

# COUNTY OF FRESNO

## REQUEST FOR PROPOSAL

### NUMBER: 964-5279

### FLEX PLAN ADMINISTRATOR

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Issue Date: June 5, 2014

Closing Date: JULY 3, 2014

Proposal will be considered LATE when the official Purchasing time clock reads 2:00 P.M.

Questions regarding this RFP should be directed to: Carolyn Flores,  
phone (559) 600-7112, e-mail [cflores@co.fresno.ca.us](mailto:cflores@co.fresno.ca.us), or fax (559) 600-7126.

Check County of Fresno Purchasing's Open Solicitations  
website at <https://www2.co.fresno.ca.us/0440/Bids/BidsHome.aspx>  
for RFP documents and changes.

Please submit all Proposals to:

County of Fresno - Purchasing  
4525 E. Hamilton Avenue, 2<sup>nd</sup> Floor  
Fresno, CA 93702-4599

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#### BIDDER TO COMPLETE

UNDERSIGNED AGREES TO FURNISH THE COMMODITY OR SERVICE STIPULATED IN THE ATTACHED PROPOSAL  
SCHEDULE AT THE PRICES AND TERMS STATED, SUBJECT TO THE "COUNTY OF FRESNO PURCHASING STANDARD  
INSTRUCTIONS AND CONDITIONS FOR REQUEST FOR PROPOSALS (RFP'S)" ATTACHED.

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COMPANY

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ADDRESS

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CITY

STATE

ZIP CODE

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( )

( )

TELEPHONE NUMBER

FACSIMILE NUMBER

E-MAIL ADDRESS

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SIGNED BY

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PRINT NAME

TITLE

**COUNTY OF FRESNO PURCHASING**  
**STANDARD INSTRUCTIONS AND CONDITIONS FOR**  
**REQUESTS FOR PROPOSALS (RFP'S) AND REQUESTS FOR QUOTATIONS (RFQ'S)**

Note: the reference to "bids" in the following paragraphs applies to RFP's and RFQ's

**GENERAL CONDITIONS**

By submitting a bid the bidder agrees to the following conditions. These conditions will apply to all subsequent purchases based on this bid.

**1. BID PREPARATION:**

- A) All prices and notations must be typed or written in ink. No erasures permitted. Errors may be crossed out, initialed and corrections printed in ink by person signing bid.
- B) Brand Names: Brand names and numbers when given are for reference. Equal items will be considered, provided the offer clearly describes the article and how it differs from that specified. In the absence of such information it shall be understood the offering is exactly as specified.
- C) State brand or make of each item. If bidding on other than specified, state make, model and brand being bid and attach supporting literature/specifications to the bid.
- D) Bid on each item separately. Prices should be stated in units specified herein. All applicable charges must be quoted; charges on invoice not quoted herein will be disallowed.
- E) Time of delivery is a part of the consideration and must be stated in definite terms and must be adhered to. F.O.B. Point shall be destination or freight charges must be stated.
- F) All bids must be dated and signed with the firm's name and by an authorized officer or employee.
- G) Unless otherwise noted, prices shall be firm for one hundred eighty (180) days after closing date of bid.

**2. SUBMITTING BIDS:**

- A) Each bid must be submitted on forms provided in a sealed envelope/package with bid number and closing date and time on the outside of the envelope/package.
- B) Interpretation: Should any discrepancies or omissions be found in the bid specifications or doubt as to their meaning, the bidder shall notify the Buyer in writing at once. The County shall not be held responsible for verbal interpretations. Questions regarding the bid must be received by Purchasing stated within this document. All addenda issued shall be in writing, duly issued by Purchasing and incorporated into the contract.
- C) **ISSUING AGENT/AUTHORIZED CONTACT:** This RFP/RFQ has been issued by County of Fresno, Purchasing. Purchasing shall be the vendor's sole point of contact with regard to the RFP/RFQ, its content, and all issues concerning it.

All communication regarding this RFP/RFQ shall be directed to an authorized representative of County Purchasing. The specific buyer managing this RFP/RFQ is identified on the cover page, along with his or her telephone number, and he or she should be the primary

point of contact for discussions or information pertaining to the RFP/RFQ. Contact with any other County representative, including elected officials, for the purpose of discussing this RFP/RFQ, its content, or any other issue concerning it, is prohibited unless authorized by Purchasing. Violation of this clause, by the vendor having unauthorized contact (verbally or in writing) with such other County representatives, may constitute grounds for rejection by Purchasing of the vendor's quotation.

The above stated restriction on vendor contact with County representatives shall apply until the County has awarded a purchase order or contract to a vendor or vendors, except as follows. First, in the event that a vendor initiates a formal protest against the RFP/RFQ, such vendor may contact the appropriate individual, or individuals who are managing that protest as outlined in the County's established protest procedures. All such contact must be in accordance with the sequence set forth under the protest procedures. Second, in the event a public hearing is scheduled before the Board of Supervisors to hear testimony prior to its approval of a purchase order or contract, any vendor may address the Board.

- D) Bids received after the closing time will NOT be considered.
- E) Bidders are to bid what is specified or requested first. If unable to or unwilling to, bidder may bid alternative or option, indicating all advantages, disadvantages and their associated cost.
- F) Public Contract Code Section 7028.15

Where the State of California requires a Contractor's license, it is a misdemeanor for any person to submit a bid unless specifically exempted.

**3. FAILURE TO BID:**

- A) If not bidding, return bid sheet and state reason for no bid or your name may be removed from mailing list.

**4. TAXES, CHARGES AND EXTRAS:**

- A) County of Fresno is subject to California sales and/or use tax (8.225%). Please indicate as a separate line item if applicable.
- B) **DO NOT** include Federal Excise Tax. County is exempt under Registration No. 94-73-03401-K.
- C) County is exempt from Federal Transportation Tax. Exemption certificate is not required where shipping papers show consignee as County of Fresno.
- D) Charges for transportation, containers, packing, etc. will not be paid unless specified in bid.

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5. W-9 – REQUEST FOR TAXPAYER IDENTIFICATION NUMBER AND CERTIFICATION & CALIFORNIA FORM 590 WITHHOLDING EXEMPTION CERTIFICATE:

Upon award of bid, the vendor shall submit to County Purchasing, a completed IRS Form W-9 - Request for Taxpayer Identification Number and Certification and a California Form 590 Withholding Exemption Certificate if not currently a County of Fresno approved vendor.

6. AWARDS:

- A) Award(s) will be made to the most responsive responsible bidder; however, the Fresno County Local Vendor Preference and/or the Disabled Veteran Business Enterprise Preference shall take precedence when applicable. Said Preferences apply only to Request for Quotations for materials, equipment and/or supplies only (no services); the preference do not apply to Request for Proposals. RFQ evaluations will include such things as life-cycle cost, availability, delivery costs and whose product and/or service is deemed to be in the best interest of the County. The County shall be the sole judge in making such determination.
- B) Unless bidder gives notice of all-or-none award in bid, County may accept any item, group of items or on the basis of total bid.
- C) The County reserves the right to reject any and all bids and to waive informalities or irregularities in bids.
- D) Award Notices are tentative: Acceptance of an offer made in response to this RFP/RFQ shall occur only upon execution of an agreement by both parties or issuance of a valid written Purchase Order by Fresno County Purchasing.
- E) After award, all bids shall be open to public inspection. The County assumes no responsibility for the confidentiality of information offered in a bid.

