



1 B. CONTRACTOR shall prepare the "Plan Document" (the formal document  
2 detailing requirements governing the COUNTY's Plan) and Summary Plan Description  
3 (summarizes the Plan Document) in accordance with all relevant Internal Revenue Service  
4 regulations and other applicable laws with final approval by the COUNTY.

5 C. The CONTRACTOR shall receive requests for reimbursement, evaluate  
6 them under the terms of the Plan, and issue checks, subject availability of funds in the account in  
7 a reasonable period of time consistent with industry standards, but no more than one week from  
8 submission of an approved claim. Interpretations of benefits shall be governed by the Plan  
9 Document. The Plan Document may be amended only upon the written approval of COUNTY.  
10 CONTRACTOR may not vary from Plan Document language without the prior written approval of  
11 COUNTY, unless otherwise required by law which CONTRACTOR shall provide immediate  
12 written notice of to COUNTY.

13 D. CONTRACTOR shall provide consulting services in regard to the design of  
14 the Plan as well as advising COUNTY as reflected in paragraph B.

15 E. CONTRACTOR shall be responsible for enrolling of employees based  
16 upon eligibility information supplied by COUNTY, the annual reenrollment, as well as enrollment of  
17 new hires in the FLEX Spending Accounts and Mass Transit and Parking Plan. New hires will be  
18 initially enrolled by COUNTY and documents will be forwarded to CONTRACTOR on a weekly  
19 basis.

20 F. CONTRACTOR shall maintain records of claims entered and claims paid  
21 for each COUNTY participating employee and covered dependent.

22 G. CONTRACTOR shall provide monthly or other periodic reports as follows:

23 1) Participant: CONTRACTOR shall prepare and distribute the following  
24 to each COUNTY participating employee:

- 25 a. Quarterly Employee Statements, detailing quarterly account activity.
- 26 b. During the last quarter of the plan year, statements will be provided  
27 monthly.

28 2) COUNTY: CONTRACTOR to provide to COUNTY:

- 1 a. The fund account statements including reconciliation statements
- 2 detailing the receipts and disbursements of the Plan;
- 3 b. Check listing, detailing the disbursements made by check number;
- 4 and
- 5 c. The Participant Summary Report, detailing the current balance in
- 6 each participating employee's account.

7 Reports will be available no later than the first week of the month following the  
8 end of the report period.

9 H. CONTRACTOR shall upon request consult with COUNTY regarding  
10 management of the Plan and Improvements in benefit definition to facilitate Plan administration.

11 I. CONTRACTOR shall maintain duplicate data processing media in a  
12 building separate from the building that claims processing and data processing are performed to  
13 provide continuity of operation in the event of fire or other casualty.

14 J. CONTRACTOR shall respond to all questions from COUNTY participating  
15 employees concerning claims and the methods and procedures used to evaluate and pay claims  
16 within seven (7) business days from receipt of the question.

17 K. All materials distributed to participants must be reviewed and approved in  
18 writing in advance by COUNTY, which approval shall not be unreasonably withheld.

19 L. CONTRACTOR shall furnish all forms and supplies required for the  
20 processing of claims and enrollment and re-enrollment of COUNTY participating employees into  
21 the Plan.

22 M. CONTRACTOR shall, consistent with industry standards, monitor and keep  
23 COUNTY informed of legislation impacting Plan.

24 N. CONTRACTOR agrees to keep full and accurate records and shall follow  
25 generally accepted industry accounting methods and practices. The COUNTY or its duly  
26 authorized representatives shall have full and free access to said records during normal working  
27 hours and upon 48 hours advance notice to CONTRACTOR.

28 O. CONTRACTOR shall assist COUNTY with discrimination testing as

1 required by Internal Revenue Service Code Sections 125 and 129. Such assistance will be  
2 provided on a periodic basis, but not more often than annually.

3 P. CONTRACTOR shall establish a Plan Deposit Account in trust for  
4 COUNTY with COUNTY'S assistance. This account shall be used as a depository for funds to be  
5 used only for CONTRACTOR's payments pursuant to the Plan and this Agreement. This account  
6 shall be funded solely by COUNTY. COUNTY shall submit to CONTRACTOR for deposit, all plan  
7 contributions into the Plan Deposit Account. COUNTY authorizes CONTRACTOR to make  
8 withdraws and other types of banking transactions from and to the Plan Deposit Account on behalf  
9 of COUNTY but only for purposes stated in the Agreement. It shall be COUNTY'S responsibility  
10 to maintain funds in the Plan Deposit Account sufficient to cover checks validly issued. All funds  
11 deposited by or on behalf of COUNTY and any interest earnings from this account shall remain  
12 the property of COUNTY, subject to the control and handling thereof by CONTRACTOR in  
13 accordance with the terms of the Agreement.

