

1 FLEXIBLE SPENDING AND MASS TRANSIT AND PARKING PLAN ADMINISTRATION
2 AGREEMENT
3

4 THIS AGREEMENT (hereinafter Agreement) is made and entered into this 23rd day of
5 September, 2008, by and between the COUNTY OF FRESNO, a Political Subdivision of the State
6 of California, hereinafter referred to as "COUNTY", and Total Benefit Services, Inc., whose
7 address is 7595 N. Del Mar Ave, Fresno, CA 93711, hereinafter referred to as "CONTRACTOR".

8 WITNESSETH:

9 WHEREAS, the COUNTY intends to maintain an employee benefit plan that includes
10 an "Employee Flexible Spending Account" as defined by Internal Revenue Code Section 125, and
11 a "Mass Transit and Parking Plan", as defined by Internal Revenue Code section 132, hereinafter
12 called the "Plan", under which benefits may be acquired using pre-tax dollars by employees, and;

13 WHEREAS, the COUNTY desires to contract for administration services in connection
14 with the operation of its Plan, and;

15 WHEREAS, the CONTRACTOR is engaged in the business of performing such
16 administrative services.

17 NOW, THEREFORE, it is agreed as follows:

18 COUNTY hereby engages CONTRACTOR, and CONTRACTOR hereby accepts
19 such engagement, to perform those services specified in this Agreement required in connection
20 with the operation of the Plan under the terms and subject to conditions provided in the
21 Agreement. In the performance of the Agreement, CONTRACTOR will utilize systems, practices
22 and procedures which recognize the specific features of the Plan.

23 1. OBLIGATIONS OF THE CONTRACTOR

24 A. CONTRACTOR shall provide the administrative system, to operate the
25 Plan, as described in the Agreement, in COUNTY's Request for Proposal No. 268-4602 dated
26 July 7, 2008 (RFP) (including Addendum Number One (1) to the RFP) attached and incorporated
27 herein by reference as EXHIBIT A, and CONTRACTOR's Response to the RFP submitted on
28 August 13, 2008 including clarifying correspondence submitted on August 27, 2008 attached and

1 incorporated herein by reference as EXHIBIT B.

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

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

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

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

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

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

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

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

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

8 Reports will be available no later than the first week of the month following the

9 end of the report period.

10 H. CONTRACTOR shall upon request consult with COUNTY regarding

11 management of the Plan and Improvements in benefit definition to facilitate Plan administration.

12 I. CONTRACTOR shall maintain duplicate data processing media in a

13 building separate from the building that claims processing and data processing are performed to

14 provide continuity of operation in the event of fire or other casualty.

15 J. CONTRACTOR shall respond to all questions from COUNTY participating

16 employees concerning claims and the methods and procedures used to evaluate and pay claims

17 within seven (7) business days from receipt of the question.

18 K. All materials distributed to participants must be reviewed and approved in

19 writing in advance by COUNTY, which approval shall not be unreasonably withheld.

20 L. CONTRACTOR shall furnish all forms and supplies required for the

21 processing of claims and enrollment and re-enrollment of COUNTY participating employees into

22 the Plan.

23 M. CONTRACTOR shall, consistent with industry standards, monitor and keep

24 COUNTY informed of legislation impacting Plan.

25 N. CONTRACTOR agrees to keep full and accurate records and shall follow

26 generally accepted industry accounting methods and practices. The COUNTY or its duly

27 authorized representatives shall have full and free access to said records during normal working

28 hours and upon 48 hours advance notice to CONTRACTOR.

1 O. CONTRACTOR shall assist COUNTY by providing discrimination testing
2 as required by Internal Revenue Service Code Sections 125 and 129. Such assistance will be
3 provided as needed consistent with Internal Revenue Service requirements.

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

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

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

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

21 2. OBLIGATIONS OF THE COUNTY

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

26 3. TERM

27 This Agreement shall become effective on the 1st day of January, 2009 and
28 shall terminate on the 31st day of December, 2011.

1 4. TERMINATION

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

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

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

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

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

25 5. COMPENSATION/INVOICING:

26 COUNTY agrees to pay CONTRACTOR and CONTRACTOR agrees to
27 receive compensation as follows: A biweekly fee of two dollars and fifteen (\$2.15) cents per
28 participating employee enrolled in the Dependent Care and/or Health Care Spending Account and

1 fifty cents (\$.50) per participating employee enrolled in the Mass Transit and Parking Plan.
2 CONTRACTOR shall submit monthly invoices in triplicate to the County of Fresno Personnel
3 Services Department.

4 In no event shall services performed under this Agreement be in excess of
5 \$250,000 during the term of this Agreement. It is understood that all expenses incidental to
6 CONTRACTOR'S performance of services under this Agreement shall be borne by
7 CONTRACTOR.

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

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

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

1 7. MODIFICATION: Any matters of this Agreement may be modified from time
2 to time by the written consent of all the parties without, in any way, affecting the remainder.

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

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

14 10. INSURANCE

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

18 A. Commercial General Liability

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

25 B. Automobile Liability

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

1 Thousand Dollars (\$50,000.00), or such coverage with a combined single limit of Five Hundred
2 Thousand Dollars (\$500,000.00). Coverage should include owned and non-owned vehicles used
3 in connection with this Agreement.

4 C. Professional Liability

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

9 D. Worker's Compensation

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

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

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

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

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

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

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

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

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

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

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

1 13. GOVERNING LAW: Venue for any action arising out of or related to this
2 Agreement shall only be in Fresno County, California.

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

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

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

13 DATE: _____

DATE: _____

REVIEWED & RECOMMENDED FOR APPROVAL

14 _____
15 CA Sales Tax Permit No.
16 (Out-of-State vendors):

_____ Department Head's Signature

17 _____
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 G:\PUBLIC\RFP\964-4964 EXHIBIT E - CURRENT AGREEMENT 09-11.DOC
28