7. TIE BIDS:

All other factors being equal, the contract shall be awarded to the Fresno County vendor or, if neither or both are Fresno County vendors, it may be awarded by the flip of a coin in the presence of witnesses or the entire bid may be rejected and re-bid. If the General Requirements of the RFQ state that they are applicable, the provisions of the Fresno County Local Vendor Preference shall take priority over this paragraph.

8. PATENT INDEMNITY:

The vendor shall hold the County, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or un-copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with this bid.

9. SAMPLES:

Samples, when required, must be furnished and delivered free and, if not destroyed by tests, will upon written request (within thirty (30) days of bid closing date) be returned at the bidder's expense. In the absence of such notification, County shall have the right to dispose of the samples in whatever manner it deems appropriate.

10. RIGHTS AND REMEDIES OF COUNTY FOR DEFAULT:

- A) In case of default by vendor, the County may procure the articles or service from another source and may recover the cost difference and related expenses occasioned thereby from any unpaid balance due the vendor or by proceeding against performance bond of the

vendor, if any, or by suit against the vendor. The prices paid by the County shall be considered the prevailing market price at the time such purchase is made.

- B) Articles or services, which upon delivery inspection do not meet specifications, will be rejected and the vendor will be considered in default. Vendor shall reimburse County for expenses related to delivery of non-specified goods or services.
- C) Regardless of F.O.B. point, vendor agrees to bear all risks of loss, injury or destruction to goods and materials ordered herein which occur prior to delivery and such loss, injury or destruction shall not release vendor from any obligation hereunder.

11. DISCOUNTS:

Terms of less than fifteen (15) days for cash payment will be considered as net in evaluating this bid. A discount for payment within fifteen (15) days or more will be considered in determining the award of bid. Discount period will commence either the later of delivery or receipt of invoice by the County. Standard terms are Net forty-five (45) days.

12. SPECIAL CONDITIONS IN BID SCHEDULE SUPERSEDE GENERAL CONDITIONS:

The "General Conditions" provisions of this RFP/RFQ shall be superseded if in conflict with any other section of this bid, to the extent of any such conflict.

13. SPECIAL REQUIREMENT:

With the invoice or within twenty-five (25) days of delivery, the seller must provide to the County a Material Safety Data Sheet for each product, which contains any substance on "The List of 800 Hazardous Substances", published by the State Director of Industrial Relations. (See Hazardous Substances Information and Training Act, California State Labor Code Sections 6360 through 6399.7.)

14. RECYCLED PRODUCTS/MATERIALS:

Vendors are encouraged to provide and quote (with documentation) recycled or recyclable products/materials which meet stated specifications.

15. YEAR COMPLIANCE WARRANTY:

Vendor warrants that any product furnished pursuant to this Agreement/order shall support a four-digit year format and be able to accurately process date and time data from, into and between the twentieth and twenty-first centuries, as well as leap year calculations. "Product" shall include, without limitation, any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein. This warranty shall survive termination or expiration of this Agreement.

In the event of any decrease in product functionality or accuracy related to time and/or date data related codes and/or internal subroutines that impede the product from operating correctly using dates beyond December 31, 1999, vendor shall restore or repair the product to the same level of functionality as warranted herein, so as to minimize interruption to County's ongoing business process, time being of the essence. In the event that such warranty compliance requires the acquisition of additional programs, the expense for any such associated or additional acquisitions, which may be required, including, without limitation, data conversion tools, shall be borne exclusively by vendor. Nothing in this warranty shall be construed to limit any rights or remedies the County may otherwise have under this Agreement with respect to defects other than year performance.

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### 16. PARTICIPATION:

Bidder may agree to extend the terms of the resulting contract to other political subdivision, municipalities and tax-supported agencies.

Such participating Governmental bodies shall make purchases in their own name, make payment directly to bidder, and be liable directly to the bidder, holding the County of Fresno harmless.

### 17. CONFIDENTIALITY:

All services performed by vendor shall be in strict conformance with all applicable Federal, State of California and/or local laws and regulations relating to confidentiality, including but not limited to, California Civil Code, California Welfare and Institutions Code, Health and Safety Code, California Code of Regulations, Code of Federal Regulations.

Vendor shall submit to County's monitoring of said compliance.

Vendor may be a business associate of County, as that term is defined in the "Privacy Rule" enacted by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). As a HIPAA Business Associate, vendor may use or disclose protected health information ("PHI") to perform functions, activities or services for or on behalf of County as specified by the County, provided that such use or disclosure shall not violate HIPAA and its implementing regulations. The uses and disclosures of PHI may not be more expansive than those applicable to County, as the "Covered Entity" under HIPAA's Privacy Rule, except as authorized for management, administrative or legal responsibilities of the Business Associate.

Vendor shall not use or further disclose PHI other than as permitted or required by the County, or as required by law without written notice to the County.

Vendor shall ensure that any agent, including any subcontractor, to which vendor provides PHI received from, or created or received by the vendor on behalf of County, shall comply with the same restrictions and conditions with respect to such information.

### 18. APPEALS:

Appeals must be submitted in writing within seven (7) working days after notification of proposed recommendations for award. A "Notice of Award" is not an indication of County's acceptance of an offer made in response to this RFP/RFQ. Appeals should be submitted to County of Fresno Purchasing, 4525 E. Hamilton Avenue, Fresno, California 93702-4599. Appeals should address only areas regarding RFP contradictions, procurement errors, quotation rating discrepancies, legality of procurement context, conflict of interest, and inappropriate or unfair competitive procurement grievance regarding the RFP/RFQ process.

Purchasing will provide a written response to the complainant within seven (7) working days unless the complainant is notified more time is required.

If the protesting bidder is not satisfied with the decision of Purchasing, he/she shall have the right to appeal to the Purchasing Agent/CAO within seven (7) working days after Purchasing's notification; except if, notified to appeal directly to the Board of Supervisors at the scheduled date and time.

If the protesting bidder is not satisfied with Purchasing Agent/CAO's decision, the final appeal is with the Board of Supervisors.

### 19. OBLIGATIONS OF CONTRACTOR:

A) CONTRACTOR shall perform as required by the ensuing contract. CONTRACTOR also warrants on behalf of itself and all subcontractors engaged for the performance of the ensuing contract

that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder.

B) CONTRACTOR shall obey all Federal, State, local and special district laws, ordinances and regulations.

### 20. AUDITS & RETENTION:

The Contractor shall maintain in good and legible condition all books, documents, papers, data files and other records related to its performance under this contract. Such records shall be complete and available to Fresno County, the State of California, the federal government or their duly authorized representatives for the purpose of audit, examination, or copying during the term of the contract and for a period of at least three (3) years following the County's final payment under the contract or until conclusion of any pending matter (e.g., litigation or audit), whichever is later. Such records must be retained in the manner described above until all pending matters are closed.

