with HIPAA and all other relevant federal and state privacy laws, including the prohibition of marketing under California Civil Code Section 56.10.

SECTION 15. OWNERSHIP OF MATERIALS.

All non-proprietary reports, documents or other materials developed or discovered by FBMC or any other person engaged directly or indirectly by FBMC to perform the services required hereunder shall be and remain the property of CITY without restriction or limitation upon their use, subject to any rights or ownership provided to any other person as a matter of applicable state or federal privacy law.

SECTION 16. WAIVER.

FBMC agrees that waiver by CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by FBMC shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

SECTION 17. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY.

- A. CONSULTANT agrees that, in the performance of this AGREEMENT, CONSULTANT shall perform its obligations under the AGREEMENT in conformance with City Council Policy 4-6, Environmentally Preferable Procurement Policy. A description for environmentally preferable procurement and the Policy can be found on the City's website at the following link:
<http://www.sanjoseca.gov/esd/natural-energy-resources/epp.htm>.
- B. Environmental procurement policies and activities related to the completion of work will include wherever practicable, but are not limited to:
1. Use of recycled and/or recyclable products in daily operations (i.e. 30, 50, 100% PCW paper, chlorine process free; triclosan free hand cleaner, etc.).
 2. Use of Energy Star Compliant equipment.
 3. Vehicles and vehicle operations (i.e. Alternative Fuel, Hybrid, etc.).
 4. Internal waste reduction and reuse protocol(s).

5. Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products, etc.

SECTION 18. FBMC'S BOOKS AND RECORDS.

- A. FBMC shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.
- B. FBMC shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.
- C. Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit at no cost to CITY, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers, subject to applicable state and federal law. Copies of such documents shall be provided to CITY for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at FBMC's address indicated for receipt of notices in this AGREEMENT.

- E. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of FBMC's business, CITY may, by written request by any of the above-named officers, require that custody of the records be given to CITY, subject to applicable state and federal law, and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by FBMC, FBMC's representatives, or FBMC's successor-in-interest.

SECTION 19. CONFLICT OF INTEREST.

FBMC shall avoid all conflict of interest or appearance of conflict of interest in performance of this AGREEMENT.

SECTION 20. GIFTS.

- A. FBMC is familiar with CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San Jose Municipal Code.
- B. FBMC agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.
- C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this AGREEMENT by FBMC. In addition to any other remedies CITY may have in law or equity, CITY may terminate this AGREEMENT for such breach as provided in SECTION 11 of this AGREEMENT.

SECTION 21. DISQUALIFICATION OF FORMER EMPLOYEES.

FBMC is familiar with the provisions relating to the disqualification of former officers and employees of CITY in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San Jose Municipal Code ("Revolving Door Ordinance"). FBMC shall not utilize either directly or indirectly any officer, employee, or agent of FBMC to perform services under this AGREEMENT, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

SECTION 22. SPECIAL PROVISIONS.

Special provisions, if any, to this AGREEMENT are specified in EXHIBIT G, entitled, "SPECIAL PROVISIONS", which is attached hereto and incorporated herein.

SECTION 23. NOTICES.

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY:	DIRECTOR OF HUMAN RESOURCES City of San José - Human Resources 200 E. Santa Clara Street, 2 nd Floor Wing San Jose, CA 95113
To FBMC:	PATRICIA K. NEELY Chief Compliance Officer FBMC 3101 Sessions Road Tallahassee, FL 32303

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

SECTION 24. VENUE.

In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

SECTION 25. PRIOR AND SUPPLEMENTAL AGREEMENTS AND AMENDMENTS.

- A. This AGREEMENT, including this CONSULTANT AGREEMENT STANDARD TERMS AND CONDITIONS (“CONSULTANT AGREEMENT”) and all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may be modified only by a written amendment duly executed by the parties to this AGREEMENT.
- B. EXHIBIT F, entitled “FBMC MASTER SERVICE AGREEMENT” shall be read with the CONSULTANT AGREEMENT. If any inconsistencies are found between the CONSULTANT AGREEMENT and EXHIBIT F, the CONSULTANT AGREEMENT shall supersede.
- C. If any provisions set forth in EXHIBIT F or any appendices thereto call for additional decisions by CITY or agreements between CITY and FBMC to further the terms of the AGREEMENT, such supplemental agreements shall be set forth in writing and signed by both parties.

RD:LRB
2/7/11

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal
corporation

LINDA R. BJORKE
Deputy City Attorney

By _____
DEANNA SANTANA
Deputy City Manager

“FBMC”

FBMC BENEFITS MANAGEMENT, INC,
a Florida Corporation, authorized to do
business in California as “Fringe Benefits
Management Company”

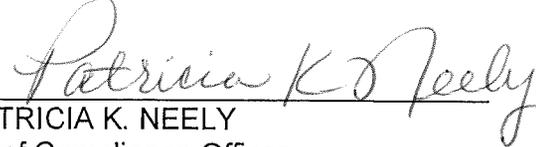
By 
PATRICIA K. NEELY
Chief Compliance Officer

EXHIBIT A

RECITALS

WHEREAS, the CITY OF SAN JOSE desires to obtain consultant services to provide planning, implementation and ongoing monitoring and maintenance of the CITY's Healthcare FSA and Dependent Care FSA benefit plans, including Internal Revenue Code Section 125 plan compliance management and Consolidated Omnibus Budget Reconciliation Act of 1985, as subsequently amended ("COBRA")/HIPAA compliance assistance for the Healthcare FSA plan; and

WHEREAS, the CITY OF SAN JOSE desires to obtain consultant services to provide enrollment, administration and customer services in support of the CITY's voluntary (participant-paid) insurance benefits program; and

WHEREAS, FBMC has the necessary professional expertise and skill to perform such services;

NOW, THEREFORE, the purpose of this AGREEMENT is to retain FBMC as CONSULTANT to CITY to perform those services specified in SECTION 1 of this AGREEMENT, EXHIBIT B, entitled "SCOPE OF SERVICES," and EXHIBIT F, entitled "FBMC MASTER SERVICE AGREEMENT," which are attached hereto and incorporated herein.

EXHIBIT B
SCOPE OF SERVICES

CONSULTANT shall perform services in support of 1) CITY's Health Care Reimbursement and Dependent Care Reimbursement FSA program, including Internal Revenue Code ("IRC") Section 125 compliance and COBRA/HIPPA compliance services, and 2) CITY's voluntary insurance group plan benefits, as set forth below.

I. FSA and Section 125 Plan Support Services.

FBMC shall provide CITY with FSA support services, including but not limited to the following:

- A. FMBC shall provide designated staff to meet with CITY personnel and CITY's designated representatives, carriers, voluntary product providers, and enrollers each quarter to provide successful planning, implementation and ongoing monitoring and maintenance of the CITY's Health Care and Dependent Care FSA programs.
- B. FBMC staff shall be available to answer calls from CITY staff and employees on a toll-free basis between 8:00 a.m. and 6:00 p.m. PST, at a minimum, and to have bilingual (Spanish) speaking capability.
- C. FBMC shall answer employee and dependent phone calls promptly with a guarantee that seventy-five percent (75%) or greater of all calls will be answered within forty-five (45) seconds, with a less than five percent (5%) abandonment rate.
- D. FBMC shall process FSA reimbursement claims quickly [ninety-five percent (95%) within five (5) days from receipt of electronic claims and

ninety-five percent (95%) within ten (10) days from receipt of manual or paper claims), with ninety-seven percent (97%) or greater accuracy].

- E. FBMC shall provide twenty-four (24) hour customer service website access for CITY employees to track claim and account balance status online.
- F. FBMC shall process ninety-five percent (95%) or more of Electronic Applications within ten (10) days of receipt, and ninety-five percent (95%) or more of Paper Applications within fifteen (15) days of receipt.
- G. FBMC shall link FBMC's system to the CITY's website to facilitate easy access for CITY personnel, employee and dependents.
- H. By dates to be determined by CITY, FBMC shall provide CITY with monthly reports regarding enrollment and invoice reporting, account reporting, account balances that may be subject to forfeit, service levels, and legislative changes that affect the plans being offered. After completion of the initial Open Enrollment period for the plan year beginning January 1, 2011, FBMC shall provide such reports to CITY no more than fifteen (15) days after the end of each month.
- I. Upon request by CITY, FBMC shall provide ad hoc reports, containing additional or customized reports.
- J. Upon request by CITY, FBMC shall assist CITY with the preparation of communication materials, account statements, educational material, and other information about claims processes for use by CITY employees.
- K. Each plan year, FBMC shall provide CITY with discrimination testing for FSA programs, including CITY's Section 125 plans, and shall provide guidance to the CITY to keep the CITY's program in compliance with Section 125 requirements. FBMC must complete annual testing and

reporting by dates to be mutually determined and provide sufficient time for CITY's legal review, any necessary amendments to the plans or other actions necessary to ensure that CITY's FSA and Section 125 plans remain in compliance with all federal and state requirements.

- L. FBMC shall provide a dedicated claims issue and eligibility contact person, and a dedicated Account Manager. CITY reserves the right to change those contacts upon request.
- M. By dates to be determined by CITY, FBMC shall provide CITY with the following reports:
 - 1. Monthly reports showing FSA claims processed and remaining election amount per participant, and
 - 2. Annual year-end report showing total FSA claims processed and remaining election amount per participant for the plan year.
- N. FBMC shall accept eligibility reporting from CITY on a semi-monthly or, if mutually agreed, more frequent basis, with a twenty-four (24) hour upload turn-around time to assure timely eligibility capture.
- O. By dates to be determined by CITY, FBMC shall provide CITY with electronically formatted communications about the FSA programs for CITY to use in news articles and flyers.
- P. By dates to be determined by CITY or as otherwise requested by CITY, FBMC shall provide to CITY monthly, annual and other periodic statistical plan reports concerning the CITY's FSA and Section 125 program, including but not limited to utilization data, enrollee distribution reports, status reports and analysis.
- Q. FBMC shall provide Administrative Services for the CITY's FSA plan including fund accounting, claims processing, research and resolution of

complaints and other problems identified by FBMC, CITY or CITY employees.

- R. FBMC shall review CITY's employee Flexible Spending Accounts annually to assure compliance with IRS Section 125 regulations as set forth in Appendix A ("Code Section 125 Pre-Tax Salary Reduction Services and Reimbursement Account Services") to EXHIBIT F, "FBMC MASTER SERVICE AGREEMENT." These services shall include, but not be limited to the following:
1. FBMC shall complete annual nondiscrimination testing upon receipt of data from CITY necessary to perform the nondiscrimination tests.
 2. FBMC shall discuss with CITY regarding any legal and regulatory updates needed to comply with applicable law at least two (2) months prior to CITY's open enrollment or when information becomes available.
 3. FBMC shall provide CITY with general FSA plan and tax favored account consulting services by dates to be determined by CITY or as otherwise requested by CITY.
- S. Upon request by CITY, FBMC shall recommend alternative Flexible Benefit plan options.
- T. FBMC shall investigate and resolve all administrative and claim problems within a reasonable period as determined by CITY and as set forth in the Performance Guarantees chart set forth below in Section I.II of this EXHIBIT B.
- U. Upon request by CITY and on dates determined by CITY, FBMC shall attend employee, labor, and management meetings related to FSA benefit plans.

- V. By dates determined by CITY, FBMC shall provide to CITY administrative guides, forms, and training for the CITY Benefits staff regarding the FSAs and IRS Section 125 plan.
- W. By dates determined by CITY, FBMC shall prepare open and special enrollment and plan documents for use in employee communications guides or letters. For CITY's regular Open Enrollment, communication materials are to be completed by FBMC and submitted to CITY by October 1st.
- X. By dates determined by CITY, FBMC shall prepare and submit to CITY all soft-copy and hard-copy communication materials, including plan information for new employee orientations, plan information and account balance reminders for current Participants.
- Y. Pursuant to a timeline determined by CITY, FBMC shall assist CITY in the planning of a minimum of four (4) annual Open Enrollment seminars for employees, to include at least one (1) annual meeting with CITY staff regarding current seminar information needs, to be completed no later than one month prior to Open Enrollment.
- Z. On dates determined by CITY, FBMC shall attend all annual Open Enrollment seminars and present FSA plan information to CITY employees on topics determined in advance at a "needs discussions" with CITY staff as described below.
- AA. No less than once a year, on a date to be determined by CITY, but no later than one month prior to open enrollment, FBMC shall coordinate and attend a "needs discussions" with CITY staff to determine information to be presented at Open Enrollment seminars, such as FSA plan changes for

the following calendar year, how Participants can utilize the plan most effectively, or other information requested by CITY.

- BB. As requested by CITY, FBMC shall assist CITY with the development of FSA-related employee benefit policies, procedures, and summary plan documents.
- CC. FBMC shall advise the CITY on pending legislation affecting the administration of the FSA programs, including compliance with IRC Section 125 and related COBRA/HIPAA requirements.
- DD. Upon enactment of any legislation relevant to CITY's FSA and Section 125 program, FBMC shall provide CITY with timely analysis and guidelines to assist the CITY with the compliance requirements.
- EE. Each calendar year, on a date determined by CITY, FBMC shall sponsor at least one (1) Participant forum or seminar on relevant group FSA issues.
- FF. Each month, FBMC shall provide CITY with written updates regarding pending legislation and regulatory implementation associated with current and future spending account issues.
- GG. By dates to be determined by CITY no less than semi-annually, FBMC shall meet with CITY Benefits staff to review and evaluate FSA and Section 125 program administration.
- HH. FBMC shall maintain effective administration of the CITY's FSAs and IRS Code Section 125 Plan as set forth in Appendix A ("Code Section 125 Pre-Tax Salary Reduction Services and Reimbursement Account Services") and other relevant appendices of EXHIBIT F, "FBMC MASTER SERVICE AGREEMENT," and pursuant to the Performance Guarantees set forth below.

II. If, during any plan year covered by this AGREEMENT, FBMC fails to meet any of the Performance Guarantees set forth below, by March 31 of the following year, FBMC shall forfeit the amounts specified.

(Such forfeiture amount represents a percentage of FBMC's annual administrative fees paid to FBMC by the CITY's provider of voluntary insurance group plans, described in EXHIBIT D, "COMPENSATION.")

	Performance Guarantee	Amount FBMC Shall Forfeit to CITY if Performance Guarantee Is Not Met.
1.	<u>Initial Set-Up.</u> System plan design shall be completed by FBMC no fewer than thirty (30) days before plan year effective date.	1.5% of annual administrative fees paid to FBMC by CITY's voluntary insurance provider.
2.	<u>Implementation.</u> FBMC's implementation project plan shall be completed and approved by CITY no later than 30 days following the date of execution of this AGREEMENT.	1.5% of annual administrative fees paid to FBMC by CITY's voluntary insurance provider.
3.	<u>Claims Administrative Services.</u> A) <i>Turnaround on Complete Claims.</i> 95% of complete claims shall be authorized by FBMC within five (5) business-days of FBMC's receipt of claim. B) <i>Financial Accuracy.</i> FBMC shall have a financial accuracy rate of no less than 97% for claims payments.	A) 1.0% of annual administrative fees paid to FBMC by CITY's voluntary insurance provider. B) 1.0% of annual administrative fees paid to FBMC by CITY's voluntary insurance provider.
4.	<u>Data Management.</u> FBMC shall post contributions to CITY employee accounts within three business-days of receipt of processable payroll information from CITY.	1.0% of annual administrative fees paid to FBMC by CITY's voluntary insurance provider.