14 Q. CONTRACTOR shall administer medical spending accounts in accordance  
15 with Internal Revenue Service Code Sections 125 and 162 for those individuals electing COBRA.

16 R. CONTRACTOR shall administer mass transit and parking accounts in  
17 accordance with Internal Revenue Service Code Section 132.

18 S. CONTRACTOR shall develop the systems and procedures, including the  
19 necessary personnel training, to begin payment of claims on the effective date of this Agreement.

20 2. OBLIGATIONS OF THE COUNTY

21 A. COUNTY shall provide timely notification of employee new hires, and  
22 terminations and shall ensure that the Plan will be funded. COUNTY will provide all information  
23 that is reasonable necessary for CONTRACTOR to properly administer the Plan to the best of its  
24 ability.

25 3. TERM

26 This Agreement shall become effective on the 1st day of January, 2006 and  
27 shall terminate on the 31st day of December, 2008.

28 4. TERMINATION

1                   A. Non-Allocation of Funds - The terms of this Agreement, and the services to  
2 be provided thereunder, are contingent on the approval of funds by the appropriating government  
3 agency. Should sufficient funds not be allocated, the services provided may be modified, or this  
4 Agreement terminated, at any time by giving the CONTRACTOR thirty (30) days advance written  
5 notice.

6                   B. Breach of Contract - The COUNTY may immediately suspend or terminate  
7 this Agreement in whole or in part, where in the determination of the COUNTY there is:

- 8                           1) An illegal or improper use of funds;
- 9                           2) A failure to comply with any term of this Agreement;
- 10                          3) A substantially incorrect or incomplete report submitted to the  
11 COUNTY;
- 12                          4) Improperly performed service.

13                   In no event shall any payment by the COUNTY constitute a waiver by the COUNTY of  
14 any breach of this Agreement or any default which may then exist on the part of the  
15 CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to the  
16 COUNTY with respect to the breach or default. The COUNTY shall have the right to demand of  
17 the CONTRACTOR the repayment to the COUNTY of any funds disbursed to the CONTRACTOR  
18 under this Agreement, which in the judgment of the COUNTY were not expended in accordance  
19 with the terms of this Agreement. The CONTRACTOR shall promptly refund any such funds upon  
20 demand.

21                   C. Without Cause - Under circumstances other than those set forth above,  
22 this Agreement may be terminated by COUNTY upon the giving of thirty (30) days advance written  
23 notice of an intention to terminate to CONTRACTOR.

24                   5.       COMPENSATION/INVOICING:

25                   COUNTY agrees to pay CONTRACTOR and CONTRACTOR agrees to  
26 receive compensation as follows: A biweekly fee of two dollars and twenty five (\$2.25) cents per  
27 participating employee enrolled in the Dependent Care and/or Health Care Spending Account and  
28 fifty cents (\$.50) per participating employee enrolled in the Mass Transit and Parking Plan.

1 CONTRACTOR shall submit monthly invoices in triplicate to the County of Fresno Personnel  
2 Services Department.

3 In no event shall services performed under this Agreement be in excess of  
4 \$160,000 during the term of this Agreement. It is understood that all expenses incidental to  
5 CONTRACTOR'S performance of services under this Agreement shall be borne by  
6 CONTRACTOR.

7 6. INDEPENDENT CONTRACTOR: In performance of the work, duties and  
8 obligations assumed by CONTRACTOR under this Agreement, it is mutually understood and  
9 agreed that CONTRACTOR, including any and all of the CONTRACTOR'S officers, agents, and  
10 employees will at all times be acting and performing as an independent contractor, and shall act in  
11 an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or  
12 associate of the COUNTY. Furthermore, COUNTY shall have no right to control or supervise or  
13 direct the manner or method by which CONTRACTOR shall perform its work and function.  
14 However, COUNTY shall retain the right to administer this Agreement so as to verify that  
15 CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof.