### 21. DISCLOSURE – CRIMINAL HISTORY & CIVIL ACTIONS:

Applies to Request for Proposal (RFP); does not apply to Request for Quotation (RFQ) unless specifically stated elsewhere in the RFQ document.

In their proposal, the bidder is required to disclose if any of the following conditions apply to them, their owners, officers, corporate managers and partners (hereinafter collectively referred to as "Bidder"):

- Within the three-year period preceding the proposal, they have been convicted of, or had a civil judgment rendered against them for:
  - fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction;
  - violation of a federal or state antitrust statute;
  - embezzlement, theft, forgery, bribery, falsification, or destruction of records; or
  - false statements or receipt of stolen property

Within a three-year period preceding their proposal, they have had a public transaction (federal, state, or local) terminated for cause or default.

### 22. DATA SECURITY:

Individuals and/or agencies that enter into a contractual relationship with the COUNTY for the purpose of providing services must employ adequate controls and data security measures, both internally and externally to ensure and protect the confidential information and/or data provided to contractor by the COUNTY, preventing the potential loss, misappropriation or inadvertent access, viewing, use or disclosure of COUNTY data including sensitive or personal client information; abuse of COUNTY resources; and/or disruption to COUNTY operations.

Individuals and/or agencies may not connect to or use COUNTY networks/systems via personally owned mobile, wireless or handheld devices unless authorized by COUNTY for telecommuting purposes and provide a secure connection; up to date virus protection and mobile devices must have the remote wipe feature enabled. Computers or computer peripherals including mobile storage devices may not be used (COUNTY or Contractor device) or brought in for use into the COUNTY's system(s) without prior authorization from COUNTY's Chief Information Officer and/or designee(s).

No storage of COUNTY's private, confidential or sensitive data on any hard-disk drive, portable storage device or remote storage installation unless

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encrypted according to advance encryption standards (AES of 128 bit or higher).

The COUNTY will immediately be notified of any violations, breaches or potential breaches of security related to COUNTY's confidential information, data and/or data processing equipment which stores or processes COUNTY data, internally or externally.

COUNTY shall provide oversight to Contractor's response to all incidents arising from a possible breach of security related to COUNTY's confidential client information. Contractor will be responsible to issue any notification to affected individuals as required by law or as deemed necessary by COUNTY in its sole discretion. Contractor will be responsible for all costs incurred as a result of providing the required notification.

### 23. PURCHASING LOCATION & HOURS:

Fresno County Purchasing is located at 4525 E. Hamilton Avenue (**second floor**), Fresno, CA 93702. Non-holiday hours of operation are Monday through Friday, 8:00 A.M. to 12:00 Noon and 1:00 P.M. to 5:00 P.M. PST; Purchasing is closed daily from 12:00 Noon to 1:00 P.M. The following holiday office closure schedule is observed:

January 1*	New Year's Day
Third Monday in January	Martin Luther King, Jr.'s Birthday
Third Monday in February	Washington - Lincoln Day
March 31*	Cesar Chavez' Birthday
Last Monday in May	Memorial Day
July 4*	Independence Day
First Monday in September	Labor Day
November 11*	Veteran's Day
Fourth Thursday in November	Thanksgiving Day
Friday following Thanksgiving	
December 25*	Christmas

\* When this date falls on a Saturday, the holiday is observed the preceding Friday. If the date falls on a Sunday, the holiday is observed the following Monday.

### 24. FRESNO COUNTY BOARD OF SUPERVISORS ADMINISTRATIVE POLICIES:

The link below references the Fresno County Board of Supervisors Administrative policies that will apply to this Request for Proposal.

[Click here to view](#)

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## OVERVIEW

The County of Fresno on behalf of the Department of Personnel Services is requesting proposals from qualified vendors to provide the following:

A Flexible Plan Administrator who will be responsible for administering flexible benefits for approximately 1,800 County employees. It is highly recommended that bidders have at least 5 years of experience in managing and administering flexible spending accounts, have knowledge and expertise in applicable state and federal laws and regulations that govern flexible spending, and have had provided administrative services to at least one employer with a group in excess of 500 employees for a minimum of 2 years.

Fresno County is currently in the final year of a three-year contract with All Valley Administrators, LLC (**Exhibit D**), the County's flexible benefits plan administrator. In conjunction with County policy to re-evaluate benefits vendors at the end of the three-year agreement, the County of Fresno is soliciting proposals for a contractor to provide professional services necessary to assume and administer the County's flex plan (Internal Revenue Code (IRC) Section 125) and Mass Transit and Qualified Parking Plan (IRC Section 132).

Fresno County began offering a Flexible Benefits Plan on July 1, 1988. The plan design allows County approved employee-paid health, life and disability premiums to be deducted as pre-tax dollars (flexed). Employee premiums are automatically flexed unless the employee elects not to enroll. Life and disability pre-tax premium elections must be renewed every year. In addition, the plan allows employees to flex dependent care expenses of up to \$5,000 and/or unreimbursed medical expenses of up to \$2,500 per year. These elections must be renewed prior to the beginning of each plan year.

## Current Plan Year (2014) Flexible Benefits Overview

Current Number of Eligible Employees:	o 6,524
Participants Flexing Health Premiums:	o 5,810
Flex Spending Account Participation:	o 1,777 (Health, Dependent Care, Mass Transit, Parking)
Health Spending Account:	o 1,608
Dependent Care Spending Account:	o 130
Mass Transit & Parking:	o 39
Average Claims Sent (Pay Week):	o 868 claims for \$49,937.71
Average Claims Sent (Non-Pay Week):	o 885 claims for \$42,052.41
Payroll Frequency:	o Biweekly (26 Pay Periods)
Payroll Plan Year 2015 Begin Date:	o December 8, 2014 (Enrollments must be completed by this date)
Official Plan Year: (Dates expenses must be incurred)	o January 1, 2015 – March 15, 2016 (Includes 2 ½ month grace period)
Term of Agreement:	o Three years and the option to extend the agreement for no more than two (2) additional one year periods, upon the written consent of both parties.

The County implemented the Mass Transit and Qualified Parking Plan under Section 132 in plan year 2003. These elections remain in effect until employees submit forms to change or stop deductions. Approximately 1,805 employees pay on a pre-tax basis for parking on county owned parking lots near their work locations.

A County-wide open enrollment is held on an annual basis for the flex spending account program. This is the only time employees may enroll, disenroll, or change the amount of their flex plan elections other than in cases of a qualified status change or new hires. Therefore, all literature must be available for open enrollment no later than September 12, 2014.

The County pays all costs associated with the plan. All proposed costs should be detailed and must be apportioned on a biweekly basis.