	Performance Guarantee	Amount FBMC Shall Forfeit to CITY if Performance Guarantee Is Not Met.
5.	<p><u>Network Systems.</u> A) <i>Website Availability.</i> FBMC shall maintain customer service website availability at 99% (not including scheduled downtime).</p> <p>B) <i>IVR and Telephone Availability.</i> FBMC shall maintain Interactive Voice Response (IVR) and customer service telephone system availability at 99% (not including scheduled downtime), based on the telephone hours of operation set forth above.</p>	<p>A) 1.0% of annual administrative fees paid to FBMC by CITY's voluntary insurance provider.</p> <p>B) 1.0% of annual administrative fees paid to FBMC by CITY's voluntary insurance provider.</p>
6.	<p><u>Customer Care.</u> A) <i>Answer Customer Calls.</i> FBMC shall answer 75% of customer calls within 45 seconds on average.</p> <p>B) <i>Lost Customer Calls.</i> FBMC's abandonment rate for customer calls shall not exceed 5%.</p>	<p>A) 1.0% of annual administrative fees paid to FBMC by CITY's voluntary insurance provider.</p> <p>B) 1.0% of annual administrative fees paid to FBMC by CITY's voluntary insurance provider.</p>

JJ. By dates to be determined by CITY, FBMC shall provide CITY with quarterly Performance Guarantee reports containing a calculation of monetary penalties that occurred during the quarter, based on the forfeiture amounts set forth in the above chart. FBMC shall calculate any performance penalties/forfeiture amounts owed to CITY using annual aggregate performance results. The annual total forfeiture amounts paid by FBMC to CITY for all Performance Guarantee categories combined shall not exceed ten percent (10%) of the total annual administrative fees

paid to FBMC by CITY's voluntary insurance provider for the plan year in which the performance penalties/forfeiture amounts accrued.

- KK. By a mutually agreed-upon date, CITY shall provide FBMC with the minimum necessary CITY employee, retiree and dependent PHI in the form of a "Monthly Current Medical Benefits File," to include current health plan election and applicable co-payments and deductibles in order to set up auto-adjudication for CITY's FSA debit card claims, pursuant to the terms set forth in EXHIBIT F, "FBMC MASTER SERVICE AGREEMENT" and to terms that shall be set forth in a Banking Arrangement agreement to be signed by FBMC and CITY and incorporated, or incorporated by reference, herein, and subject to all applicable federal and state privacy laws.
- LL. By a date determined by CITY and occurring no later than four (4) weeks prior to January 1, 2011, FBMC shall use the "Monthly Current Medical Benefits File" to set up auto-adjudication for FSA debit card claims pursuant to the terms set forth in EXHIBIT F, "FBMC MASTER SERVICE AGREEMENT," pursuant to terms set forth in Appendix B ("HIPAA Confidentiality") and Appendix C ("Reimbursement Account Card Services") to EXHIBIT F, "FBMC MASTER SERVICE AGREEMENT", incorporated herein.
- MM. FBMC and CITY shall enter into a Banking Arrangement agreement(s) in which CITY shall agree to utilize a non-interest bearing account established by FBMC at FBMC's bank for CITY's deposit of Participant payroll deductions pursuant to Participant elections and for FBMC's reimbursements to Participants. FBMC and CITY shall enter into any agreements necessary to establish such account and the terms by which

CITY shall “pre-fund” the account, pursuant to Internal Revenue Service Uniform Coverage and as set forth in EXHIBIT D, entitled “COMPENSATION,” incorporated herein.

- NN. FBMC shall provide Federal COBRA and/or HIPAA Portability Services related to CITY’s Health Care FSA.

As set forth in Appendix D (“Federal COBRA and/or HIPAA Portability Services (Premier Continuation)”) of EXHIBIT F, “FBMC MASTER SERVICE AGREEMENT,” FBMC shall assist CITY with activities which CITY is required to perform to comply with COBRA and HIPAA portability related to the CITY’s FSA program. By deadlines set forth in Appendix D or otherwise determined by CITY or required by law, FBMC shall provide COBRA-related services including but not limited to:

1. FBMC shall mail a General COBRA Notice to each Participant who becomes covered by the CITY’s Health Care FSA program and, where required by law, the covered spouse or covered dependent.
2. Upon a Participant’s termination from CITY employment or other specified qualifying events, FBMC shall mail a COBRA Qualifying Event Notice and election form. Such notification by FBMC shall include mailing required notices and all future billings, collecting premiums, mailing notices of conversion options and cancellation of coverage, reporting to CITY and record-keeping.
3. If FBMC receives notice from a qualified beneficiary that the qualified beneficiary is not eligible for COBRA for any reason, FBMC shall mail an Unavailability Notice to the qualified beneficiary.

4. FBMC shall process election forms submitted by qualified beneficiaries in accordance with applicable law, and upon request by CITY, FBMC shall monitor the timely receipt of elections and contributions.
5. Each year by a date determined by CITY, FBMC shall produce and print annual enrollment materials, and FBMC shall mail the enrollment materials directly to COBRA participants and ensure compliance with all pertinent law, regulatory rulings, guidelines and notices applicable to COBRA administration.
6. FBMC shall collect, reconcile and post COBRA premiums from qualified beneficiaries in a manner and method agreed upon by CITY, and FBMC shall deposit all premiums into a benefit continuation premium depository account in FBMC's designated bank.
7. Upon termination of COBRA coverage, FBMC shall mail notice to the qualified beneficiary indicating that COBRA coverage is terminated or terminating.
8. Upon request by CITY, FBMC shall provide qualified beneficiaries with end of eligibility notices, conversion notices and/or confirmation notices.
9. FBMC shall resolve all servicing issues related to COBRA for CITY's Health Care FSA plan through level one appeals, and CITY shall be responsible to grant or deny level two and level three appeals.
10. FBMC shall calculate eligibility for CITY's Health Care FSA.

11. Pursuant to HIPAA requirements, FBMC shall mail a Certificate of Creditable Coverage to each covered individual who loses active coverage under the CITY's Health Care FSA after CITY provides FBMC with the information necessary to complete the certificate, after the loss of coverage, and following a request by the covered individual.
12. By dates to be determined by CITY each month, FBMC shall provide CITY with written reports summarizing COBRA activities in a manner and timeframe agreed to by CITY.
13. FBMC shall establish a standard procedure for exchanging information with CITY and providers, subject to applicable state and federal law.
14. FBMC shall provide toll-free bilingual Federal COBRA and/or HIPAA Portability customer service to CITY staff and Participants, which shall include Spanish language and other languages requested by CITY.
15. FBMC shall maintain an internet website that contains benefit alerts, newsletters, legislative updates and other information related to COBRA.
16. FBMC shall provide other COBRA- and HIPAA-related services to CITY and CITY employees and dependents as requested by CITY and as set forth in Appendix D (Federal COBRA and/or HIPAA Portability Services (Premier Continuation)) to EXHIBIT F.

II. Voluntary Insurance Benefits Support Services.

FBMC shall serve as CITY's third party administrator to provide enrollment, communication, maintenance, and administration services in support of CITY's voluntary insurance benefits program, including CITY's Accident Insurance and Critical Illness Insurance (with Cancer rider) group plans to be provided by CITY's selected insurance carrier.

Services to be provided by FBMC in support of CITY's voluntary insurance program shall include but not be limited to:

- A. FBMC shall successfully coordinate with CITY's selected insurance carrier to ensure that Open Enrollment communications are accurate, eligibility is assessed appropriately, enrollments are communicated and implemented, premium billing functions are provided, and quality voluntary insurance group coverage is provided to CITY employees, retirees and their eligible dependents.
- B. During CITY designated enrollment periods, FBMC shall provide CITY with representatives (available onsite during the Open Enrollment period and available throughout the year via FBMC's telephonic customer service center), whereby FBMC shall handle all employee and retiree enrollments, answer questions and resolve any issues regarding CITY's selected insurance carrier voluntary insurance group plans.
- C. Upon request by CITY, FBMC shall coordinate with CITY's selected insurance carrier to provide CITY with ad hoc reports and other additional or customized reports.

- D. Upon CITY's request, FBMC shall assist CITY with the preparation of communication materials, educational material, information about claim processes, and other documentation for use by CITY employees and retirees.
- E. Within thirty (30) days of the end of each reporting period as determined by CITY, FBMC shall coordinate with CITY's selected insurance carrier and provide CITY with the following reports:
 - 1. Monthly plan utilization reporting for employees and retirees;
 - 2. Quarterly claim lag reporting for employees and retirees; and
 - 3. Annual plan utilization reporting for employees and retirees.
- F. By dates to be determined by CITY, FBMC shall provide CITY with electronically formatted communications about the CITY's voluntary insurance group plans for CITY to use in news articles and flyers for employees and retirees.
- G. By dates determined by CITY or as otherwise requested, FBMC shall coordinate with CITY's selected insurance carrier and shall provide CITY with monthly, annual and other periodic statistical plan reports concerning the CITY's voluntary insurance program, including but not limited to enrollment information, utilization data, enrollee distribution reports, status reports and analysis.
- H. Upon request by CITY, and by dates determined by CITY, FBMC shall prepare and/or coordinate with CITY's selected insurance carrier to prepare Open Enrollment and special enrollment and plan documents for use in CITY employee and retiree communications guides or letters.
- I. Pursuant to a timeline determined by CITY, FBMC shall assist CITY in the planning of a minimum of four (4) annual Open Enrollment seminars for

employees and retirees, to include at least one (1) annual meeting with CITY Benefits staff regarding current seminar information needs to be completed no later than one month prior to open enrollment.

- J. On dates determined by CITY, FBMC shall attend all annual Open Enrollment seminars for employees and retirees and shall present information about the voluntary insurance coverage to be provided by CITY's selected insurance carrier at City Hall or other locations to be determined by CITY. CITY and FBMC shall determine topics in advance at "needs discussion" meetings described below.
- K. No less than once each year, on a date to be determined by CITY, but no later than one month prior to Open Enrollment, FBMC shall coordinate and attend "needs discussions" with CITY staff to determine information to be presented at Open Enrollment seminars, such as plan benefits, how to utilize the plan most effectively, and other information requested by CITY.
- L. During all Open Enrollment periods during the period covered by this AGREEMENT, FBMC shall assist CITY employees and retirees in their decision-making about whether to continue or to enroll in a CITY-sponsored voluntary insurance group plan, and FBMC shall provide CITY employees and retirees with any administrative support, information and other assistance necessary in order to enroll in or continue such coverage.
- M. Each year, by a date mutually determined by CITY and FBMC and occurring prior to CITY's Open Enrollment, CITY shall provide FBMC with the minimum necessary employee and retiree PHI in order for FBMC to provide the voluntary insurance group plan enrollment services set forth in this AGREEMENT, subject to all applicable federal and state privacy laws.

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- N. FBMC shall provide other support and enrollment services to CITY and to CITY employees and retirees as requested by CITY or as mutually determined to be necessary to administer and support CITY's voluntary insurance group plans.
- O. As CITY's third party administrator for voluntary insurance benefits, FBMC makes the following ongoing guarantees to CITY:
 - 1. FBMC is licensed to provide administration services and insurance plans in the State of California.
 - 2. FBMC shall provide access to insurance coverage for out-of-state retired Participants.

EXHIBIT C
SCHEDULE OF PERFORMANCE

Work for the AGREEMENT commenced retroactive to January 1, 2011, and the estimated time for completion of the initial term of the AGREEMENT is December 31, 2011, or August 31 2012 if CITY declines to exercise the option to extend the term for the 2012 plan year, as set forth in Section 2.

In the event CITY exercises all options under this AGREEMENT as specified in Section 2, the fifty-six (56) month term of this AGREEMENT covers the following plan years, plus an additional eight (8) month period for completion of all relevant claims and reimbursements:

- | | |
|----------------------------------|-------------------------------------|
| • January 1 to December 31, 2011 | 2011 Plan Year |
| • January 1 to December 31, 2012 | 2012 Plan Year |
| • January 1 to December 31, 2013 | 2013 Plan Year |
| • January 1 to December 31, 2014 | 2014 Plan Year |
| • January 1 to August, 2015 | Completion of Claims/Reimbursements |

EXHIBIT D
COMPENSATION

I. Administration Fees and Performance Guarantees.

FBMC shall waive all CITY-paid fees for FSA administration and voluntary insurance support services in exchange for CITY's selection of FBMC as CITY's third party administrator for voluntary insurance benefits.

- A. FBMC shall waive all proposed fees associated with the FSA administration, including but not limited to participation fees, implementation fees, plan document review and preparation, 550 Form preparation and required plan discrimination testing fees and any fees related to customized benefits communication material design and preparation, in exchange for CITY's selection of FBMC to provide third party administrator services in support of CITY's voluntary insurance benefits, including but not limited to such services as enrollment and communication, which will entitle FBMC to receive associated insurance product commissions from the underwriter (CITY's selected voluntary insurance group plan carrier).
- B. The associated insurance product commissions paid to FBMC by the underwriter (CITY's selected voluntary insurance group plan carrier) shall replace any compensation that might otherwise be payable by CITY in exchange for services rendered by FBMC pursuant to this AGREEMENT, including all FSA administration and voluntary insurance support services.

- C. Each year, on a date to be mutually determined by FBMC and CITY, FBMC shall provide CITY with disclosure of all commission compensation received by FBMC from the underwriter (CITY's selected voluntary insurance carrier).

- D. As set forth in EXHIBIT B, entitled "SCOPE OF SERVICES," if, during any calendar year covered by this AGREEMENT, FBMC fails to meet any Performance Guarantees related to services in support of CITY's FSA plan, by March 31 of the following year, FBMC shall forfeit certain penalty amounts that are based on a percentage of FBMC's annual administrative fees paid to FBMC by the CITY's provider of voluntary insurance group plans. Such annual total forfeiture amounts paid by FBMC to CITY for all Performance Guarantee categories combined shall not exceed ten percent (10%) of the total annual administrative fees paid to FBMC by CITY's voluntary insurance provider for the plan year in which the performance penalties/forfeiture amounts accrued.

II. COBRA Premiums Interest.

As set forth in Appendix D ("Federal COBRA and/or HIPAA Portability Services (Premier Continuation)") to EXHIBIT F, "FBMC MASTER SERVICE AGREEMENT," FBMC may retain as additional compensation for FSA support services any interest earned on certain COBRA premiums collected by FBMC and held in an FBMC maintained account.

III. FSA Banking Arrangements and Pre-Funding Requirements.

CITY shall provide pre-funding of the Health Care FSA account and ongoing funding to all FSA reimbursement accounts established for CITY by FBMC.

Although pre-funding is not "compensation" provided by CITY to FBMC in exchange for FBMC's services rendered pursuant to the terms of this AGREEMENT, CITY agrees to fund the bank account(s) established by FBMC for the CITY's Health Care and Dependent Care FSAs as described below and as set forth in EXHIBIT F, "FBMC MASTER SERVICE AGREEMENT."

