

EXHIBIT E
CURRENT AGREEMENT

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, 14th 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 th 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**

27 C:\DOCUMENTS AND SETTINGS\JOLOPEZ\LOCAL SETTINGS\TEMPORARY INTERNET FILES\OLKB\EXHIBIT E - FSA
28 CONTRACT_2005.DOC