## KEY DATES

<b>RFP Issue Date:</b>	<b>June 5, 2014</b>
<b>Vendor Conference:</b> <i>Vendors are to contact Carolyn Flores at (559) 600-7110 if planning to attend vendor conference.</i>	<b>June 16, 2014 at 11:00 A.M.</b> County of Fresno Purchasing 4525 E. Hamilton Avenue, 2 <sup>nd</sup> Floor Fresno, CA 93702
<b>Deadline for Written Requests for Interpretations or Corrections of RFP:</b>	<b>June 18, 2014 at 8:00 A.M.</b> Fax No. (559) 600-7126 E-Mail: <a href="mailto:cflores@co.fresno.ca.us">cflores@co.fresno.ca.us</a>
<b>RFP Closing Date:</b>	<b>July 3, 2014 at 2:00 P.M.</b> County of Fresno Purchasing 4525 E. Hamilton Avenue, 2 <sup>nd</sup> Floor Fresno, CA 93702

## TRADE SECRET ACKNOWLEDGEMENT

All proposals received by the County shall be considered "Public Record" as defined by Section 6252 of the California Government Code. This definition reads as follows:

"...Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975."

Each proposal submitted is Public record and is therefore subject to inspection by the public per Section 6253 of the California Government Code. This section states that "every person has a right to inspect any public record".

The County will not exclude any proposal or portion of a proposal from treatment as a public record except in the instance that it is submitted as a trade secret as defined by the California Government Code. Information submitted as proprietary, confidential or under any other such terms that might suggest restricted public access will not be excluded from treatment as public record.

"Trade secrets" as defined by Section 6254.7 of the California Government Code are deemed not to be public record. This section defines trade secrets as:

"...Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data or compilation of information that is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it."

Information identified by bidder as "trade secret" will be reviewed by County of Fresno's legal counsel to determine conformance or non-conformance to this definition. Such material should be submitted in a separate binder marked "Trade Secret". Examples of material not considered to be trade secrets are pricing, cover letter, promotional materials, etc.

**INFORMATION THAT IS PROPERLY IDENTIFIED AS TRADE SECRET AND CONFORMS TO THE ABOVE DEFINITION WILL NOT BECOME PUBLIC RECORD. COUNTY WILL SAFEGUARD THIS INFORMATION IN AN APPROPRIATE MANNER.**

Information identified by bidder as trade secret and determined not to be in conformance with the California Government Code definition shall be excluded from the proposal. Such information will be returned to the bidder at bidder's expense upon written request.

Trade secrets must be submitted in a separate binder that is plainly marked "Trade Secrets."

The County shall not in any way be liable or responsible for the disclosure of any proposals or portions thereof, if they are not (1) submitted in a separate binder that is plainly marked "Trade Secret" on the outside; and (2) if disclosure is required or allowed under the provision of law or by order of Court.

Vendors are advised that the County does not wish to receive trade secrets and that vendors are not to supply trade secrets unless they are absolutely necessary.

## TRADE SECRET ACKNOWLEDGEMENT

I have read and understand the above "Trade Secret Acknowledgement."

I understand that the County of Fresno has no responsibility for protecting information submitted as a trade secret if it is not delivered in a separate binder plainly marked "Trade Secret." I also understand that all information my company submits, except for that information submitted in a separate binder plainly marked "Trade Secret," are public records subject to inspection by the public. This is true no matter whether my company identified the information as proprietary, confidential or under any other such terms that might suggest restricted public access.

Enter company name on appropriate line:

\_\_\_\_\_  
(Company Name) Has submitted information identified as Trade Secrets in a separate marked binder.\*\*

\_\_\_\_\_  
(Company Name) Has **not** submitted information identified as Trade Secrets. Information submitted as proprietary confidential or under any other such terms that might suggest restricted public access will not be excluded from treatment as public record.

### ACKNOWLEDGED BY:

\_\_\_\_\_  
Signature ( ) Telephone

\_\_\_\_\_  
Print Name and Title Date

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

\*\*Bidders brief statement that clearly sets out the reasons for confidentiality in conforming with the California Government Code definition.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## DISCLOSURE – CRIMINAL HISTORY & CIVIL ACTIONS

In their proposal, the bidder is required to disclose if any of the following conditions apply to them, their owners, officers, corporate managers and partners (hereinafter collectively referred to as "Bidder"):

- Within the three-year period preceding the proposal, they have been convicted of, or had a civil judgment rendered against them for:
  - fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction;
  - violation of a federal or state antitrust statute;
  - embezzlement, theft, forgery, bribery, falsification, or destruction of records; or
  - false statements or receipt of stolen property
- Within a three-year period preceding their proposal, they have had a public transaction (federal, state, or local) terminated for cause or default.

Disclosure of the above information will not automatically eliminate a Bidder from consideration. The information will be considered as part of the determination of whether to award the contract and any additional information or explanation that a Bidder elects to submit with the disclosed information will be considered. If it is later determined that the Bidder failed to disclose required information, any contract awarded to such Bidder may be immediately voided and terminated for material failure to comply with the terms and conditions of the award.

Any Bidder who is awarded a contract must sign an appropriate Certification Regarding Debarment, Suspension, and Other Responsibility Matters. Additionally, the Bidder awarded the contract must immediately advise the County in writing if, during the term of the agreement: (1) Bidder becomes suspended, debarred, excluded or ineligible for participation in federal or state funded programs or from receiving federal funds as listed in the excluded parties list system (<http://www.epls.gov>); or (2) any of the above listed conditions become applicable to Bidder. The Bidder will indemnify, defend and hold the County harmless for any loss or damage resulting from a conviction, debarment, exclusion, ineligibility or other matter listed in the signed Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER  
RESPONSIBILITY MATTERS--PRIMARY COVERED TRANSACTIONS**

**INSTRUCTIONS FOR CERTIFICATION**

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms covered transaction, debarred, suspended, ineligible, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

**CERTIFICATION**

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it, its owners, officers, corporate managers and partners:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
  - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (c) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Signature:

Date:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Printed Name & Title)

\_\_\_\_\_  
(Name of Agency or Company)

**VENDOR MUST COMPLETE AND RETURN WITH REQUEST FOR PROPOSAL**

**Firm:** \_\_\_\_\_

**REFERENCE LIST**

Provide a list of at least five (5) customers for whom you have recently provided similar services. Be sure to include all requested information.

Reference Name: \_\_\_\_\_ Contact: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Phone No.: ( \_\_\_\_\_ ) \_\_\_\_\_ Date: \_\_\_\_\_  
 Service Provided: \_\_\_\_\_

Reference Name: \_\_\_\_\_ Contact: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Phone No.: ( \_\_\_\_\_ ) \_\_\_\_\_ Date: \_\_\_\_\_  
 Service Provided: \_\_\_\_\_

Reference Name: \_\_\_\_\_ Contact: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Phone No.: ( \_\_\_\_\_ ) \_\_\_\_\_ Date: \_\_\_\_\_  
 Service Provided: \_\_\_\_\_

Reference Name: \_\_\_\_\_ Contact: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Phone No.: ( \_\_\_\_\_ ) \_\_\_\_\_ Date: \_\_\_\_\_  
 Service Provided: \_\_\_\_\_

Reference Name: \_\_\_\_\_ Contact: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Phone No.: ( \_\_\_\_\_ ) \_\_\_\_\_ Date: \_\_\_\_\_  
 Service Provided: \_\_\_\_\_

***Failure to provide a list of at least five (5) customers may be cause for rejection of this RFP.***

## PARTICIPATION

The County of Fresno is a member of the Central Valley Purchasing Group. This group consists of Fresno, Kern, Kings, and Tulare Counties and all governmental, tax supported agencies within these counties.