A. Pursuant to Appendix A ("Code Section 125 Pre-Tax Salary Reduction Services and Reimbursement Account Services") to EXHIBIT F, "FBMC MASTER SERVICE AGREEMENT," by January 1 of each plan year, CITY shall pre-fund the Health Care Reimbursement Account as follows:

1. CITY shall make sufficient funds available to the bank account established by FBMC for CITY's FSA reimbursement account in an amount necessary to address the Internal Revenue Service "Uniform Coverage Rule," which requires that employers make the full amount of coverage elected under the plan available to employees from the first day of the plan year, regardless of how much employees have actually contributed to the account.
2. By January 1, 2011 for the Initial Period of this AGREEMENT, CITY shall deposit \$15,219.21 into the bank account.

3. By January 1 of the beginning of each Option Period of this AGREEMENT, if, based on CITY's analysis of the available balance in the bank account after the final pay period of the calendar year preceding the Option Period, CITY deems that additional funds must be deposited into the account to ensure requisite funding, and subject to appropriation, CITY shall deposit an amount not to exceed Forty-Two Thousand Dollars (\$42,000) for each Option Period, for a total amount not to exceed One Hundred Forty-One Thousand Two Hundred Nineteen Dollars and Twenty-One Cents (\$141,219.21) for the fifty-six (56) month term of this AGREEMENT (including the entire Option Period), according to the following calculation:

Total annual employee election amount for the Option Period plan year, divided by the number of business days in the year, multiplied by the number of business days from January 1 until the first pay day of the year pursuant to CITY's payroll schedule for that year.

4. CITY is not required to provide pre-funding for January 1, 2015, the beginning of the final run-off claims and reimbursement period covered by this AGREEMENT.
- B. All other funds deposited by CITY into the bank account established by FBMC for CITY's FSA reimbursement accounts shall be dollars deducted via employee payroll deduction pursuant to annual elections by individual

FSA plan Participants, and FBMC shall disburse reimbursement funds to Participants from this account via check, direct deposit and/or debit card.

- C. Pursuant to Appendix E (“Banking Arrangements Agreement”) of EXHIBIT F, FBMC waives any other “minimum balance” requirements in exchange for CITY’s agreement to deposit Participant deductions, per annual Participant elections, into the bank account established by FBMC for CITY’s FSA reimbursement accounts on a per-payroll basis and via electronic funds transfer, automatic check handling transfer or wire transfer.

- D. After the claims run-off period ends on June 15th following the end of each plan year, FBMC shall determine the total amount of FSA plan elections forfeited by FSA plan Participants. This amount shall be paid by FBMC to CITY by August 1st following the end of each plan year, along with back-up documentation that demonstrates how this amount was calculated.

EXHIBIT E
INSURANCE

FBMC, at FBMC's sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by FBMC, its agents, representatives, employees or subcontractors.

I. Minimum Scope of Insurance.

Coverage shall be at least as broad as:

- a. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
- b. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
- c. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
- d. Professional Liability Errors & Omissions for all professional services.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager.

II. Minimum Limits of Insurance.

FBMC shall maintain limits no less than:

- a. Commercial General Liability: \$5,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
- b. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
- c. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officers, employees, agents and contractors; and
- d. Professional Liability Errors & Omissions \$2,000,000 per occurrence/aggregate limit.

IV. Other Insurance Provisions.

The policies are to contain, or be endorsed to contain, the following provisions:

- a. Commercial General Liability and Automobile Liability Coverages.

1. Insured. The City of San José, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, FBMC; products and completed operations of FBMC; premises owned, leased or used by FBMC; and automobiles owned, leased, hired or borrowed by FBMC. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.

2. Contribution Not Required. FBMC's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of FBMC's insurance and shall not contribute with it.

3. Provisions Regarding the Insured's Duties After Accident or Loss. Any failure to comply with reporting provisions of the policies by FBMC shall not affect coverage provided CITY, its officers, employees, agents, or contractors.

4. Coverage. Coverage shall state that FBMC's insurance shall 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.

5. Waiver of Subrogation. Coverage shall contain a waiver of subrogation in favor of the City, its officers, employees, agents and contractors.

b. Workers' Compensation and Employers' Liability.

Coverage shall contain waiver of subrogation in favor of the City of San José, its officers, employees, agents and contractors.

c. All Coverages.

Each insurance policy required by this AGREEMENT shall be endorsed to state we will endeavor to provide 30 days notice for cancellation, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

V. Acceptability of Insurers.

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

VI. Verification of Coverage.

FBMC shall furnish CITY with certificates of insurance and additional insured endorsement affecting coverage required by this AGREEMENT. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

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City of San José—Human Resources
Risk Management
Attn: Connie Aparicio-Yanez
200 East Santa Clara Street, 2nd Floor Wing
San Jose, CA 95113-1905

VII. Subcontractors.

FBMC shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

EXHIBIT F

FBMC MASTER SERVICE AGREEMENT

- I. The following attachments together constitute the FBMC MASTER SERVICE AGREEMENT under this agreement:
 - A. Appendix A: Code Section 125 Pre-Tax Salary Reduction Services and Reimbursement Account Services.
 - B. Appendix B: HIPAA Confidentiality
 - C. Appendix C: Reimbursement Account Card Services
 - D. Appendix D: Federal COBRA and/or HIPAA Portability Services (Premier Continuation)
 - E. Appendix E: Banking Arrangements Agreement

- II. CITY and FBMC anticipate that the FBMC MASTER SERVICE AGREEMENT, including any appendices thereto, that are contained or incorporated by reference herein may be amended upon mutual agreement by CITY and FBMC.

Any such amended FBMC MASTER SERVICE AGREEMENT, including amended appendices thereto, that is entered into by CITY and FBMC during the term of this AGREEMENT shall be incorporated by reference herein.

EXHIBIT G
SPECIAL PROVISIONS

Retroactive Services

- A. It is understood and agreed that FBMC has provided services prior to the execution of this AGREEMENT in anticipation of its execution. However, in no event shall FBMC be compensated for work performed for CITY prior to January 1, 2011.

- B. FBMC waives any and all compensation for services by FBMC during the period of October 5, 2010 to December 31, 2010 performed in preparation for the plan year beginning January 1, 2011.

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EXHIBIT H

**NOTICE OF EXERCISE OF OPTION TO EXTEND
CONSULTANT SERVICES AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
FBMC BENEFITS MANAGEMENT, INC.**

WHEREAS, on _____, 2011, the CITY OF SAN JOSE ("CITY") and FBMC BENEFITS MANAGEMENT, INC. ("FBMC") entered an Agreement for Consultant Services ("AGREEMENT") which contains options to extend the Initial Term for three (3) additional Option Periods; and

WHEREAS, CITY has made the determination to extend the AGREEMENT for the first/second/third Option Period;

NOW, THEREFORE,

CITY HEREBY EXERCISES, pursuant to Section 2 of the AGREEMENT, the first/second/third option to extend the term of the AGREEMENT for the period of _____ through _____. All of the terms and conditions of the AGREEMENT shall remain in full force and effect during the Option Period.

"CITY"

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

LINDA R. BJORKE
Deputy City Attorney

By _____
Director of Human Resources

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2/7/11

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

“CITY”

APPROVED AS TO FORM:

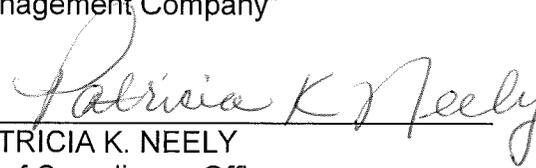
CITY OF SAN JOSE, a municipal
corporation

LINDA R. BJORKE
Deputy City Attorney

By _____
DEANNA SANTANA
Deputy City Manager

“FBMC”

FBMC BENEFITS MANAGEMENT, INC,
a Florida Corporation, authorized to do
business in California as “Fringe Benefits
Management Company”

By 
PATRICIA K. NEELY
Chief Compliance Officer

The City of San Jose

FBMC Master Service Agreement

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FBMC MASTER SERVICE AGREEMENT

The City of San Jose ("Employer") has asked FBMC to provide administrative services for certain employee benefit plans maintained by Employer ("Benefit Plans") as described in this FBMC Service Agreement ("Agreement"). This FBMC Service Agreement shall be read with and incorporated into Employer's Consultant Agreement ("AGREEMENT"), and if any inconsistencies are found between the FBMC Service Agreement, the AGREEMENT shall supercede. In consideration of the mutual promises contained in this Agreement, Employer and FBMC agree as follows:

ARTICLE I - INTRODUCTION

1.1 Effective Date and Term. The effective date of this Agreement is 01/01/2011 ("Effective Date") and will continue through 12/31/2014 or until such time as the Agreement is terminated in accordance with Section 5.8 herein or Section 11 of AGREEMENT, or in the event that Employer declines to exercise the annual Options to Renew, as set forth in Section 2 of the AGREEMENT.

This Agreement also includes by reference Appendices in correlation with the execution of this Agreement covering the scope of the services under this Agreement, including but not limited to the following:

Appendices

- A Code § 125 Pre-tax Salary Reduction Services And Reimbursement Account Services
- B HIPAA Confidentiality
- C Reimbursement Account Card Services
- D Federal COBRA and/or HIPAA Portability Services (Premier Continuation)
- E Banking Arrangements

Each Appendix attached hereto is incorporated into by reference and made a part of this Agreement. An Appendix may have a later effective date than this Agreement to the extent that Employer and FBMC agree to the terms set forth in the Appendix after this Agreement has already become effective. The responsibilities of the parties set forth in the Appendices are in addition to any responsibilities set forth in the Agreement. If there is a conflict between the Appendices and the Agreement, the Agreement controls.

1.2 (a) This section left blank by agreement of the parties.

1.2 (b) Prior Administration. FBMC shall have no duty, obligation, or liability with respect to claims incurred prior to the beginning date of this Agreement ("Prior Reimbursement Requests") and administration (or other) services arising prior to the beginning date of this Agreement ("Prior Administration"), regardless of whether such services were/are to be performed prior to or after the beginning date of this Agreement.

Employer agrees that Employer shall be responsible for the proper handling of Prior Reimbursement Requests and maintaining legally required records of all Prior Reimbursement Requests and Prior Administration sufficient to comply with applicable legal (e.g., IRS or DOL substantiation) requirements.

1.2 (c) Administration. Employer shall furnish the information requested by FBMC as determined necessary to perform FBMC's functions hereunder, including information concerning the Agreement and the eligibility of individuals to participate in and receive Employer's health plan and/or FSA benefits under this Agreement, subject to applicable federal and state privacy law. Such information shall be provided to FBMC in the time and in the manner agreed to by Employer and FBMC. FBMC shall have no responsibility with regard to benefits paid in error due to Employer's failure to timely update such information. From time to time thereafter, but no more frequently than monthly, FBMC shall provide Employer with updated reports summarizing the eligibility data provided by Employer ("Eligibility Reports") by electronic medium unless otherwise agreed by the parties. The Eligibility Reports shall specify the effective date for each Participant who is added to or terminated from participation in

Employer's health plan and/or FSA benefits. Employer shall be responsible for ensuring the accuracy of its Eligibility Reports, and bears the burden of proof in any dispute with FBMC relating to the accuracy of any Eligibility Report. FBMC shall have no liability to Employer or any Participant as a consequence of an inaccurate Eligibility Report, and FBMC shall not have any obligation to credit Employer for any claims expenses or administrative fees incurred or paid to FBMC as a consequence of Employer failing to review Eligibility Reports for accuracy. FBMC shall assume that all such information is complete and accurate and is under no duty to question the completeness or accuracy of such information. Such Eligibility Reports shall be considered Personal Health Information (PHI) and, when transmitted by or maintained in electronic media shall be considered electronic PHI, and subject to the privacy and security rules under the Health Insurance Portability and Accountability Act (HIPAA), other applicable federal and state privacy law, and this Agreement.

ARTICLE II - EMPLOYER RESPONSIBILITIES

Employer will be responsible for the items described in this Section II and any additional items described in the Services Appendices and/or Exhibits attached hereto.

2.1 Employer Responsibilities.

Employer has sole responsibility for the establishment and operation of the Benefit Plans. Employer shall have sole discretionary authority and responsibility for construing and interpreting the provisions of the Benefit Plans and deciding all questions of fact arising under the Benefit Plans. Employer will not represent to covered individuals or to any third party that FBMC is the "Plan Administrator" as that term is generally defined in ERISA Sec. 3(16) (without regard to whether ERISA applies or not). It is Employer's sole responsibility and duty to ensure Employer's compliance with all applicable laws and regulations, and FBMC's provision of services under this Agreement does not relieve the Employer of this obligation. FBMC's general responsibility under this Agreement is to assist the Employer with satisfaction of its responsibilities under the Benefit Plans. Employer understands that it is Employer's responsibility to pay any fee or penalty arising from the Benefit Plans that is

assessed by the Internal Revenue Service, the Department of Labor, and/or other federal or state governmental agencies.

2.2 Payments to FBMC. In consideration for the services provided by FBMC in accordance with this Agreement, Employer agrees to pay to FBMC the applicable Service Charges in accordance with Section 4 of the AGREEMENT and Article IV of this Agreement. Notwithstanding any provision herein to the contrary, Employer and FBMC intend and agree that any funds submitted by Employer to FBMC: (i) are and shall remain the general assets of Employer; (ii) are not "plan assets" within the meaning of ERISA (without regard to whether ERISA applies); (iii) were never held in an account, fund, or trust bearing the name of a Benefit Plan or any participants or beneficiaries thereof; and (iv) shall remain subject to the claims of Employer's creditors at all times.

Employer shall advise the participants and beneficiaries of the Benefit Plans that the benefits under the Benefit Plans shall at all times be paid out of the general assets of Employer.

2.3 Information to FBMC. Employer will furnish the information determined by FBMC to be the minimum necessary to satisfy its responsibilities under this Agreement in a format mutually agreed upon by the parties. Such information will be provided to FBMC in the time and in the method agreed to by the parties under this Agreement and Section 14 of the AGREEMENT. FBMC shall assume that all such information provided to FBMC by Employer or a designee of Employer (e.g. another third party administrator) is complete and accurate and is under no duty to question the completeness or accuracy of such information. Employer understands that FBMC cannot accurately perform its duties under this Agreement without accurate and timely information and that FBMC shall have no liability to Employer or any Covered Individual as a consequence of inaccurate and/or untimely information provided to FBMC by Employer, a Covered Individual or a third party who has provided information to FBMC at Employer's request (e.g. a prior or existing service provider).

The Employer further:

(a) appoints FBMC as its Benefits Administrator for the performance of the

services required to be provided by FBMC during the term of this Agreement with respect to the benefits offered under, and in conjunction with the Benefit.

(b) acknowledges and agrees that, within limits set forth in Section 4 of AGREEMENT, FBMC has a right to receive fees and commissions with respect to certain Benefits provided under the plan, including as applicable: pre- and post-tax product commissions and broker fees. Fees and commissions for Benefits provided to an Eligible Individual after the Effective Date of this Agreement shall continue for such period of time as the Individual continues to pay premiums with respect to such Benefit(s) notwithstanding any termination of this Agreement.