16 CONTRACTOR and COUNTY shall comply with all applicable provisions of  
17 law and the rules and regulations, if any, of governmental authorities having jurisdiction over  
18 matters the subject thereof.

19 Because of its status as an independent contractor, CONTRACTOR shall have  
20 absolutely no right to employment rights and benefits available to COUNTY employees.  
21 CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its  
22 employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely  
23 responsible and save COUNTY harmless from all matters relating to payment of  
24 CONTRACTOR'S employees, including compliance with Social Security withholding and all other  
25 regulations governing such matters. It is acknowledged that during the term of this Agreement,  
26 CONTRACTOR may be providing services to others unrelated to the COUNTY or to this  
27 Agreement.

28 7. MODIFICATION: Any matters of this Agreement may be modified from time

1 to time by the written consent of all the parties without, in any way, affecting the remainder.

2 8. NON-ASSIGNMENT: Neither party shall assign, transfer or sub-contract this  
3 Agreement nor their rights or duties under this Agreement without the prior written consent of the  
4 other party.

5 9. HOLD HARMLESS: CONTRACTOR agrees to indemnify, save, hold  
6 harmless, and at COUNTY'S request, defend the COUNTY, its officers, agents, and employees  
7 from any and all costs and expenses, damages, liabilities, claims, and losses occurring or  
8 resulting to COUNTY in connection with the performance, or failure to perform, by  
9 CONTRACTOR, its officers, agents, or employees under this Agreement, and from any and all  
10 costs and expenses, damages, liabilities, claims, and losses occurring or resulting to any person,  
11 firm, or corporation who may be injured or damaged by the performance, or failure to perform,  
12 of CONTRACTOR, its officers, agents, or employees under this Agreement.

13 10. INSURANCE

14 Without limiting the COUNTY's right to obtain indemnification from  
15 CONTRACTOR or any third parties, CONTRACTOR, at its sole expense, shall maintain in full  
16 force and effect the following insurance policies throughout the term of this Agreement:

17 A. Commercial General Liability

18 Commercial General Liability Insurance with limits of not less than One  
19 Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Two Million Dollars  
20 (\$2,000,000). This policy shall be issued on a per occurrence basis. COUNTY may require  
21 specific coverages including completed operations, products liability, contractual liability,  
22 Explosion-Collapse-Underground, fire legal liability or any other liability insurance deemed  
23 necessary because of the nature of this contract.

24 B. Automobile Liability

25 Comprehensive Automobile Liability Insurance with limits for bodily injury of  
26 not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per person, Five Hundred  
27 Thousand Dollars (\$500,000.00) per accident and for property damages of not less than Fifty  
28 Thousand Dollars (\$50,000.00), or such coverage with a combined single limit of Five Hundred

1 Thousand Dollars (\$500,000.00). Coverage should include owned and non-owned vehicles used  
2 in connection with this Agreement.

3 C. Professional Liability

4 If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N.,  
5 L.C.S.W., M.F.C.C.) in providing services, Professional Liability Insurance with limits of not less  
6 than One Million Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00)  
7 annual aggregate.

8 D. Worker's Compensation

9 A policy of Worker's Compensation insurance as may be required by the  
10 California Labor Code.

11 CONTRACTOR shall obtain endorsements to the Commercial General Liability  
12 insurance naming the County of Fresno, its officers, agents, and employees, individually and  
13 collectively, as additional insured, but only insofar as the operations under this Agreement are  
14 concerned. Such coverage for additional insured shall apply as primary insurance and any other  
15 insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees shall be  
16 excess only and not contributing with insurance provided under CONTRACTOR's policies herein.  
17 This insurance shall not be cancelled or changed without a minimum of thirty (30) days advance  
18 written notice given to COUNTY.

19 Within Thirty (30) days from the date CONTRACTOR executes this  
20 Agreement, CONTRACTOR shall provide certificates of insurance and endorsement as stated  
21 above for all of the foregoing policies, as required herein, to the County of Fresno, Silvia Fabela,  
22 2220 Tulare Street, 14<sup>th</sup> Floor, Fresno, CA 93721, stating that such insurance coverage have  
23 been obtained and are in full force; that the County of Fresno, its officers, agents and employees  
24 will not be responsible for any premiums on the policies; that such Commercial General Liability  
25 insurance names the County of Fresno, its officers, agents and employees, individually and  
26 collectively, as additional insured, but only insofar as the operations under this Agreement are  
27 concerned; that such coverage for additional insured shall apply as primary insurance and any  
28 other insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees,



1 shall be excess only and not contributing with insurance provided under CONTRACTOR's policies  
2 herein; and that this insurance shall not be cancelled or changed without a minimum of thirty (30)  
3 days advance, written notice given to COUNTY.