Whenever possible, these and other tax supported agencies co-op (piggyback) on contracts put in place by one of the other agencies.

Any agency choosing to avail itself of this opportunity, will make purchases in their own name, make payment directly to the contractor, be liable to the contractor and vice versa, per the terms of the original contract, all the while holding the County of Fresno harmless. If awarded this contract, please indicate whether you would extend the same terms and conditions to all tax supported agencies within this group as you are proposing to extend to Fresno County.

☐ Yes, we will extend contract terms and conditions to all qualified agencies within the Central Valley Purchasing Group and other tax supported agencies.

☐ No, we will not extend contract terms to any agency other than the County of Fresno.

---

(Authorized Signature)

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Title

**\* Note: This form/information is not rated or ranked in evaluating proposal.**



## GENERAL REQUIREMENTS

**DEFINITIONS:** The terms Bidder, Proposer, Contractor and Vendor are all used interchangeably and refer to that person, partnership, corporation, organization, agency, etc. which is offering the proposal and is identified on the Proposal Identification Sheet.

**RFP CLARIFICATION AND REVISIONS:** Any revisions to the RFP will be issued and distributed as written addenda.

**FIRM PROPOSAL:** All proposals shall remain firm for at least one hundred eighty (180) days.

**PROPOSAL PREPARATION:** Proposals should be submitted in the formats shown under "PROPOSAL CONTENT REQUIREMENTS" section of this RFP.

County of Fresno will not be held liable or any cost incurred by bidders responding to RFP.

Bidders are to bid what is specified or requested first. If unable to or unwilling to, bidder may bid alternative or option, indicating all advantages, disadvantages and their associated cost.

**SUPPORTIVE MATERIAL:** Additional material may be submitted with the proposal as appendices. Any additional descriptive material that is used in support of any information in your proposal must be referenced by the appropriate paragraph(s) and page number(s).

Bidders are asked to submit their proposals in a binder (one that allows for easy removal of pages) with index tabs separating the sections identified in the Table of Contents. Pages must be numbered on the bottom of each page.

Any proposal attachments, documents, letters and materials submitted by the vendor shall be binding and included as a part of the final contract should your bid be selected.

**TAXES:** The quoted amount must include all applicable taxes. If taxes are not specifically identified in the proposal it will be assumed that they are included in the total quoted.

**SALES TAX:** Fresno County pays California State Sales Tax in the amount of 8.225% regardless of vendor's place of doing business.

**RETENTION:** County of Fresno reserves the right to retain all proposals, excluding proprietary documentation submitted per the instructions of this RFP, regardless of which response is selected.

**ORAL PRESENTATIONS:** Each finalist may be required to make an oral presentation in Fresno County and answer questions from County personnel.

**AWARD/REJECTION:** The award will be made to the vendor offering the overall proposal deemed to be to the best advantage of the County. The County shall be the sole judge in making such determination. The County reserves the right to reject any and all proposals. The lowest bidders are not arbitrarily the vendors whose proposals will be selected. Award Notices are tentative: Acceptance of an offer made in response to this RFP shall occur only upon execution of an agreement by both parties or issuance of a valid written Purchase Order by Fresno County Purchasing.

County Purchasing will chair or co-chair all award, evaluation and contract negotiation committees.

Award may require approval by the County of Fresno Board of Supervisors.

**WAIVERS:** The County reserves the right to waive any informalities or irregularities and any technical or clerical errors in any quote as the interest of the County may require.

**TERMINATION:** The County reserves the right to terminate any resulting contract upon written notice.

**MINOR DEVIATIONS:** The County reserves the right to negotiate minor deviations from the prescribed terms, conditions and requirements with the selected vendor.

**PROPOSAL REJECTION:** Failure to respond to all questions or not to supply the requested information could result in rejection of your proposal.

**ASSIGNMENTS:** The ensuing proposed contract will provide that the vendor may not assign any payment or portions of payments without prior written consent of the County of Fresno.

**BIDDERS LIABILITIES:** County of Fresno will not be held liable for any cost incurred by vendors in responding to the RFP.

**CONFIDENTIALITY:** Bidders shall not disclose information about the County's business or business practices and safeguard confidential data which vendor staff may have access to in the course of system implementation.

**DISPUTE RESOLUTION:** The ensuing contract shall be governed by the laws of the State of California.

Any claim which cannot be amicably settled without court action will be litigated in the U. S. District Court for the Eastern District of California in Fresno, CA or in a state court for Fresno County.

**NEWS RELEASE:** Vendors shall not issue any news releases or otherwise release information to any third party about this RFP or the vendor's quotation without prior written approval from the County of Fresno.

**BACKGROUND REVIEW:** The County reserves the right to conduct a background inquiry of each proposer/bidder which may include collection of appropriate criminal history information, contractual and business associations and practices, employment histories and reputation in the business community. By submitting a proposal/bid to the County, the vendor consents to such an inquiry and agrees to make available to the County such books and records the County deems necessary to conduct the inquiry.

**ACQUISITIONS:** The County reserves the right to obtain the whole system/services/goods as proposed or only a portion of the system/services/goods, or to make no acquisition at all.

**OWNERSHIP:** The successful vendor will be required to provide to the County of Fresno documented proof of ownership by the vendor, or its designated subcontractor, upon request of the proposed programs/services/goods.

**EXCEPTIONS:** Identify with explanation, any terms, conditions, or stipulations of the RFP with which you *CAN NOT* or *WILL NOT* comply with by proposal group.

**ADDENDA:** In the event that it becomes necessary to revise any part of this RFP, addenda will be provided to all agencies and organizations that receive the basic RFP.

**SUBCONTRACTORS:** If a subcontractor is proposed, complete identification of the subcontractor and his tasks should be provided. The primary contractor is not relieved of any responsibility by virtue of using a subcontractor.

**CONFLICT OF INTEREST:** The County shall not contract with, and shall reject any bid or proposal submitted by the persons or entities specified below, unless the Board of Supervisors finds that special circumstances exist which justify the approval of such contract:

1. Employees of the County or public agencies for which the Board of Supervisors is the governing body.
2. Profit-making firms or businesses in which employees described in Subsection (1) serve as officers, principals, partners or major shareholders.
3. Persons who, within the immediately preceding twelve (12) months, came within the provisions of Subsection (1), and who were employees in positions of substantial responsibility in the area of service to be performed by the contract, or participated in any way in developing the contract or its service specifications.
4. Profit-making firms or businesses in which the former employees described in Subsection (3) serve as officers, principals, partners or major shareholders.
5. No County employee, whose position in the County enables him to influence the selection of a contractor for this RFP, or any competing RFP, and no spouse or economic dependent of such employee, shall be employees in any capacity by a bidder, or have any other direct or indirect financial interest in the selection of a contractor.
6. In addition, no County employee will be employed by the selected vendor to fulfill the vendor's contractual obligations to the County.