(c) agrees not to terminate or eliminate any payroll deduction slots or other similar mechanism for any Benefit with respect to which FBMC has a right to receive commissions as long as any Employee of the Employer shall elect to continue the payment of premiums for such Benefit by means of salary reduction.

(d) agrees to give FBMC reasonable access to the Employer's employees who are eligible to participate in the plan, subject to applicable federal and state laws, including applicable privacy laws and the prohibition on marketing under California Civil Code Section 56.10(d).

(e) agrees to distribute approved product, Benefit and plan literature and documentation (including, without limitation, education and enrollment materials and any material required to be distributed to Employees or Benefit Participants by applicable law.)

(f) agrees as may be necessary to provide FBMC, on an annual basis, with scheduled payroll dates and the corresponding dates or deadlines for the submission of Employee payroll deduction authorizations for each such payroll date (hereinafter the "Payroll Cutoff Date"), prior to the inception of any Plan Year.

(g) agrees to provide appropriate payroll data and other minimum necessary data and information to enable FBMC to meet its obligations hereunder.

(h) agrees to warrant to FBMC that all properly executed payroll deduction and reduction authorization forms which are received by the Employer on or before the Payroll Cutoff Date will be expeditiously processed and implemented for the payroll period with respect to which such Payroll Cutoff Date is applicable.

(i) agrees to remit payroll deduction and reduction data and premiums (if applicable), in a format as mutually agreed upon by the parties, to the depository account designated by FBMC, subject to the Employer's reasonable approval, in a prompt and expeditious manner immediately after each payroll date.

(j) agrees to instruct Employer's selected voluntary insurance carrier (or other provider if parties agree to other products and/or providers) to comply with any agreement to share costs, if the contract between FBMC and Benefit Providers provides for or requires proportionate sharing of costs with the Employer's Benefit Provider(s), subject to written agreement between FBMC and Employer and subject to appropriation by San Jose City Council. FBMC shall provide the Employer with a copy of any such agreement between FBMC and Benefit Providers simultaneous with a request for action under this paragraph. Shared costs will consist of enrollment materials developed for each Benefit Provider by FBMC.

2.4 This section intentionally left blank.

2.5 This section intentionally left blank.

2.6 Additional Employer Responsibilities. Except as otherwise explicitly provided in the AGREEMENT or this Agreement (including its related Appendices and Exhibits), the Employer shall retain the liability for:

(a) all Plan benefits and all expenses incident to the Plan;

(b) any state premium, or similar tax, however denominated, including any penalties and interest payable with respect thereto, assessed on the basis of and/or measured by the amount of Plan benefit funds handled pursuant to this Agreement;

(c) any acts or omissions by the Employer (and its employees, agents, or affiliates) arising out of this Agreement, or the administration of the Plan (including those alleged to be a breach of fiduciary duty under applicable law);

(d) any legal action or proceeding to recover benefits under the Plan.

This liability shall survive the termination of this Agreement.

ARTICLE III - FBMC'S RESPONSIBILITIES

FBMC will be responsible for the items described in Section 1 of the AGREEMENT and this Article III and any additional items described in the Services Appendices and Exhibits attached hereto.

3.1 Bonding and Insurance. FBMC will maintain a fidelity bond and other appropriate forms of insurance on all FBMC Employees who handle Employer and/or employee contributions provided to FBMC by Employer in accordance with the terms of this Agreement to the extent required by law.

3.2 Liability for Claims and Expenses FBMC does not insure nor underwrite any Benefit Plan liability of Employer and is not financially responsible for the claims payable under and/or expenses incident to the Benefit Plans. FBMC has no duty or obligation to defend any legal action or proceeding brought to recover benefits under the Benefit Plans; however, FBMC will provide to Employer and/or Employer's legal counsel, upon request and subject to any limitations described in this Agreement, any documentation in FBMC's possession that may relate to such claim for benefits and/or expenses.

3.3 Benefit Plan Documents and Forms. To the extent set forth in the applicable Appendices and Exhibits attached hereto, FBMC may provide Employer with sample documents and forms related to administration of the Benefit Plans for which FBMC provides related administrative services under this Agreement. Such sample documents and forms have been prepared in accordance with the standard of care set forth in Section 3.5. Nevertheless, the

Employer understands and acknowledges that it is the Employer's responsibility, in accordance with Section 2.1 of this Agreement, to ensure that all Benefit Plan documents and forms, including any template or sample documents and forms provided to Employer by FBMC in accordance with this Agreement, comply with the applicable laws and regulations.

3.4 Recordkeeping. FBMC will maintain the usual and customary books, records and documents, including electronic records in FBMC's possession for at least the lesser of the term of this Agreement (or seven (7) years for public employers; eight (8) years for private employers) following the date the record was created, or received by FBMC. During this period, Employer has the right of continuing access to these documents and as such FBMC will make available in its offices.

3.5 Care and Diligence. FBMC shall use reasonable care and due diligence in the exercise of its powers and the performance of its duties under this Agreement in the same manner that any other prudent service provider in the same industry would exercise its powers and perform its duties. However, FBMC will not be liable to the Employer for mistakes of judgment or other actions taken in good faith. If FBMC makes any payment under this Agreement to an ineligible person, or if more than the correct amount is paid, FBMC shall make a diligent effort to recover any payment made to or on behalf of an ineligible person or any overpayment in accordance with the internal protocol established by FBMC. However, FBMC will not be liable to any person including Employer for such payment unless FBMC would otherwise be liable under another provision of this Agreement. It shall not be considered a breach of this Agreement if FBMC refuses to perform services generally required under this Agreement if the manner in which Employer desires such services to be performed requires material changes to FBMC's existing standard operating procedures.

3.6 Non-Discretionary Duties; Additional Duties. The services to be performed by FBMC under this Agreement shall be ministerial in nature and will generally be performed in accordance with the terms of the Benefit Plans established by the Employer and FBMC's standard operating procedures. FBMC

and Employer may agree to additional duties by amending this Agreement and/or the appendices hereto in accordance with Section 5.3.

3.7 Third Party Vendors. FBMC may, with written agreement from the Employer, contract with one or more third parties for purposes of assisting FBMC with the fulfillment of its duties and responsibilities under this Agreement. FBMC agrees to indemnify Employer and hold its officers, directors and employees harmless from any claim, demand, or expense arising from the intentional and/or grossly negligent act or omission of such third party. FBMC shall not disclose PHI to any Third Party Vendor unless FBMC has first entered into a Business Associate Agreement or other written agreement with the Third Party Vendor to ensure compliance with HIPAA and other applicable federal and state privacy law, including the prohibition on marketing under California Civil Code Section 56.10(d).

3.8 Customer Service and Electronic Administrative Services. To the extent set forth in the applicable Services Appendices and Exhibits, FBMC may provide certain electronic administrative services. FBMC shall not be deemed in default of this Agreement, nor held responsible for, any cessation, interruption or delay in the performance of its obligations to provide such services hereunder due to causes beyond its reasonable control, including, but not limited to, natural disaster, act of God, labor controversy, civil disturbance, disruption of the public markets, terrorism, war or armed conflict, or the inability to obtain sufficient materials or services required in the conduct of its business, including Internet access, or any change in or the adoption of any law, judgment or decree.

3.9 This section left blank by agreement of the parties.

ARTICLE IV - COMPENSATION

4.1 Service Charges. FBMC agrees to waive all applicable Employer-paid service charges for the services performed by FBMC in accordance with this Agreement as described in Section 4 of AGREEMENT.

4.2 Payment of Charges.

4.2 Escheatment. The State of Florida and various other states require escheatment of unclaimed moneys, which are represented by uncashed checks, which are unprocessed by the Participants after several years, relative to their participation in the Plan. FBMC provides these funds to the Employer identified as surplus funds (to distinguish from forfeited funds) during the close out of every plan year. It is the Employer's responsibility to comply with its State laws.

4.3 Third Party Compensation. As set forth herein and in the Appendices, Employer understands and agrees that FBMC receives compensation from third parties related to certain services that it may provide hereunder. Such compensation may include commissions with respect to insurance coverage purchased by Employees; interchange revenue related to the use of electronic payment cards for FSA, HRA, and HSA related transactions; interest on Employer funds held to pay Plan benefits; and payments from mutual fund investment options made available to Employees for HSA deposits. Although these amounts are not paid directly by Employer, this compensation is in addition to other payments Employer makes to FBMC for the administrative and other services described herein.

ARTICLE V - GENERAL PROVISIONS

5.1 Entire Agreement; Severability; Headings. The AGREEMENT, which incorporates this Agreement, embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof. No prior statement, representation, warranty, covenant or agreement of any kind not expressly set forth in this Agreement will affect, or be used to interpret, change or restrict, the express terms and provisions of this Agreement. If any provisions set forth in the AGREEMENT, including this Agreement and Appendices hereto, call for additional agreements between CITY and FBMC to further the terms of the AGREEMENT, such supplemental agreements shall be set forth in writing signed by both parties. If a court declares any term of this Agreement invalid, the same will not affect the validity of any other provision, provided that the

basic purposes of this Agreement are achieved through the remaining valid provisions. The headings of sections and subsections contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

5.2 Compliance; Non-Waiver. Failure by Employer or FBMC to insist upon strict performance of any provision of this Agreement will not modify such provision, render it unenforceable, or waive any subsequent breach. No waiver or modification of any of the terms or provisions of this Agreement shall be valid unless in each instance the waiver or modification is accomplished pursuant to the amendment provisions of Section 5.3.

5.3 This section left blank by agreement of the parties.

5.4 Audits. Employer may perform no more than one (1) audit of the records specifically related to performance of the parties under this Agreement each year, subject to 14 days written notice to FBMC. Audits must be performed during normal working hours. An employee (other than the Contact Information as set forth in this Agreement) or an agent of Employer may perform audits provided such employee or agent signs an acceptable confidentiality agreement. Each party agrees to provide reasonable assistance and information to the auditors. Employer acknowledges and agrees that if it requests an audit, it will reimburse FBMC for FBMC's reasonable expenses, including copying and labor costs, in assisting Employer to perform the audit. Each party also agrees to provide such additional information and reports, as the other party will reasonably request.

FBMC may conduct quarterly or monthly reconciliation of internal accounting (control) files as determined between the parties, or the related Appendices and Exhibits. FBMC may also conduct internal audits within the individual departments to validate controls, processes, systems, and accuracy.

5.5 Non-Disclosure of Proprietary Information. Employer and FBMC each acknowledge that as a result of entering into this Agreement, each party has and will continue to reveal and disclose to the other information that

is proprietary and/or confidential of such party, to the extent allowed by law, including applicable laws governing transparency of public records and government agencies, Employer and FBMC agree that each party will (a) keep such proprietary and/or confidential information of the other party in strict confidence; (b) not disclose confidential information of the other party to any third parties or to any of its employees not having a legitimate need to know such information; and (c) will not use confidential information of the other party for any purpose not directly related to and necessary for the performance of its obligations under this Agreement, its related Appendices and Exhibits, unless required to do so by law or by a court of competent jurisdiction or a regulatory body having authority to require such disclosure. For purposes of this Section, confidential information is any information identified as confidential and/or proprietary (or words of similar import); including but not limited to the parties' respective businesses or finances. The terms and conditions of this Section 5.5 shall survive the termination of this Agreement. Information revealed or disclosed by a party for any purpose not directly related to and necessary for the performance of such party's obligations under the Agreement, its related Appendices and Exhibits shall not be considered confidential information for purposes hereof; (a) if, when, and to the extent such information is or becomes generally available to the public without the fault or negligence of the party receiving or disclosing the information; or (b) if the unrestricted use of such information by the party receiving or disclosing the information has been expressly authorized in writing and in advance by an authorized representative of the other party. It shall not be considered a breach of this Agreement if FBMC or Employer discloses any information obtained in the course of performing its duties under the Agreement, its related Appendices and Exhibits as required by applicable law.

5.6 Disclosure of Individually Identifiable Health Information. Both parties agree to the additional limitations and conditions set forth in the Federal COBRA and/or HIPAA Portability Services Appendix (the "HIPAA Appendix") or as otherwise required under applicable federal and state privacy law, including California Civil Code Sections 56 et seq., with respect to Covered Individuals' personal identifiable health information,

including PHI, created, received, used or disclosed by FBMC in the course of performing its obligations under the AGREEMENT, including this Agreement, its related Appendices and Exhibits. If there is a conflict between this Agreement and the HIPAA Confidentiality Appendix, the HIPAA Confidentiality Appendix will control but only with respect to the subject matter of the HIPAA Confidentiality Appendix.

As set forth in Section 14 of AGREEMENT, FBMC shall not disclose PHI to any third party unless FBMC has first entered into a Business Associate Agreement or other written agreement with the Third Party Vendor to ensure compliance with HIPAA and other applicable federal and state privacy law.

5.7 Notices and Communications. All notices between Employer and FBMC provided for herein shall be sent by confirmed facsimile; by guaranteed overnight mail, with tracing capability; by first class United States mail, with postage prepaid; or by email addressed to the other party at their respective addresses set forth as follows:

To FBMC:

Patricia K. Neely
Chief Compliance Officer
FBMC
3101 Sessions Road
Tallahassee, FL 32303.
tneely@fbmc-benefits.com

To Employer:

Mark Danaj
Director of Human Resources
200 East Santa Clara Street; 2nd Floor
San José, CA 95113

All notices shall be deemed provided when sent except as otherwise set forth in the AGREEMENT. Employer further agrees that FBMC may communicate confidential, protected, privileged or otherwise sensitive information to Employer through a named contact(s) designated by Employer ("Contact") and identified in this Agreement and specifically agrees to indemnify FBMC and hold it harmless: for any such communications directed to Employer through the Contact attempted via facsimile, mail, telephone, e-mail or any other media, acknowledging the possibility that such

communications may be inadvertently misrouted or intercepted.

5.8 Termination of Agreement. FBMC agrees to be bound by the terms set forth in Section 11 of the AGREEMENT. If there is more than one Service Appendix and Exhibit attached hereto, termination of one Service Appendix or Exhibit will not terminate the Agreement or the other Service Appendices or Exhibits except as specifically set forth in the written notice. However, if the reason for termination is that Employer alleges that FBMC breached its standard of care as set forth in Section 3.5 herein, Employer shall allow FBMC 30 days from date of notice to cure before sending a written notice of termination which shall become effective 30 days from the notice of termination. This Agreement (including its related Appendices and Exhibits) will automatically terminate on the earliest of the following dates:

(a) the last day of the last period that a Service Charge or any other amount due to FBMC under this Agreement was timely paid except as otherwise provided by FBMC;

(b) the date that all Benefit Plans for which related services are provided under this Agreement have been terminated except for any post-termination processing period agreed to and priced separately by FBMC; or

(c) the date that this Agreement or all of the Benefit Plans for which related services are provided in accordance with this Agreement become illegal or are in violation of applicable law.