4 In the event CONTRACTOR fails to keep in effect at all times insurance  
5 coverage as herein provided, the COUNTY may, in addition to other remedies it may have,  
6 suspend or terminate this Agreement upon the occurrence of such event.

7 All policies shall be with admitted insurers licensed to do business in the State  
8 of California. Insurance purchased shall be purchased from companies possessing a current A.M.  
9 Best, Inc. rating of A FSC VII or better.

10 11. AUDITS AND INSPECTIONS: The CONTRACTOR shall at any time during  
11 business hours, and as often as the COUNTY may deem necessary, make available to the  
12 COUNTY for examination all of its records and data with respect to the matters covered by this  
13 Agreement. The CONTRACTOR shall, upon request by the COUNTY, permit the COUNTY to  
14 audit and inspect all of such records and data necessary to ensure CONTRACTOR'S compliance  
15 with the terms of this Agreement.

16 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR  
17 shall be subject to the examination and audit of the Auditor General for a period of three (3) years  
18 after final payment under contract (Government Code Section 8546.7).

19 12. NOTICES: The persons and their addresses having authority to give and  
20 receive notices under this Agreement include the following:

<u>COUNTY</u>	<u>CONTRACTOR</u>
Paul Nerland	Virginia Park
COUNTY OF FRESNO	Total Benefit Services
2220 Tulare Street, 14 <sup>th</sup> Floor	7595 N. Del Mar Ave
Fresno, CA 93721	Fresno, CA 93711

24 Any and all notices between the COUNTY and the CONTRACTOR provided  
25 for or permitted under this Agreement or by law shall be in writing and shall be deemed duly  
26 served when personally delivered to one of the parties, or in lieu of such personal services, when  
27 deposited in the United States Mail, postage prepaid, addressed to such party.

28 13. GOVERNING LAW: Venue for any action arising out of or related to this

1 Agreement shall only be in Fresno County, California.

2                   The rights and obligations of the parties and all interpretation and performance  
3 of this Agreement shall be governed in all respects by the laws of the State of California.

4           14.     ENTIRE AGREEMENT: This Agreement constitutes the entire agreement  
5 between the CONTRACTOR and COUNTY with respect to the subject matter hereof and  
6 supersedes all previous Agreement negotiations, proposals, commitments, writings,  
7 advertisements, publications, and understanding of any nature whatsoever unless expressly  
8 included in this Agreement. In the event of any inconsistency in interpreting the documents which  
9 constitute this Agreement, the inconsistency shall be resolved by giving precedence in the  
10 following order of priority: (1) the text of this Agreement (excluding Exhibits A and B); (2) Exhibit A;  
11 and (3) Exhibit B.

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1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of  
2 the day and year first hereinabove written.

3 **CONTRACTOR**

**COUNTY OF FRESNO**

4 \_\_\_\_\_  
5 (Authorized Signature)

\_\_\_\_\_ Chairman, Board of Supervisors

6 \_\_\_\_\_  
7 Print Name & Title  
8 Clyde W. Ford, Vice President

9 \_\_\_\_\_  
10 Mailing Address  
11 Total Benefit Services, Inc.  
12 7595 North Del Mar Ave, Fresno, CA 93711

13 DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

14 TAXPAYER FEDERAL I.D. #:77-0063124

REVIEWED & RECOMMENDED FOR APPROVAL

15 \_\_\_\_\_  
16 CA Sales Tax Permit No.  
17 (Out-of-State vendors):

\_\_\_\_\_ Department Head's Signature

18 \_\_\_\_\_  
19 APPROVED AS TO LEGAL FORM

APPROVED AS TO ACCOUNTING FORM

20 \_\_\_\_\_  
21 County Counsel

\_\_\_\_\_ Auditor-Controller/Treasurer-Tax Collector

22 FOR ACCOUNTING USE ONLY:

23 ORG No.: 89250200  
24 Account No.: 7295  
25 Requisition No.: [click to type requisition number]

26 **FCMC 1/03**  
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