#### **ORDINANCE 3.08.130 – POST-SEPARATION EMPLOYMENT PROHIBITED**

No officer or employee of the County who separates from County service shall for a period of one year after separation enter into any employment, contract, or other compensation arrangement with any County consultant, vendor, or other County provider of goods, materials, or services, where the officer or employee participated in any part of the decision making process that led to the County relationship with the consultant, vendor or other County provider of goods, materials or services.

Pursuant to Government Code section 25132(a), a violation of the ordinance may be enjoined by an injunction in a civil lawsuit, or prosecuted as a criminal misdemeanor.

**EVALUATION CRITERIA:** Respondents will be evaluated on the basis of their responses to all questions and requirements in this RFP and product cost. The County shall be the sole judge in the ranking process and reserves the right to reject any or all bids. False, incomplete or unresponsive statements in connection with this proposal may be sufficient cause for its rejection.

**SELECTION PROCESS:** All proposals will be evaluated by a team consisting of representatives from appropriate County Department(s), and Purchasing. It will be their responsibility to make

the final recommendations. Purchasing will chair or co-chair the evaluation or evaluation process.

Organizations that submit a proposal may be required to make an oral presentation to the Selection Committee. These presentations provide an opportunity for the individual, agency, or organization to clarify its proposal to ensure thorough, mutual understanding.

**INDEPENDENT CONTRACTOR:** In performance of the work, duties, and obligations assumed by Contractor under any ensuing Agreement, it is mutually understood and agreed that Contractor, including any and all of Contractor's officers, agents, and employees will at all times be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venture, partner, or associate of the County. Furthermore, County shall have no right to control, supervise, or direct the manner or method by which Contractor shall perform its work and function. However, County shall retain the right to administer this Agreement so as to verify that Contractor is performing its obligations in accordance with the terms and conditions thereof. Contractor and County shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

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

**HOLD HARMLESS CLAUSE:** Contractor agrees to indemnify, save, hold harmless and at County's request, defend the County, its officers, agents and employees, from any and all costs and expenses, damages, liabilities, claims and losses occurring or resulting to County in connection with the performance, or failure to perform, by Contractor, its officers, agents or employees under this Agreement and from any and all costs and expenses, damages, liabilities, claims and losses occurring or resulting to any person, firm or corporation who may be injured or damaged by the performance, or failure to perform, of Contractor, its officers, agents or employees under this Agreement.

**SELF-DEALING TRANSACTION DISCLOSURE:** Contractor agrees that when operating as a corporation (a for-profit or non-profit corporation), or if during the term of the agreement the Contractor changes its status to operate as a corporation, members of the Contractor's Board of Directors shall disclose any self-dealing transactions that they are a party to while Contractor is providing goods or performing services under the agreement with the County. A self-dealing transaction shall mean a transaction to which the Contractor is a party and in which one or more of its directors has a material financial interest. Members of the Board of Directors shall disclose any self-dealing transactions that they are a party to by completing and signing a Fresno County Self-Dealing Transaction Disclosure Form and submitting it to the County prior to commencing with the self-dealing transaction or immediately thereafter.

**PRICE RESPONSIBILITY:** The selected vendor will be required to assume full responsibility for all services and activities offered in the proposal, whether or not they are provided directly. Further, the County of Fresno will consider the selected vendor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the

contract. The contractor may not subcontract or transfer the contract, or any right or obligation arising out of the contract, without first having obtained the express written consent of the County.

**ADDRESSES AND TELEPHONE NUMBERS:** The vendor will provide the business address and mailing address, if different, as well as the telephone number of the individual signing the contract.

**ASSURANCES:** Any contract awarded under this RFP must be carried out in full compliance with The Civil Rights Act of 1964, The Americans With Disabilities Act of 1990, their subsequent amendments, and any and all other laws protecting the rights of individuals and agencies. The County of Fresno has a zero tolerance for discrimination, implied or expressed, and wants to ensure that policy continues under this RFP. The contractor must also guarantee that services, or workmanship, provided will be performed in compliance with all applicable local, state, or federal laws and regulations pertinent to the types of services, or project, of the nature required under this RFP. In addition, the contractor may be required to provide evidence substantiating that their employees have the necessary skills and training to perform the required services or work.

#### **INSURANCE:**

Without limiting the COUNTY's right to obtain indemnification from CONTRACTOR or any third parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect, the following insurance policies or a program of self-insurance, including but not limited to, an insurance pooling arrangement or Joint Powers Agreement (JPA) throughout the term of the Agreement:

##### **A. Commercial General Liability**

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

##### **B. Automobile Liability**

Comprehensive Automobile Liability Insurance with limits for bodily injury of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per person, Five Hundred Thousand Dollars (\$500,000.00) per accident and for property damages of not less than Fifty Thousand Dollars (\$50,000.00), or such coverage with a combined single limit of Five Hundred Thousand Dollars (\$500,000.00). Coverage should include owned and non-owned vehicles used in connection with this Agreement.

##### **C. Professional Liability**

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

This coverage shall be issued on a per claim basis. Contractor agrees that it shall maintain, at its sole expense, in full force and effect for a period of three (3) years following the termination of this Agreement, one or more policies of professional liability insurance with limits of coverage as specified herein.

D. Worker's Compensation

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

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

Within thirty (30) days from the date Contractor executes this Agreement, Contractor shall provide certificates of insurance and endorsement as stated above for all of the foregoing policies, as required herein, to the County of Fresno, Personnel Services, 2220 Tulare Street, 14<sup>th</sup> Floor, Fresno, CA 93721, stating that such insurance coverage have been obtained and are in full force; that the County of Fresno, its officers, agents and employees will not be responsible for any premiums on the policies; that such Commercial General Liability insurance names the County of Fresno, its officers, agents and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned; that such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by County, its officers, agents and employees, shall be excess only and not contributing with insurance provided under Contractor's policies herein; and that this insurance shall not be cancelled or changed without a minimum of thirty (30) days advance, written notice given to County.

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

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

**AUDIT AND RETENTION:** The Contractor shall maintain in good and legible condition all books, documents, papers, data files and other records related to its performance under this contract. Such records shall be complete and available to Fresno County, the State of California, the federal government or their duly authorized representatives for the purpose of audit, examination, or copying during the term of the contract and for a period of at least three years following the County's final payment under the contract or until conclusion of any pending matter (e.g., litigation or audit), whichever is later. Such records must be retained in the manner described above until all pending matters are closed.

**DEFAULT:** In case of default by the selected bidder, the County may procure materials and services from another source and may recover the loss occasioned thereby from any unpaid balance due the selected bidder, or by any other legal means available to the County.

**BREACH OF CONTRACT:** In the event of breach of contract by either party, the other party shall be relieved of its obligations under this agreement and may pursue any legal remedies.

**CONFIDENTIALITY**

All services performed by vendor shall be in strict conformance with all applicable Federal, State of California and/or local laws and regulations relating to confidentiality, including but not limited to, California Civil Code, California Welfare and Institutions Code, Health and Safety Code, California Code of Regulations, Code of Federal Regulations.

Vendor shall submit to County's monitoring of said compliance.