Termination of this Agreement (including its related Appendices and Exhibits) shall not terminate the rights or obligations of either party arising prior to the effective date of such termination. The indemnity, confidentiality and privacy provisions of this Agreement shall survive its termination.

5.9 Interpretations. The parties hereto acknowledge and agree that both (i) the rule of construction to the effect that any ambiguities are resolved against the drafting party; and (ii) the terms and provisions of this Agreement, will be construed fairly as to all parties hereto and not in favor of or against a party, regardless of

which party was generally responsible for the preparation of this Agreement.

5.10 Governing Law. The Agreement, its related Appendices and Exhibits will be governed by and construed in accordance with the laws of the state of California.

5.11 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 Employer, FBMC and their respective successors or assigns, any rights, remedies or obligations whatsoever.

5.12 This section left blank by agreement of the parties.

IN WITNESS WHEREOF, Employer and FBMC have caused this Agreement, its related Appendices and Exhibits to be executed in their names by their undersigned officers, the same being duly authorized to do so.

FBMC Benefits Management, Inc.

Name: Patricia K. Neely

Title: Sr. VP & Chief Compliance Officer

Signature: *Patricia K. Neely*

Date: 12/18/2010

The City of San Jose

Name: DEANNA SANTANA

Title: Deputy City Manager

Signature: _____

Date: _____

APPROVED AS TO FORM:

Name: LINDA R. BJORKE

Title: Deputy City Attorney

Signature: _____

FBMC SERVICE AGREEMENT

**CODE § 125 PRE-TAX SALARY REDUCTION SERVICES
AND REIMBURSEMENT ACCOUNT SERVICES**

APPENDIX A

The City of San Jose ("Employer" or "CITY") has established an Internal Revenue Code ("Code") Section 125 Cafeteria Plan to allow eligible employees to pay for their share of certain benefit plan coverage with pre-tax salary reductions. Employer has asked FBMC to assist it with its administrative obligations under the Code Section 125 Cafeteria Plan.

In addition, Employer has established one or more of the following health care and/or dependent care reimbursement account arrangements: (i) a Health Care Flexible Spending Account ("FSA") Plan, (ii) a Dependent Care FSA Plan, and (iii) a Health Reimbursement Account Plan, which shall be referred to collectively as the "Reimbursement Accounts". Employer has asked FBMC to assist it with its administrative obligations under the Cafeteria Plan and one or more of the Reimbursement Account Plans initialed below.

Parties Must Initial All That Apply

Initialed By FBMC	Initialed By Employer	Plan
X		A Code § 125 Cafeteria Premium Only Plan ("Cafeteria Plan")
X		A Code § 105 Healthcare FSA Plan ("Healthcare FSA" or "Medical Expense FSA" or "Reimbursement Account") that is offered under the Employer's Code § 125 Cafeteria Plan
X		A Code § 129 Dependent Care FSA Plan ("Dependent Care FSA" or "Reimbursement Account") that is offered under the Employer's Code § 125 Cafeteria Plan
		A Code §§ 105 and 106 Employer-provided medical reimbursement plan that is a Health Reimbursement Arrangement ("HRA") as defined under IRS Notice 2002-45.

PLN

This Service Appendix is incorporated into and made a part of the City of San Jose Consultant Agreement ("AGREEMENT") and its related Exhibits, including EXHIBIT F, entitled "FBMC Master Service Agreement," its related Appendices and its Exhibits (together, the "Master Service Agreement"). The effective date of this Service Appendix is the effective date of the AGREEMENT or if later, the date indicated in this Service Appendix. The responsibilities of the parties set forth in this Service Appendix are in addition to any responsibilities set forth in the AGREEMENT. If there is a conflict between this Service Appendix and the AGREEMENT, the AGREEMENT will control.

In consideration for the services provided by FBMC in accordance with this Service Appendix, Employer agrees to pay to FBMC applicable fees in accordance with the AGREEMENT. The Employer will make sufficient funds available to pay the fees in accordance with the method set forth in this AGREEMENT. CITY agrees to pre-fund the Health Care Reimbursement Account and FBMC agrees to waive any and all administrative services fees in exchange for CITY's selection of FBMC as third party administrator for CITY's voluntary insurance benefits, as set forth, along with other financial terms, in EXHIBIT D, entitled "COMPENSATION," of the AGREEMENT.

In consideration for the mutual promises set forth below, the Employer and FBMC agree as follows on FBMC's and Employer's responsibilities:

1. Data Provider. For the purposes of this Service Appendix, the Data Provider shall mean the party that is providing information to FBMC. Data Provider may be the Employer, a Business Partner or another third party entity designated by Employer. Data Provider shall be responsible for providing FBMC timely, accurate and complete information necessary for FBMC to provide the Services described herein. FBMC is under no obligation to verify the accuracy and completeness of the information it receives from the Data Provider.

2. Plan Documentation. Unless provided otherwise in the AGREEMENT, FBMC shall provide sample prototype plan documentation and forms (non-customized) for review by Employer and Employer's legal counsel. Such documentation will be limited to the following (if applicable): a plan document, summary plan description, salary reduction /change of election forms and sample forms for Covered Individuals to request reimbursement under the Reimbursement Accounts. Although FBMC has prepared this sample prototype plan documentation with the assistance of legal counsel, FBMC makes no warranties or representations regarding the adequacy of such documentation in light of Employer's particular facts and circumstances. FBMC will customize such documentation only to the extent to incorporate the Employer's responses to certain plan design questions submitted to the Employer by FBMC. In addition, FBMC may provide sample document changes to reflect revisions in applicable legislation or regulations.

Employer is responsible for reviewing such documentation with its legal counsel to ensure that such documents comply with applicable law and that revisions made to such document by FBMC on the Employer's instructions are complete and accurate. Employer is responsible for making all other changes to the documents that it deems necessary. All such changes made by Employer should be communicated to FBMC as soon as possible. Employer will provide FBMC with a copy of the completed and properly executed plan documents for Plan(s) initialed above, no later than a Plan's effective date.

3. Elections. Employer shall be responsible for determining who is eligible for the Plan(s) initialed above, and who has satisfied the requirements to become a Covered Individual in the Plan.

For the Plan(s) initialed above, FBMC is not responsible for any consequences arising from its takeover of administrative duties from another service provider or arising from payments made to terminated employees prior to FBMC receiving notice of termination from the Employer or its designee.

Unless provided otherwise in the AGREEMENT, FBMC will process and maintain employee census, Employer contribution (if any), and salary reduction (if any) information for the Reimbursement Accounts, including initial enrollments, annual enrollments and changes made to such elections as reported to FBMC by the Employer or its designee.

All elections and changes to elections will be processed in accordance with the terms of the plan document(s) described in Section 2 above, the AGREEMENT, the Employer's instructions, and applicable law. Unless provided otherwise in the AGREEMENT, FBMC will process **change of status elections** and maintain on-going records of activity affecting each employee election. Employer is ultimately responsible for determining whether a requested change in election is permitted.

Employer will provide **newly eligible employees** with salary reduction forms provided by FBMC. Employer will collect and submit the completed forms to FBMC as soon as possible after receipt of such forms but no later than the effective date of such elections.

4. Reimbursements. FBMC shall process requests for reimbursements in accordance with industry standards, applicable law and IRS guidelines, and information provided to FBMC by the Employer and Data Provider. Unless provided otherwise in the AGREEMENT, FBMC will make the initial determinations on **claims appeal review** adopted under the Reimbursement Accounts.

FBMC will document the decision and communicate it to the Employer.

Employer shall be responsible for the determination on the final level of appeal.

If a request for reimbursement is approved, FBMC shall disburse benefit payments that are determined to be payable in accordance with the terms of the Plans and the AGREEMENT as soon as reasonably possible after such determination is made, provided that sufficient funds have been made available by Employer to pay such benefit payments. Reimbursements will be issued via checks and/or direct deposit and be processed on a daily basis. Additionally, the parties may agree in the AGREEMENT to use the electronic payment card for the FSA reimbursements. Employer shall make sufficient funds available to pay benefits under the Reimbursement Plans in accordance with the method selected in the AGREEMENT. If sufficient funds have not been made available, reimbursements will be pended until sufficient funds are made available. If the claims are ineligible reimbursements or non-receipt claims, in accordance with applicable tax law, the Employer will recover the funds for ineligible and non-receipt claims via a post-tax payroll slot, check or other such provision approved by the Internal Revenue Service under Revenue Ruling 2003-43.

In the event this AGREEMENT is terminated, all requests for reimbursement submitted to FBMC after the effective date of termination will be returned to Employer, or at Employer's request, submitted to another third party. FBMC will have no further responsibility with respect to such claims submitted after the effective date of termination. The parties may agree to an extension of processing post termination which shall be priced separately from this AGREEMENT.

5. Banking. FBMC will deposit payroll deductions on a per payroll basis into the depository account established under the AGREEMENT. Employer agrees to fund the account either with payroll deductions on a per payroll basis, or based on payment of claims on a weekly basis.

Employer shall make sufficient funds available to pay benefits under the Plans as initialed above, including pre-funding as may be necessary to address the IRS Uniform Coverage requirements as set forth in EXHIBIT D, entitled

“COMPENSATION,” to the AGREEMENT, and funding to maintain a Minimum Balance if the Employer has chosen to make the Electronic Payment Card available.

Electronic Payment Card Funding and/or Transit Pass Funding: To the extent that the Employer has chosen to make an Electronic Payment Card available, Employer agrees to make sufficient funds available from its general assets for amounts allocable to eligible reimbursement benefits under its Plan by depositing, at a minimum, the “Minimum Balance” (in amounts specified by FBMC from time to time).

Employer shall also deposit additional funds (in order to reestablish the Minimum Balance at the request of FBMC. If the Employer does not deposit additional funds, all payments are suspended and all electronic payment cards are deactivated. In addition, the Employer must pay the then current deactivation service fee.

6. Electronic Payment Card. If the Employer wishes to make an electronic payment card available, FBMC will administer the card as follows:

(i) FBMC or a service provider chosen by FBMC will provide an electronic payment card (“Card”) to each participant who enrolls in the applicable Plan(s). The Card will be deactivated upon notice from the Employer that the participant is no longer employed by the Employer or has ceased to satisfy the eligibility requirements. Neither FBMC nor the Card Service Provider is responsible for any damages or costs arising from use of such Card by an ineligible individual prior to notice being received by FBMC or the Card service provider. FBMC reserves the right to deactivate the Card any other time that it deems appropriate to comply with applicable law.

(ii) Participants must agree to use the Card in accordance with the terms of the Cardholder Agreement that accompanies the Card. FBMC or the Card services provider will deactivate the Card if the participant fails to use the Card in accordance with the Cardholder Agreement.

(iii) The Card may be used by Participants to pay for Eligible Expenses (as defined by the applicable Reimbursement Account) with all IRS approved merchants.

(iv) FBMC will require substantiation of expenses paid with the Card in accordance with the requirements set forth in the applicable Treasury regulations and/or other applicable guidance. The Card will be deactivated if the Participant fails to provide the requested substantiation. FBMC will make reasonable attempts to collect repayment of claims paid through the Card for ineligible expenses or offset the ineligible payment against any claims for future eligible expenses (made during the plan year where required). No more than 2 requests for repayment will be made. If repayment or offset is not made, Employer will be informed and will be responsible for taking any necessary action required by law (e.g. including such amounts in income and tax reporting with regard to such amounts).

(v) FBMC or the Card service provider will incur no liability for any ineligible Card payments except those arising from FBMC's or the Card service provider's negligence or material breach of its obligations under this AGREEMENT. It is Employer's responsibility to ensure that it complies with all applicable tax and other laws.

(vi) All Cards will be deactivated on the date this AGREEMENT is terminated.

(vii) If the Card has been deactivated (other than for failure to properly fund), neither FBMC nor the Card service provider will reactivate the card except as prompted by written instructions from the Employer.

(viii) Employer assumes all risks of offering the electronic payment card as administered by FBMC (as set forth above and in the cardholder agreement) for use by participants in a Dependent Care FSA. Employer agrees to indemnify and hold FBMC harmless from any and all damages that may arise as a result of using the electronic payment card in accordance with the terms set forth above.

7. Enrollment/Administration. Unless provided otherwise in the AGREEMENT, FBMC will prepare enrollment materials (non-customized) in accordance with industry standards and IRS guidelines. FBMC will distribute the enrollment materials and conduct one annual enrollment in a manner agreed to by the parties. Employer agrees to provide management support in planning enrollment,

coordinating meeting facilities and scheduling. FBMC will confirm all elections with participants.

FBMC will create and maintain employee and Employer level accounting files based upon enrollment information.

Employer will grant or deny all levels of enrollment-related appeals and communicate with its employees and FBMC. FBMC will provide guidance and assistance if requested.

8. Transfer of Data. FBMC will establish a standard procedure for exchanging information with the Employer, providers, and card processor. Employer will furnish the information (including contribution and enrollment election information) in a format, method, and timeframe necessary for FBMC to adequately perform its services hereunder. FBMC may exchange eligibility and adjudication data with pharmacy benefits managers and other health care providers as applicable.

9. HIPAA. Unless provided otherwise in the AGREEMENT, FBMC shall distribute its standard Certificate of Creditable Coverage ("Certificate"), in accordance with HIPAA's method of delivery requirements, to each eligible employee who loses coverage under the Healthcare FSA Plan and/or HRA Plan.

10. Customer Service. FBMC will provide toll-free bilingual access for employees to request general information, benefit counseling, a tax-savings analysis, and general assistance. FBMC will make available account balance information to all Reimbursement Account participants via the internet.

11. Form 5500. FBMC shall provide information maintained in FBMC's database that is required to be included on the Form 5500 for a Reimbursement Account Plan if the Employer is required to file the Form 5500. Such information will be provided within a reasonable period of time following Employer's written request. Employer is responsible for determining whether a Form 5500 is required to be filed.

12. Nondiscrimination Testing. FBMC shall conduct the nondiscrimination testing required under the Code (collectively referred to as the "Nondiscrimination Tests") for the Plan(s) initialed above.

FBMC shall provide Employer with a written request for data necessary to perform the Nondiscrimination Tests. Upon FBMC's receipt of the completed form from the Employer, FBMC shall complete the testing and provide a report summarizing its interpretations of the results within a reasonable amount of time after receipt of the requested information. Employer is responsible for bringing the Plan(s) tested into compliance, based on the results of the Nondiscrimination Tests performed.

13. Consulting & Brokerage Services.

Unless otherwise provided in the AGREEMENT, FBMC will provide Benefit Plan consulting services. Such services may include:

- i) discussions regarding Benefit Plan design both initially and for any revisions regarding existing benefits;
- ii) discussion regarding legal and regulatory updates needed to comply with applicable law;
- iii) analysis of provider capabilities, experience, financial soundness, and ability to continue to provide current benefits;
- iv) review of banking systems, and administrative tasks to be implemented with the Employer; and
- v) general flex plan and tax favored account consulting services.

Unless otherwise provided in the AGREEMENT, FBMC will provide brokerage services which may include securing quotes by direct negotiation, assisting CITY to obtain contracts with selected providers, and assisting CITY to negotiate renewals and charges. FBMC will secure and review master contracts and

IN WITNESS WHEREOF, Employer and FBMC have caused this Service Appendix to be executed in their names by their undersigned officers, the same being duly authorized to do so (sign and date only if effective date is different from Effective Date of AGREEMENT).

agreements from providers and maintain copies of all such agreements.