Vendor may be a Business associate of County, as that term is defined in the "Privacy Rule" enacted by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). As a HIPAA Business Associate, vendor may use or disclose protected health information ("PHI") to perform functions, activities or services for or on behalf of County, as specified by the County, provided that such use or disclosure shall not violate HIPAA and its implementing regulations. The uses and disclosures of PHI may not be more expansive than those applicable to County, as the "Covered Entity" under HIPAA's Privacy Rule, except as authorized for management, administrative or legal responsibilities of the Business Associate.

Vendor shall not use or further disclose PHI other than as permitted or required by the County, or as required by law without written notice to the County.

Vendor shall ensure that any agent, including any subcontractor, to which vendor provides PHI received from, or created or received by the vendor on behalf of County, shall comply with the same restrictions and conditions with respect to such information.

**APPEALS**

Appeals must be submitted in writing within \*seven (7) working days after notification of proposed recommendations for award. A "Notice of Award" is not an indication of County's acceptance of an offer made in response to this RFP. Appeals shall be submitted to County of Fresno Purchasing, 4525 E. Hamilton Avenue 2<sup>nd</sup> Floor, Fresno, California 93702-4599. Appeals should address only areas regarding RFP contradictions, procurement errors, quotation rating discrepancies, legality of procurement context, conflict of interest, and inappropriate or unfair competitive procurement grievance regarding the RFP process.

Purchasing will provide a written response to the complainant within \*seven (7) working days unless the complainant is notified more time is required.

If the protesting bidder is not satisfied with the decision of Purchasing, he/she shall have the right to appeal to the Purchasing Agent/CAO within seven (7) working days after Purchasing's notification; except, if notified to appeal directly to the Board of Supervisors at the scheduled date and time.

If the protesting bidder is not satisfied with Purchasing Agent/CAO's decision, the final appeal is with the Board of Supervisors.

\*The seven (7) working day period shall commence and be computed by excluding the first day and including the last day upon the date that the notification is issued by the County.

**RIGHTS OF OWNERSHIP**

The County shall maintain all rights of ownership and use to all materials designed, created or constructed associated with this service/project/program.

## SPECIFIC BIDDING INSTRUCTIONS AND REQUIREMENTS

**ISSUING AGENT:** This RFP has been issued by County of Fresno, Purchasing. Purchasing shall be the vendor's sole point of contact with regard to the RFP, its content, and all issues concerning it.

**AUTHORIZED CONTACT:** All communication regarding this RFP shall be directed to an authorized representative of County Purchasing. The specific buyer managing this RFP is identified on the cover page, along with his or her telephone number, and he or she should be the primary point of contact for discussions or information pertaining to the RFP. Contact with any other County representative, including elected officials, for the purpose of discussing this RFP, its content, or any other issue concerning it, is prohibited unless authorized by Purchasing. Violation of this clause, by the vendor having unauthorized contact (verbally or in writing) with such other County representatives, may constitute grounds for rejection by Purchasing of the vendor's quotation.

The above stated restriction on vendor contact with County representatives shall apply until the County has awarded a purchase order or contract to a vendor or vendors, except as follows. First, in the event that a vendor initiates a formal protest against the RFP, such vendor may contact the appropriate individual, or individuals who are managing that protest as outlined in the County's established protest procedures. All such contact must be in accordance with the sequence set forth under the protest procedures. Second, in the event a public hearing is scheduled before the Board of Supervisors to hear testimony prior to its approval of a purchase order or contract, any vendor may address the Board.

**VENDOR CONFERENCE:** On June 16, 2014 at 11:00 A.M., a vendor's conference will be held in which the scope of the project and proposal requirements will be explained. The meeting will be held at the office of County of Fresno Purchasing, 4525 E. Hamilton (between Cedar and Maple), 2<sup>nd</sup> Floor, Fresno, California. Addendum will be prepared and distributed to all bidders only if necessary to clarify substantive items raised during the bidders' conference.

Bidders are to contact Carolyn Flores at County of Fresno Purchasing, (559) 600-7112, if they are planning to attend the conference.

**NUMBER OF COPIES:** Submit one (1) original, with two (2) \*reproducible compact disc enclosed and five (5) copies of your proposal no later than the proposal acceptance date and time as stated on the front of this document to County of Fresno Purchasing. The cover page of each document is to be appropriately marked "Original" or "Copy".

**\*Bidder shall submit two (2) reproducible compact disc (i.e.: PDF file) containing the complete proposal excluding trade secrets. Compact disc should accompany the original binder and should be either attached to the inside cover of the binder or inserted in an attached sleeve or envelope in the front of the binder to insure the disc is not misplaced.**

**INTERPRETATION OF RFP:** Vendors must make careful examination of the requirements, specifications and conditions expressed in the RFP and fully inform themselves as to the quality and character of services required. If any person planning to submit a proposal finds discrepancies in or omissions from the RFP or has any doubt as to the true meaning or interpretation, correction thereof may be requested at the scheduled Vendor Conference (see



above). Any change in the RFP will be made only by written addendum, duly issued by the County. The County will not be responsible for any other explanations or interpretations.

Questions may be submitted subsequent to the Vendor Conference, subject to the following conditions:

- a. Such questions are submitted in writing to the County Purchasing not later than June 18, 2014 at 8:00 a.m. Questions must be directed to the attention of Carolyn Flores, Buyer III.
- b. Such questions are submitted with the understanding that County can respond only to questions it considers material in nature.
- c. Questions shall be e-mailed to [countypurchasing@co.fresno.ca.us](mailto:countypurchasing@co.fresno.ca.us).

**NOTE:** The bidder is encouraged to submit all questions at the Vendor Conference. Time limitations can prevent a response to questions submitted after the conference.

**SELECTION COMMITTEE:** All proposals will be evaluated by a team co-chaired by Purchasing. All proposals will be evaluated by a review committee that may consist of County of Fresno Purchasing, department staff, community representatives from advisory boards and other members as appropriate.

The proposals will be evaluated in a multi-stage selection process. Some bids may be eliminated or set aside after an initial review. If a proposal does not respond adequately to the RFP or the bidder is deemed unsuitable or incapable of delivering services, the proposal may be eliminated from consideration. It will be the selection committee's responsibility to make the final recommendation to the Department Head.

**CONTRACT TERM:** It is County's intent to contract with the successful bidder for a term of three (3) years with the option to renew for up to two (2) additional one (1) year periods based on mutual written consent. County will retain the right to terminate the Agreement upon giving thirty (30) days advance written notification to the Contractor.

**PAYMENT:** The County of Fresno, if appropriate, may use Procurement Card to place and make payment for orders under the ensuing contract.

**AUDITED FINANCIAL STATEMENTS:** Copies of the audited Financial Statements for the last three (3) years for the business, agency or program that will be providing the service(s) proposed. If audited statements are not available, compiled or reviewed statements will be accepted with copies of three years of corresponding federal tax returns. This information is to be provided after the RFP closes, if requested. **Do not provide with your proposal.**

**CONTRACT NEGOTIATION:** The County will prepare and negotiate its own contract with the selected vendor, giving due consideration to standard contracts and associated legal documents submitted as a part of bidder's response to the RFP. The tentative award of the contract is based on successful negotiation pending formal recommendation of award. Bidder is to include in response the names and titles of officials authorized to conduct such negotiations.