14. Implementation /Reports. FBMC will prepare with Employers assistance an annual implementation overview which shall specify new election planning activities, including a timeline of key events.

FBMC will prepare and provide various reports monthly, quarterly and annually as agreed to by the parties in this AGREEMENT. The Employer is responsible for reviewing the reports submitted by FBMC and notifying FBMC of any errors of which it is aware within a reasonable period of time after reviewing them.

15. Benefit Education and Training. FBMC will provide toll-free bilingual access for employees to request general enrollment information, benefit counseling, a tax-savings analysis, and forms completion assistance.

If requested, FBMC will additionally provide training to the Employer's administrative staff on general administrative or enrollment processes and procedures.

FBMC will maintain an internet website that contains all Benefits Alerts and the *Quarterly Review Newsletter* providing legislative updates and information regarding flexible benefit plans.

Employer is responsible for all other duties related to its Cafeteria Plan and Reimbursement Account Plans initialed above, and not otherwise set forth in this Appendix or in the AGREEMENT.

FBMC Benefits Management, Inc.

Name: _____

Title: _____

Signature: Patricia K. Neely

Date: _____

The City of San Jose

Name: DEANNA SANTANA

Title: Deputy City Manager

Signature: _____

Date: _____

APPROVED AS TO FORM:

Name: LINDA R. BJORKE

Title: Deputy City Attorney

Signature: _____

FBMC SERVICE AGREEMENT

HIPAA CONFIDENTIALITY AGREEMENT

APPENDIX B

This HIPAA CONFIDENTIALITY AGREEMENT APPENDIX (the "Privacy Agreement") is entered into by and between The City of San Jose (hereinafter the "CITY") in its individual capacity and on behalf of its Group Health Plan(s) (hereinafter the "Plan(s)") and FBMC, in its capacity as both service provider to the Plan and to the CITY. This Appendix is incorporated into and made a part of the City of San Jose Consultant Agreement ("AGREEMENT") and its related Exhibits (together, the "AGREEMENT"), including EXHIBIT F, entitled "FBMC Master Service Agreement," entered into between CITY and FBMC. This Appendix is effective as of the date set forth below and not necessarily the effective date of the AGREEMENT into which this Privacy Agreement is incorporated.

Section 1. Scope and Purpose of Confidentiality Agreement. Generally, this Appendix is intended to comply with the privacy and administrative simplification requirements set forth in 45 CFR Parts 160 and 164, Subparts A and E (the "Privacy Rules"), issued pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH"), and Part 2.6 of the California Civil Code (Sections 56 et seq.) any of which may be amended from time to time. In entering into this Privacy Agreement, both the CITY and FBMC acknowledge that the Plan and the CITY are separate and distinct entities and that FBMC may perform services both on behalf of the Plan and also on behalf of the CITY in its capacity as Plan sponsor. FBMC is considered a "Business Associate" under the Privacy Rules with respect to services it performs on behalf of the Plan, if any, and an "Agent of the CITY" with respect to services it performs on behalf of the CITY/Plan sponsor, if any. This Appendix sets forth the responsibilities of FBMC in its capacity as a Business Associate, as required by 45 CFR §164.504(e)(1) (and is referred to by this Appendix as Business Associate when addressing its responsibilities to the Plan) and in its capacity as Agent of the CITY, as required by 45 CFR § 164.504(f)(2)(ii)(B) (and is referred to by this Appendix as "Agent of the CITY" when addressing its responsibilities to the CITY); FBMC is also responsible to

comply with Part 2.6 of the California Civil Code and other relevant California law related to protection of "medical information" as defined in Section 56.05(g). This Appendix also sets forth the responsibilities of the CITY with respect to actions that affect FBMC's responsibility under this Appendix.

Section 2. Definitions. For purposes of this AGREEMENT, the terms used throughout this Privacy Agreement shall have the following meanings:

2.1. "Breach" has the same meaning as that term is defined in §13400 of the HITECH Act and shall include the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information.

2.2. "Designated Record Set" will have the same meaning given to the term "designated record set" in 45 CFR §164.501.

2.3. "EDI Rule" shall mean the Standards for Electronic Transactions as set forth at 45 CFR Parts 160, Subpart A and 162, Subpart A and I through R.

2.4. "Group Health Plan" will have the same meaning as the term "group health plan" in 45 CFR §160.103.

2.5. "HITECH Act" means the Health Information Technology for Economic and Clinical Health Act of 2009.

2.6. "Individual" will have the same meaning as the term "individual" in 45 CFR §160.103 and will include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

2.7. "Privacy Rule" will mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

2.8. "Protected Health Information" or "PHI" will have the same meaning as the term "Protected Health Information" in 45 CFR §160.103, limited to the information created or received by Business Associate from or on behalf of the Plan. PHI will not include information created by FBMC as Agent of the CITY. PHI shall also include "medical information" as defined in California Civil Code Section 56.05(g).

2.9. "Representative" will include the Business Associate's managing members (as applicable), trustees, general partners (as applicable) and financial and legal advisors.

2.10. "Required by Law" will have the same meaning as the term "required by law" in 45 CFR §164.103, and as the term "compelled" in California Civil Code Section 56.10(b).

2.11. "Secretary" will mean the Secretary of the Department of Health and Human Services or his designee.

2.12. "Unsecured PHI" shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in §13402(h) of the HITECH Act.

Any terms used but not defined in this Appendix shall have the same meaning as those terms in 45 C.F.R. §§164.103 and 164.501 and the HITECH Act.

Section 3. Responsibilities of Business Associate.

3.1. *Scope of Responsibilities.* All services performed by FBMC in accordance with the AGREEMENT other than those set

forth in Section 4.2 herein will be considered performed on behalf of the Plan and are subject to the provisions set forth in this Section 3.

3.2. *Confidentiality.* At all times, both during and after the termination of its relationship with the Plan for any reason, Business Associate and its Representatives will not use, disclose, or give others any of the PHI in any manner whatsoever, except as provided in Sections 3.3 and 3.4 of this Privacy Agreement, and will hold and maintain the PHI in confidence. Business Associate will ensure that appropriate safeguards are in place to prevent the use or disclosure of the PHI otherwise than as permitted by this Privacy Agreement.

3.3. *Permitted Uses and Disclosures.*

(a) Except as otherwise limited in this Privacy Agreement, Business Associate may use or disclose PHI, provided that such use or disclosure of PHI would not violate the Privacy Rules, as follows: (i) as permitted or required in this Appendix and in the AGREEMENT; (ii) as otherwise permitted by the Privacy Rules or relevant California privacy laws; (iii) as Required by Law in accordance with 45 CFR §164.512; (iv) for the proper management and administration of Business Associate; (v) to fulfill any present or future legal responsibilities; (vi) for Data Aggregation services to the Plan (as defined in 45 CFR §164.501); or (vii) any use and disclosure of PHI that has been de-identified within the meaning of 45 CFR §164.514.

(b) Business Associate agrees to document any disclosures of PHI and the information related to such disclosures to respond to an accounting of disclosures of PHI if requested by CITY in accordance with 45 CFR §164.528, and to provide such documentation to the Plan as it may request from time to time.

(c) In the event that Business Associate maintains PHI in a Designated Record Set, Business Associate agrees to provide access to such PHI that it maintains in a Designated Record Set to the Individual to whom the PHI relates in accordance with 45 CFR §164.524. Furthermore, at the request

of the Plan, Business Associate agrees to make amendments to PHI that it maintains in a Designated Record Set as directed by the Plan and to incorporate any amendments to PHI in accordance with 45 CFR §164.526.

(d) Business Associate shall not use or disclose any PHI provided by CITY for "marketing" purposes as defined in California Civil Code Section 56.05(f) and as prohibited under 56.10(d), except to the extent authorized by the Individual. Marketing activities include but are not limited to intentionally sharing, selling, using for marketing or using PHI for a purpose not necessary to provide health care services to the person.

(e) Business Associate may disclose PHI to its agents or subcontractors with a bona fide need to know such PHI, but only if, prior to such disclosure, such agents or subcontractors provide reasonable assurances that they will agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI.

(f) Pursuant to California Civil Code Section 56.10(e), except as expressly authorized by the Individual or as otherwise provided by law, Business Associate shall not further disclose PHI to a person or entity that is not engaged in providing health care services to the Individual or his provider of health care or health care service plan or insurer or self-insured employer, except as expressly authorized by the individual or as otherwise provided by law.

3.4. Required Disclosures and Use. Business Associate may disclose the PHI revealed to it by the Plan if and to the extent that law or court order requires such disclosure. Further, Business Associate agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of the Plan available to the Secretary, as requested by the Plan or designated by the Secretary, for purposes of the Secretary determining the Plan's compliance with the Privacy Rule.

3.5. Required Notice to Business Associate. In accordance with 45 CFR §164.520, and to the extent that such a limitation may affect Business Associate's use or disclosure of PHI, the CITY, acting on behalf of the Plan, agrees to notify Business Associate of any limitation(s) in its notice of privacy practices, including, without limitation, any changes in, or revocation of, permission by an Individual to use or disclose PHI. The CITY, acting on behalf of the Plan, also agrees to notify Business Associate of any restriction to the use or disclosure of PHI that it has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

3.6. Required Notice to the Plan. Business Associate agrees to report to the Plan any use or disclosure of PHI otherwise than as provided by this Privacy Agreement within ten days of becoming aware of such use or disclosure. Notice to one of the employees designated by the CITY in accordance with Section 3.7 herein shall be considered notice to the Plan. To the extent such use or disclosure also constitutes a Privacy Breach, subsection 3.9 shall apply.

3.7. Disclosure to Employees of the CITY.

(a) Except with respect to disclosures under Section 3.3 and 3.4 of this Privacy Agreement, the Plan acknowledges and agrees that Business Associate shall only disclose PHI in its possession to the employees who are responsible for providing those services enumerated in the AGREEMENT between the parties, in accordance with 45 CFR §164.504(f), and that such disclosures are solely for purposes of carrying out Plan administration functions that the CITY performs for its Group Health Plan.

CITY agrees to provide Business Associate with a list of names and positions with whom Business Associate may interact under 3.7(a) as Designated Persons. Business Associate shall have no duty to inquire whether the list of Designated Persons is accurate. If no list is provided, Business

Associate shall deem any CITY's employee with whom it interacts to be a Designated Person.

CITY shall indemnify and hold harmless Business Associate (and its employees) for any and all liability Business Associate may incur as a result of any improper use or disclosure of PHI by the CITY or a Designated Person(s).

3.8 Security. Under the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Parts 160 and 164 Subpart C, Business Associate shall:

(a) implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Protected Health Information as provided for by this Appendix and;

(b) in accordance with the HITECH Act, promptly inform CITY, as soon as reasonably practicable, any use or disclosure of PHI meeting the definition of breach and not provided for by this Appendix. Business Associate shall provide such notice to CITY in accordance with 45 CFR 164.410 of the Breach Notification Rules, subject to the law enforcement delay provided in 45 CFR 164.412 and in a manner to facilitate CITY's notification requirements under HITECH.

Business Associate shall have no responsibility to provide notice to individuals (45 CFR 164.404), a media outlet (45 CFR 164.406), or to the Secretary of the Department of Health and Human Services (45 CFR 164.408).

Notwithstanding the above, Business Associate shall provide the following notices of any incident that, in Business Associate's reasonable determination, constitutes a Breach directly caused by Business Associate and directly related to the services Business Associate provides to CITY under the AGREEMENT or that is caused by any agent or subcontractor to whom Business Associate disclosed CITY PHI: (i) notice to affected individuals, including any substitute notice as necessary (in accordance with 45

CFR 164.404) and (ii) if, required, concurrent notice to the Secretary of the Department of Health and Human Services ("HHS"). Business Associate shall also inform the CITY if notice to a media outlet is necessary (45 CFR 164.406), and shall assist CITY in those notification efforts. Notwithstanding the foregoing, Business Associate shall not be responsible for providing or assisting with any notice to individuals, HHS, or a media outlet for Breaches caused by any person or entity other than Business Associate or any agent or subcontractor to whom Business Associate disclosed CITY PHI. For Breaches (as reasonably determined by Business Associate) discovered by Business Associate and caused by any person or entity other than Business Associate, Business Associate shall report to CITY without unreasonable delay its discovery of any such Breach.

Section 4. Responsibilities of Agent of the CITY.

4.1 Scope of Responsibility. It is agreed and understood that FBMC performs the services set forth in 4.2 on behalf of the CITY as agent of the CITY to assist the CITY with the obligation to the Plan. All such services set forth in Section 4.2 are necessary to assist the CITY with the CITY's responsibility to the Plan.

4.2 Scope of Services. The following services are performed by FBMC as Agent of the CITY:

(a) services that facilitate and report the enrollment and disenrollment of employees and their eligible dependents in the Plan, and may include creation of health identification cards.

(b) services that facilitate the collection and/or payment of premiums under the group health Plan(s).

(c) services that facilitate claims review, repricing, adjudication and payment.

4.3 Scope of Responsibilities of Agent of the CITY. FBMC, as Agent of the CITY, agrees to the same conditions and restrictions set forth in Sections 3.2 through

3.7 herein to the extent such information received from CITY originated from the Plan (i.e., the information was once PHI). With regard to all other individual identifiable health information, FBMC agrees to use its best efforts to protect the confidentiality of such information, and to only use such information as necessary to perform services referenced in Section 4.2 or as otherwise required or permitted by applicable law.

4.4 Electronic Data Interchange. CITY acknowledges that Agent of the CITY is under no obligation to comply with the EDI standard transaction requirements set forth in 45 CFR Parts 160 and 162 and the security rules set forth in 45 CFR §164.302 et seq. with respect to services set forth in Section 4.2 herein.

Section 5. Term and Termination.

5.1 Termination for Cause. Upon CITY's knowledge of a material breach of this Privacy Agreement by FBMC, the CITY shall either:

(a) provide an opportunity for FBMC to cure the breach or end the violation and terminate this AGREEMENT and any agreement between the parties with respect to the services performed by FBMC for the CITY if FBMC does not cure the breach or end the violation within the time specified by the CITY; or

(b) immediately terminate this AGREEMENT and/or any agreement between the parties with respect to the services performed by FBMC for the CITY if FBMC has breached a material term of this AGREEMENT and cure is not possible; or

(c) If neither termination nor cure is feasible, CITY shall report the violation to the Secretary.

5.2 Effect of Termination on this Appendix.

(a) Upon termination of this Appendix, for any reason, FBMC shall return or destroy all PHI received from the Plan, or created or received by FBMC on behalf of the Plan

except to the extent determine infeasible as set forth in (b) below. This provision shall apply to PHI that is in the possession of subcontractors or agents of FBMC. FBMC shall retain no copies of the PHI.

(b) In the event that FBMC determines, in its sole discretion, that returning or destroying the PHI is infeasible, FBMC shall provide to the Plan notification of the conditions that make return or destruction infeasible. In the event that FBMC determines that return or destruction of the PHI is infeasible, FBMC will continue to extend the protections of this Privacy 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 FBMC maintains such PHI.

Section 6. HITECH Act Compliance. The Privacy Subtitle of the HITECH Act sets forth provisions that significantly change the requirements for business associates and the agreements between business associates and covered entities under HIPAA and many of these changes will be clarified in forthcoming regulations and guidance. Each party agrees to comply with the applicable provisions of the HITECH Act and any implementing regulations and guidance issued thereunder to the extent applicable to the arrangement between the parties; provided, however, that FBMC shall have the right, upon the issuance of any such implementing regulations or guidance, to terminate this Appendix, and the underlying AGREEMENT upon thirty (30) days prior written notice to the CITY. Also, the parties agree to negotiate a modification of this Appendix as reasonably necessary to comply with the HITECH Act and its implementing regulations, guidance, and interpretations as they become effective; provided, however, that notwithstanding any other provision of any prior privacy agreement or the underlying AGREEMENT, in the event they are not able to agree upon such a modification, either party shall have the right to terminate this Appendix, and/or the underlying service agreement upon thirty (30) days prior written notice to the other party.

IN WITNESS WHEREOF, CITY and FBMC have caused this Privacy Agreement to be executed in their names by their undersigned officers, the same being duly authorized to do so (sign and date only if effective date is different from Effective Date of AGREEMENT).

FBMC BENEFITS MANAGEMENT, INC.

Name: _____

Title: _____

Signature: *Fatima K Nooly*

Date: _____

THE CITY OF SAN JOSE

Name: DEANNA SANTANA

Title: Deputy City Manager

Signature: _____

Date: _____

APPROVED AS TO FORM:

Name: LINDA R. BJORKE

Title: Deputy City Attorney

Signature: _____

FBMC SERVICE AGREEMENT
REIMBURSEMENT ACCOUNT CARD SERVICES
APPENDIX C

FBMC, in conjunction with the card provider, will provide a prepaid card service that is designed to process certain transactions electronically by allowing participating employees to use the electronic payment card to purchase certain services. The transactions may be associated with the Employer's Health HRA, Health FSA, and/or Dependent Care FSA Plans, and/or Commuter Benefits program (the "Benefit Plans") and the services may include health care services and products from hospitals, physicians, health care professionals, and other providers and merchants, as well as eligible dependent care providers, and the purchase of transit passes, as designated under the Employer's Benefit Plans.

The City of San Jose ("Employer" or "CITY") has asked FBMC to assist it with its administrative obligations related to processing claims via electronic payment card under one or more of the Benefit Plans above. Assistance will only be provided with respect to the Benefit Plans for which FBMC has provided the sample plan documentation or, if FBMC's sample plan documentation is not utilized, then only such plans identified by Employer and agreed to by FBMC pursuant to separate written notice.

This Reimbursement Account Card Services Appendix ("Service Appendix") is incorporated into and made a part of the City of San Jose Consultant Services Agreement ("AGREEMENT") and its EXHIBITS incorporated therein, including EXHIBIT F, entitled "FBMC Master Service Agreement," and its related Appendices and Exhibits (together, the "Master Service Agreement"). The effective date of this Service Appendix is the effective date of the AGREEMENT or if later, the date indicated in this Service Appendix. The responsibilities of the parties set forth in this Service Appendix are in addition to any responsibilities set forth in the AGREEMENT. If there is a conflict between this Service Appendix and the AGREEMENT, the AGREEMENT will control.

In consideration for the services provided by FBMC in accordance with this Service Appendix, Employer agrees to pay to FBMC the applicable fees in accordance with this AGREEMENT, its Appendices and Exhibits. The Employer will make sufficient funds available to pay the fees in accordance with the method set forth in this AGREEMENT, its Appendices and Exhibits. CITY agrees to pre-fund the Health Care Reimbursement Account and FBMC agrees to waive any and all administrative services fees in exchange for CITY's selection of FBMC as third party administrator for CITY's voluntary insurance benefits, as set forth, along with other financial terms, in EXHIBIT D, entitled "COMPENSATION," of the AGREEMENT.

In consideration for the mutual promises set forth below, the Employer and FBMC agree as follows:

1. Definitions.

(a) "Account" is the bank account from which reimbursements are made, established as set forth in the Banking Arrangement Agreement, incorporated herein as Appendix E to the Master Service Agreement.

(b) "Benefit Plan Participants" or "Participants" mean employees and their dependents that are participating in the

reimbursement accounts as part of the Benefit Plans.

(c) "Card" or "Cards" means the electronic payment card; administered by FBMC.

(d) "Card" Transaction means when the card is presented for payment of Qualified Expenses.

(e) "Employee" means those employees eligible to participate in the Benefit Plans.

(f) "Flexible Spending Account" ("FSA") means a medical spending account or dependent care reimbursement account or both, as provided through the Benefit Plans.

(g) "Health Reimbursement Arrangement" ("HRA") means a health reimbursement arrangement as established under the Benefit Plans.

(h) "Qualified Expenses" include any and all related goods and services as defined under Sections 105(b), 106, 129, and 213(d) of the Internal Revenue Code relating to IRS-approved tax-favored arrangements.

2. FBMC Responsibilities.

(a) Unless provided otherwise in the AGREEMENT, FBMC shall automatically deduct any fee for the Card directly from each Participant's flexible spending account, or if the Employer agrees to pay any applicable fees on behalf of the Participants, the fee will be billed to the Employer.

(b) FBMC shall provide administrative services to Employer and Participants, including updating Participants' records, maintaining accurate Account balances, and contribution information, activating and deactivating Participant Cards, responding to Participant inquiries and providing appropriate notices regarding Participant Accounts and actions taken in relation thereto.

(c) FBMC shall provide administrative services to Employer, including maintaining accurate Account balance information, providing reports of Account activities and initiating draws against an Account designated by the Employer to fund reimbursement transactions and maintain Account balances at the agreed-upon levels.

(d) FBMC will refer Participants to the Card processing center to report lost or stolen Cards. FBMC will resolve all servicing issues related to the Card, except transaction or merchant disputes. However, it is Employer's responsibility to ensure that it complies with all applicable tax and other laws.

(e) FBMC will make available to the Employer, for distribution to the Participants, information concerning the proper use of the Card.

(f) FBMC agrees to operate the Card program in accordance with IRS guidance applicable to debit card processing of Qualified Expenses as set forth in Rev. Rul. 2003-43 and Rev. Rul. 2006-69.

3. Employer Responsibilities.

(a) Employer acknowledges that Card services are not generally available to certain persons, including, but not limited to, those ineligible to participate in Employer's Benefit Plan, non-employees, terminated employees, persons participating through COBRA, and certain employees on leave from employment and on disability (collectively, "Ineligible Persons"). Employer agrees to make necessary eligibility changes immediately or immediately notify FBMC.

(b) Employer agrees to sufficiently fund the Account, in advance, in an amount set forth in EXHIBIT D, entitled "COMPENSATION," of the AGREEMENT, in a checking account in the Employer's name at a financial institution selected by FBMC (the "Maintenance Deposit") to ensure adequate funding for the payment of Card Transactions as they occur. The Maintenance Deposit may be increased depending on the timing and level of Card Transactions.

(c) The Employer shall deposit additional funds in the Account (at the request of FBMC) in order to reestablish the Maintenance Deposit at the end of each claim processing cycle. The Maintenance Deposit shall be waived if the Employer agrees to establish an account in the Employer's name at the financial institution selected by FBMC.

(d) Each day that Card Transactions are paid from the Account, Employer authorizes FBMC to initiate a draw from a designated Employer account to restore the Account to the Maintenance Deposit level.

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(e) After reasonable attempts by FBMC to resolve any ineligible Card Transactions as described in Section 6, paragraph iv of Appendix A ("Code Section 125 Pre-Tax Salary Reduction Services and Reimbursement Account Services") of the , Master Servicer Agreement, upon notification by FBMC to Employer, Employer will resolve any ineligible Card Transactions, through post-tax payroll deduction, that have not been repaid to the Account by the participant through check or money order. This may include reclassification of the debt as taxable income and accepting the loss as part of the risk of the plan.

(f) Employer agrees to notify FBMC of employee termination in a timely manner.

(g) Employer agrees that the cost of all claims arising under the Benefit Plans shall be paid by the Employer's contributions to the Account. The liability for payment of claims falls on the Employer or the Plan Participant, and not on FBMC. Any additional costs related to the Account, including administrative costs and banking costs, shall be paid by the Employer or Plan Participant pursuant to the Banking Arrangement Agreement, incorporated herein as Appendix E to the Master Service Agreement. In no event shall FBMC be responsible for any such costs or charges. If, at any time, the amount of reimbursement benefits payable under the applicable Benefit Plan provisions exceeds the amount deposited by the Employer in the Account, the Employer shall transfer an amount necessary to the Account to fulfill its reimbursement obligations under the applicable Plan before any further reimbursement benefit payment is made. Employer is responsible for paying any insufficient fund charges that may apply. FBMC is under no obligation to advance funds on behalf of the Employer.

(h) Employer agrees to notify FBMC immediately upon suspicion of inappropriate or fraudulent Card use.

(i) Employer acknowledges that Card usage for the Benefit Plans is subject to IRS regulation, which may include, without limitation, restrictions on the amount a Participant may charge, which merchants

may accept the Card, and the type of expense that may be charged and other legal requirements including, but not limited to those described in Rev. Rul. 2003-43 and Rev. Rul. 2006-69. Employer acknowledges that, despite such usage restrictions imposed by the IRS, the Card may properly cause payments to be issued for expenses that do not represent eligible Benefit Plan expenses. Employer agrees FBMC may not be held responsible for Employer losses due to payments for ineligible expenses. Employer acknowledges that state or other laws may govern whether and to what extent it may recoup ineligible payments by withholding such amounts from employee pay. Employer agrees FBMC may not be held responsible for Employer's efforts to recoup payments for ineligible expenses.

(k) Employer agrees to administer the Benefit Plans in accordance with the rules and regulations of the Benefit Plans.

(l) Employer agrees to provide to FBMC in a timely fashion all information required for any reports or other documents required by law, including but not limited to the rules and regulations promulgated by the U.S. Department of Labor and the Internal Revenue Service. It is Employer's responsibility to ensure that it complies with all applicable tax and other laws.

(m) Employer agrees to provide a current benefits file to facilitate the automatic adjudication of health-related co-payments.

(n) Employer consents to the use of its name in FBMC's marketing materials.

4. Transfer of Data. FBMC will establish a standard procedure for exchanging information. Employer will furnish the information determined to be the minimum necessary to satisfy its responsibilities under this Service Appendix in a format, method, and time mutually agreed upon by the parties in the AGREEMENT. If agreed upon in the AGREEMENT and permitted under HIPAA and other applicable law, FBMC may exchange eligibility and adjudication data with the pharmacy benefits manager. Also, FBMC may interface with the Card

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processor on all Card activity and post data to system files.

5. Administration. FBMC will administer the Card as follows:

(a) FBMC or the Card service provider chosen by FBMC will provide a Card to each Participant who elects to use a Card, for one or more of the IRS-approved, tax-favored arrangements as set forth in Rev. Rul. 2003-43 and Rev. Rul. 2006-69; or, at the Employer's option, a Card will be sent to all employees who enroll in one or more of the Benefit Plans that include the Card option.

(b) FBMC will provide each participant with receipt transmittal forms, reimbursement forms and instructions for filing reimbursement Claims; and provide each Participant with information regarding FSA payroll deposits and claims withdrawals; and

(c) FBMC will provide each Participant with written monthly reports summarizing the previous period's FSA activities; and receive electronic and/or paper Claims, and expeditiously review such Claims to determine what amount, if any, is due and payable with respect thereto; and

(d) FBMC will disburse the benefit payments it determines to be due (provided the Employer has sufficient funds in the Account) in accordance with the provisions of the Benefit Plan and the following procedure(s):

(i) valid reimbursement for FSA benefits shall be paid by FBMC in the agreed upon time frame by authorizing a valid Card Transaction at point of sale, via direct deposit, or mailing a check in the appropriate amount(s) directly to the Participants at their home addresses; and

(ii) Card Transactions deemed ineligible shall be offset with valid paper transactions; or

(iii) Card Transactions deemed ineligible shall be deducted via the

payroll system or reported as taxable income.

(iv) unresolved transactions shall result in card suspension or termination as applicable.

(e) FBMC agrees to reasonably ensure compliance with proper use of the Card and take whatever action is necessary to investigate and resolve errors in the Card Transactions.

(f) The Card will be deactivated upon notice from the Employer that the Participant is no longer employed by the Employer or has ceased to satisfy the eligibility requirements of one or more of the Benefit Plans that include the Card option. Where Employer instructs FBMC to terminate eligibility, FBMC agrees to deactivate, within twenty-four (24) hours of an eligibility update in FBMC's system the Card of any Ineligible Person. If FBMC has deactivated a Card pursuant to the preceding sentence, Employer agrees that FBMC or the Card service provider may not be held responsible for any Card payment made after a person becomes an Ineligible Person. Should the Employer fail to provide this notice in a timely manner, causing payment of ineligible expenses, Employer will be responsible for all such ineligible expenses and will, upon request from FBMC, reimburse the Account for all such ineligible expenses from the Department of Human Resources' non-personal expenditure fund. FBMC may deactivate, at its option and without prior notice to Employer or Participant, any Card for fraudulent activity or as outlined in the Cardholder Agreement. FBMC reserves the right to deactivate the Card any other time that it deems appropriate.

(g) Participants must agree to use the Card in accordance with the terms of the Cardholder Agreement that accompanies the Card. FBMC or the Card services provider will deactivate the portion of the Card that corresponds to one or more of the applicable Benefit Plans if the Participant fails to use the Card in accordance with the Cardholder Agreement.

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(h) The Card may be used by Participants to pay for Qualified Expenses with merchants who have a category code associated with medical services, day care services and/or parking transit services (to the extent applicable). FBMC reserves the right to allow the Card to be used at merchants who do not have an appropriate category code under certain circumstances.

(i) FBMC will require substantiation of expenses paid with the Card in accordance with the requirements set forth in the applicable Treasury regulations and/or other applicable guidance. FBMC will notify claimants in writing as to any electronic or paper claims that are denied or deemed ineligible for reimbursement because of inadequate claim substantiation, improper claim form submission, or expenses not meeting plan requirements. The portion of the Card that corresponds to one or more of the applicable Benefit Plans will be deactivated if the Participant fails to provide the requested substantiation. Unless provided otherwise in the AGREEMENT, its Appendices and Exhibits, FBMC will make reasonable attempts to collect repayment of claims paid through the Card for ineligible expenses or offset the ineligible payment against any claims for future eligible expenses (made during the plan year where required). If repayment or offset is not made, Employer will be informed and will be responsible for taking any necessary action required by law. Employer agrees to comply with Revenue Ruling 2003-43 and recover the funds from the Participant through an after-tax payroll deduction and send those funds to FBMC for credit to the Participant's Account or by such other method deemed to comply with prevailing tax law.

(j) FBMC or the Card service provider will incur no liability for any ineligible Card payments except those arising from FBMC's or the Card service provider's negligence or material breach of its obligations under this AGREEMENT. It is Employer's responsibility to ensure that it complies with all applicable tax and other laws.

(k) All Cards will be deactivated on the date this AGREEMENT is terminated.

(l) If a portion of the Card that corresponds to one or more of the applicable Benefit Plans has been deactivated (other than for failure to properly fund), neither FBMC nor the Card service provider will reactivate the portion of the Card, except as prompted by written instructions from the Employer, or unless provided otherwise in the AGREEMENT, its Appendices and Exhibits.

(m) Employer understands that until the IRS and/or Treasury issues formal guidance approving the use of the Card under a Code Section that outlines the required terms and conditions of such Card use, the Employer assumes all risks of offering the Card as administered by FBMC (as set forth above and in the Cardholder Agreement) for use by Participants in the absence of such IRS and/or Treasury formal guidance. Employer agrees to indemnify and hold FBMC harmless from any and all damages that may arise as a result of using the Card in accordance with the terms set forth above.

Employer is responsible for all other duties related to the Card not otherwise set forth in this Appendix or in the AGREEMENT.

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IN WITNESS WHEREOF, Employer and FBMC have caused this Service Appendix to be executed in their names by their undersigned officers, the same being duly authorized to do so (sign and date only if effective date is different from Effective Date of AGREEMENT).

FBMC Benefits Management, Inc.

Name: _____

Title: _____

Signature: Patricia K Neely

Date: _____

The City of San Jose

Name: DEANNA SANTANA

Title: Deputy City Manager

Signature: _____

Date: _____

APPROVED AS TO FORM:

Name: LINDA R. BJORKE

Title: Deputy City Attorney

Signature: _____

FBMC SERVICE AGREEMENT

FEDERAL COBRA AND/OR HIPAA PORTABILITY SERVICES (PREMIER CONTINUATION)

APPENDIX D

The City of San Jose ("the "Employer" or "CITY") has independently concluded that one or more of its Benefit Plans that provide medical care ("Health Plans") are subject to the provisions of the federal Consolidated Omnibus Budget Reconciliation Act of 1985, as subsequently amended ("COBRA") and/or the portability provisions of the federal Health Insurance Portability and Accountability Act as subsequently amended ("HIPAA") or has voluntarily elected to extend similar rights to Benefit Plan participants. Consequently, Employer is required (or has voluntarily elected) to perform certain acts in order to comply with COBRA and/or HIPAA.

Employer has requested FBMC to assist it with satisfying Employer's obligations under the aforementioned rules.

This Federal COBRA Appendix And/or HIPAA Portability Services Appendix ("Service Appendix") is incorporated into and made a part of the City of San Jose Consultant Agreement ("AGREEMENT") and its related Exhibits, including EXHIBIT F, entitled "Master Service Agreement," and its related Appendices and Exhibits (together, the "Master Service Agreement"). The effective date of this Service Appendix is the effective date of the AGREEMENT or if later, the date indicated in this Service Appendix. The responsibilities of the parties set forth in this Service Appendix are in addition to any responsibilities set forth in the AGREEMENT. If there is a conflict between this Service Appendix and the AGREEMENT, the AGREEMENT will control.

In consideration for the services provided by FBMC in accordance with this Service Appendix, Employer agrees to pay to FBMC the applicable fees in accordance with this AGREEMENT, its Appendices and Exhibits. The Employer will make sufficient funds available to pay the fees in accordance with the method set forth in this AGREEMENT, its Appendices and Exhibits. CITY agrees to pre-fund the Health Care Reimbursement Account and FBMC agrees to waive any and all administrative services fees in exchange for CITY's selection of FBMC as third party administrator for CITY's voluntary insurance benefits, as set forth, along with other financial terms, in EXHIBIT D, entitled "COMPENSATION," of the AGREEMENT.

In consideration of the mutual promises set forth below, the parties agree as follows:

1. For the purposes of this Service Appendix, the Data Provider shall mean the party that is providing information to FBMC. Data Provider may be the Employer, a business partner or another third party entity designated by Employer. Data Provider shall be responsible for providing FBMC timely, accurate and complete information necessary for FBMC to provide the Services described herein in a format agreed upon in the AGREEMENT. FBMC is under no obligation to verify the accuracy and completeness of information provided to it by Data Provider.

2. FBMC shall distribute its standard General COBRA Notice (as required under federal law) by first class mail to the last known address of each covered employee and, when required by applicable law, the covered spouse or the covered dependent as soon as reasonably possible but no later than thirty (30) business days after receiving the information necessary to complete and send a General Notice or after the date of the covered employee's initial coverage, whichever is later. Employer understands that FBMC is not the "plan administrator"

and is only responsible for satisfying the deadlines set forth in this AGREEMENT. The Employer further understands that FBMC's satisfaction of such deadlines may not prevent such notices from being untimely as defined under applicable federal law. Data Provider is solely responsible for providing the minimum necessary information to FBMC sufficiently in advance of the federal deadline, taking into account the agreed upon timeframes in this AGREEMENT, to ensure that all notices are furnished in accordance with applicable federal law. FBMC is not responsible for resending any notices that are returned to FBMC to the extent they were mailed to the last known address of the Covered Individual.

3. FBMC shall distribute its standard COBRA "Qualifying Event Notice" and Election Form (as required by federal law) by first class mail to the last known address of the Qualified Beneficiary as soon as reasonably possible but no later than fourteen (14) days after receiving the information necessary to complete the Election from Employer or Data Provider, or where applicable, from the Qualified Beneficiary. The notice will specify the plan(s) for which the Qualified Beneficiary is eligible, the premium rate and the due date. This notification requirement shall include mailing required notices and all future billings, collecting premiums, mailing notices of conversion options and cancellation of coverage, reporting to Employer and record keeping. Employer understands that FBMC is not the "plan administrator" and is only responsible for satisfying the deadlines set forth in this AGREEMENT. Employer further understands that FBMC's satisfaction of such deadlines may not prevent such notices from being untimely as defined under applicable federal law. Data Provider is solely responsible for providing the necessary information to FBMC sufficiently in advance of the federal deadline, taking into account the agreed upon timeframes in this AGREEMENT, to ensure that all notices are furnished in accordance with applicable federal law. In this regard, the Employer shall notify FBMC of all persons who have experienced a qualifying event by noting termination or other changes of employment status on a monthly Employer report or by

separate notification to FBMC. The minimum necessary information provided in the notification should include the name, address, social security number, and date and type of qualifying event. FBMC is not responsible for resending any notices that are returned to FBMC to the extent they were mailed to the last known address of the Qualified Beneficiary.

Unless otherwise agreed to in the AGREEMENT, FBMC will maintain proof of mailing Qualifying Event Notices and Election Forms.

The Employer agrees to provide to FBMC's home office, on forms provided by FBMC, the following information on a weekly basis at it relates to the Employer's employees, their spouses and eligible dependents covered under the Health Plans, prior to the loss of coverage:

- a. the death of a covered employee.
- b. the termination (other than by reason of the employee's gross misconduct), or reduction of hours of a covered employee's employment.
- c. the divorce or legal separation of a covered employee from the employee's covered spouse.
- d. a covered employee becoming entitled to benefits under Medicare.
- e. a covered dependent child ceasing to be a dependent child under the terms of the Health Plan.
- f. bankruptcy reorganization under Title II for person with retiree coverage if the bankruptcy causes a "substantial" loss of coverage within one year before or after filing.
- g. any other Information relevant to the fulfillment of this AGREEMENT as is necessary for compliance with COBRA, as amended.

In addition, the Employer agrees to provide FBMC with up-to-date, pertinent information relating to the Health Plans on the effective date of this AGREEMENT and Services

Appendix and at the time of any later plan modifications by the Employer. The parties agree that FBMC may rely on and act in accordance with any information or other instruction believed by FBMC in good faith to be genuine and properly given.

4. If FBMC receives notice from a Qualified Beneficiary that a qualifying event has occurred or a Qualified Beneficiary has been determined to be disabled by the Social Security Administration, and such Qualified Beneficiary is not eligible for COBRA for any reason, FBMC shall send an Unavailability Notice by first class mail to the last known address of the Qualified Beneficiary as soon as reasonably possible but no later than fourteen (14) days after receiving notice from such Qualified Beneficiary.

5. FBMC shall process the Election Forms submitted by Qualified Beneficiaries in accordance with applicable federal law and any additional written instructions from the Employer. To the extent agreed by the parties, FBMC may monitor the timely receipt of elections and contributions. Upon receipt of the Qualified Beneficiary's election to continue benefits, FBMC may send them coupon booklets to the extent requested by the parties.

6. Unless otherwise agreed to in the AGREEMENT, FBMC will produce and print "annual" enrollment materials. FBMC may mail the enrollment materials directly to the COBRA participants. FBMC will ensure compliance with all pertinent law, regulatory rulings, guidelines and notices applicable to COBRA administration.

7. FBMC shall collect, reconcile, and post COBRA premiums from Qualified Beneficiaries (or third parties on behalf of Qualified Beneficiaries where applicable) in a manner and method as agreed upon by the parties. All premiums collected by FBMC in accordance with this Service Appendix will be deposited into a benefit continuation premium depository account in FBMC's designated bank. FBMC will send all premiums collected to providers or the Employer in a manner agreed to between the parties. FBMC will terminate coverage if contributions are not received timely. FBMC

reserves the right to retain as an additional administrative fee any interest earned on such funds while held in an FBMC maintained account.

8. FBMC shall send by first class mail to the last known address of the Qualified Beneficiary a notice indicating that COBRA coverage is terminating or has terminated. The Termination Notice will be sent as soon as reasonably practicable but no later than a reasonable amount of time after COBRA coverage has ended.

9. FBMC may provide Qualified Beneficiaries with end of eligibility notices, conversion notices (if applicable), and confirmation notices as agreed upon by the parties.

10. FBMC will resolve all servicing issues related to COBRA; however, FBMC is only responsible for Level 1 appeals determinations. Employer will grant or deny second or third level appeals.

11. FBMC will calculate medical FSA eligibility. In the event that an eligible participant has elected to continue his/her Medical FSA through COBRA and FBMC is not the Employer's COBRA administrator, FBMC will post contributions as received from the COBRA administrator and will adjudicate and issue reimbursements for eligible claims. If the participant's account becomes overspent after being advised he/she is COBRA-eligible, FBMC will return to the COBRA administrator any contributions received after the account has been overspent.

12. FBMC may provide responses to inquiries by providers and/or insurance carriers regarding coverage status of Qualified Beneficiaries. All responses will be based solely on the information provided to FBMC in accordance with this Service Appendix.

13. FBMC shall distribute its standard HIPAA Certificate of Creditable Coverage ("Certificate") to Medical FSA participants by first class mail to the last known address of each Covered Individual who loses active coverage under the applicable Health Plans as soon as practicable after receiving the

information necessary to complete the Certificate. FBMC shall also distribute the Certificate by first class mail to the last known address of each Covered Individual who loses COBRA coverage under the applicable Health Plans as soon as practicable after the loss of coverage. FBMC shall also send the Certificate following a request by a Covered Individual (or formerly Covered Individual) provided that the request is made no later than 24 months after the date that coverage was lost. All certificates will be mailed in accordance with the delivery methods established under HIPAA.

14. FBMC shall provide written monthly reports summarizing COBRA activities in a manner and timeframe agreed to by the parties. Employer is responsible for reviewing the reports submitted by FBMC and notifying FBMC of any errors of which it becomes aware within a reasonable period of time after reviewing them.

15. FBMC will establish a standard procedure for exchanging information with the Employer and providers. Employer will furnish the information (including

contribution and enrollment election information) in a format, method and timeframe necessary for FBMC to adequately perform its services hereunder. FBMC may exchange eligibility and adjudication data with pharmacy benefits managers and other health care providers as applicable.

16. If agreed upon in the AGREEMENT, FBMC will provide toll-free bilingual access for the Employer's administrative staff.

FBMC will maintain an internet website that contains all Benefits Alerts and the *Quarterly Review Newsletter* providing legislative updates and information regarding COBRA.

Employer is responsible for all other duties related to its Cafeteria Plan and Reimbursement Account Plans initialed above, and not otherwise set forth in this Appendix or in the AGREEMENT.

Employer is responsible for all other duties related to the Health Plans not otherwise set forth above.

IN WITNESS WHEREOF, Employer and FBMC have caused this Service Appendix to be executed in their names by their undersigned officers, the same being duly authorized to do so (sign and date only if effective date is different from Effective Date of AGREEMENT).

FBMC Benefits Management, Inc.

Name: _____

Title: _____

Signature: Patricia K. Nooly

Date: _____

The City of San Jose

Name: DEANNA SANTANA

Title: Deputy City Manager

Signature: _____

Date: _____

APPROVED AS TO FORM:

Name: LINDA R. BJORKE

Title: Deputy City Attorney

Signature: _____



December 21, 2010

City of San Jose
200 East Santa Clara Street
San Jose, CA 95113-1905

CLIENT: City of San Jose

BANKING ARRANGEMENTS

A non-interest bearing account will be established by Fringe Benefits Management Company (FBMC) in FBMC's FEIN number, at UMB Bank. Fees assessed by the bank less earnings credits will be charged to this account and will be the client's responsibility. The earnings credit rate is a factor used to discount bank service charges for business deposit customers. The rate, which is often tied to the U.S. Treasury bill rate, is applied to a customer's account balance to determine the fee reduction. Customers with large deposits therefore pay lower fees. Monthly fees not off-set by the earnings credit will be debited from the plan bank account. Monthly fees debited from the plan bank account will be reported by plan year as a reduction to the plan's forfeiture/surplus funds. If adequate funding is not available in the plan bank account to debit for monthly fees, the client would be required to cover any shortfall in the plan bank account.

Account Name: City of San Jose
C/O Fringe Benefits Management Company

Any two of the following individuals will have signature authority on this account:

Name:	Title:
Lorraine Strickland	President, FBMC
Debra Tougas	Chief Financial Officer, FBMC
Patricia K. Neely	Senior Vice President, FBMC

Funds will be disbursed to participants from this account via check, direct deposit, and debit card.

CLIENT FUNDING

The plan bank account will be funded by the City of San Jose on a per payroll basis via electronic funds transfer, ACH or wire. Advance funding is necessary due to the medical availability rule. The first payroll date of the 2011 plan year is 1/14/2011. Debit Card prefunding has been waived.

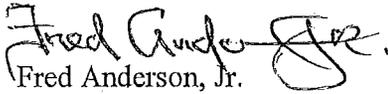
BANK ACCOUNT RECONCILIATION

FBMC will receive bank statements directly from UMB. The completed reconciliation will be emailed to the contacts provided by the client on a quarterly basis, 30 days after the end of the quarter.

FBMC will provide the necessary banking information for funding purposes upon your acceptance of the above banking arrangements. Please contact me at 1-800-872-0345 if you have questions.

Sincerely,

FRINGE BENEFITS MANAGEMENT COMPANY


Fred Anderson, Jr.
Vice President, Accounting

Approved By: _____ Title: _____

cc: Rosemary Cardenas
Brandie Hunter