**NOTICES:** All notices, payments, invoices, insurance and endorsement certificates, etc. need to be submitted as follows: referencing contract/purchase order number, department, position, title and address of administering official.

**LOCAL VENDOR PREFERENCE:** The Local Vendor Preference **does not** apply to this Request for Proposal.

## SCOPE OF WORK

The County requires the technical expertise of a third party administrator to assure compliance with all federal and state regulations and to administer the plan on a day-to-day basis.

The administrator will not be responsible for the employee and dependent health benefit plan or for any of the other qualifying and mandatory benefits other than the Flexible Spending Account.

### QUALIFICATIONS

It is recommended that bidders possess at a minimum the following qualifications:

- Five (5) years of experience managing and administering flexible spending accounts.
- Knowledge and expertise in applicable state and federal (IRS) rules, laws and regulations.
- Experience providing flexible spending account administration services to at least one employer with a group in excess of 500 employees for a minimum of two (2) years.
- The ability to provide financial statements for the last three (3) years to demonstrate financial stability (do not provide with your proposal, provide upon request).

### SCOPE OF WORK

#### A. PLAN DESIGN:

It is essential that the plan take into consideration the following elements:

1. The plan will include the present County employee benefits:

BENEFIT	DESCRIPTION
Employee and dependent health benefit plan:	The health benefit plan provides health, dental, vision and pharmaceutical benefits to most full-time and part-time employees with a portion of the cost paid by the County. Employee-paid premiums are deducted biweekly and include approximately 5,810 employees.
Group Life Insurance:	Three bargaining units have available to its members on a contributory basis \$50,000 and one bargaining unit has \$41,000 of group life insurance. Approximately 851 employees are eligible and approximately 323 employees participate in the program.
Social Security:	All County employees are covered by Social Security.
Flexible Spending Accounts:	The existing Flex (IRC Section 125, see Exhibit E) includes two spending accounts: <ol style="list-style-type: none"> <li>1. Healthcare Expenses</li> <li>2. Dependent Care Expenses.</li> </ol>
Mass Transit and Qualified Parking:	The existing Flex (IRC Section-132) includes two plans: <ol style="list-style-type: none"> <li>1. Mass Transit</li> <li>2. Qualified Parking</li> </ol> Approximately 1,805 employees pay on a pre-tax basis for parking on County lots.
The Benefits described previously require employee contribution for all or a portion of the cost.	

2. The plan will comply with all relevant federal and state laws.
3. All costs associated with the program will be apportioned on a biweekly basis.
4. The plan will be nondiscriminatory as defined by IRS regulations.
5. Plan design will minimize administrative and clerical workload for County staff. All County resources needed will be defined and described completely. (Reference - Plan Administration)
6. The plan will include only those benefits that can be funded by employees using pre-tax dollars.
7. The plan will have an established process through which employee complaints are resolved. Historically, complaints are less than 1% annually.
8. Employee access to the plan administrator is vital and will be described fully. (Reference #2, Under Plan Administration)
9. The County is requiring a three-year agreement and the option to extend the agreement for no more than two (2) additional one year periods, upon the written consent of both parties.
10. Fresno County has an existing plan document covering the IRC Section 125 Flexible Benefits Plan. The County will require the plan be amended to include any legislative changes to the plan.
11. The scope of services include providing for services through the grace period and claims run-out for each plan year being administered through the end of the agreement at no additional cost.

**B. PLAN IMPLEMENTATION:**

The flexible benefits plan administrator is required to send at minimum one (1) representative to the County's information open enrollment fairs. Essential elements with respect to plan implementation are noted below:

1. In collaboration with the County, the contractor will develop a timeline, strategies and materials for employee education and enrollment. This plan will include strategies that will effectively communicate to employee's time, location and purpose of all educational and enrollment meetings.
2. Education will include, but is not limited to group meetings; clear, concise and easily understood printed materials; individual employee consultation as required; and a comprehensive website that employees may access to obtain information.
3. There will be no products sold by the enrollment consultation staff. The plan will be presented objectively, with no pressure for employee enrollment. Employees shall be advised of possible advantages and any possible disadvantages in participating in the plan.
4. All commitments concerning the plan, activities and administration will be in writing and reviewed by the County of Fresno prior to distribution to employees. There will be sufficient contractor-provided enrollment consultation staff to provide reasonable time for employees to have their specific questions answered privately.
5. Contractor's enrollment consultants will be available to assist with plan enrollment consultation during the open enrollment period. Actual enrollment process will be performed by County staff.

6. The contractor's enrollment consultant's assisting County employees must be professional, knowledgeable and well versed in all aspects of the plan. Sales oriented staff marketing products, services or coverage outside of the County approved flexible benefits plan is strictly prohibited.
7. An annual re-enrollment program must also be detailed in the plan design.
8. All Flex Plan literature must be available for Open Enrollment by September 12, 2014 with an effective date of December 8, 2014, for plan year 2015. Dates for subsequent plan years, will be consistent with the above time frame. Actual dates will be provided to the administrator each plan year.
9. The contractor will utilize technology to allow access to claims information and/or submission of claims online and through mobile devices while also having the proper security in place to protect confidential information.

**C. PLAN ADMINISTRATION:**

Listed below are critical expectations with respect to plan administration:

1. Administrator will match the County's current level of benefits. The administrator will keep the County informed of all enhancements to the flexible spending account.
2. Administrator will provide plan participants access to their staff for inquiries and problem resolution, to include but not be limited to, toll free phone number, e-mail, and open enrollment fairs.
3. Reimbursements to employees will be made on a defined schedule and will occur at least two (2) times per week, (currently Tuesdays and Fridays).
4. Administrator will assume fiduciary accounting responsibility and prepare all accounting and reporting required by state and federal law as well as requests made by County management.
5. Administrator will maintain individual accounts for all participants crediting biweekly contributions to each account and debiting periodic payments against those accounts according to authorizations signed by the County and/or participants. Any missed biweekly contributions discovered by the Administrator shall be reported to the County as soon as possible and Administrator shall revoke the individual's account and notify the County.
6. Administrator shall be responsible for notifying participants who terminate participation and have a negative balance in their account. Notification should identify what the negative balance is and provide a chance for the participant to pay the County the amount. The County shall be notified of the notification and payments shall be made to the County.
7. Account Statements (Two Pricing Options). The County currently provides statements to employees consistent with option 1 below. However, bidders are required to submit pricing under both of the options below.
  - a. Option 1: Each quarter the administrator will provide participants accurate and timely account statements reflecting approved transactions. During the last quarter of the plan year, statements will be provided monthly. Employees will be given the opportunity to sign up for paperless statements.
  - b. Option 2: Statements will be made available online monthly. During the last quarter of the plan year, electronic notifications will notify employees of statements available online. Employees will be given the opportunity to sign up for paper statements.

8. Each month the Administrator will provide the County electronic fund account statements including reconciliation statements detailing receipts and disbursements of the plan; check listings, and participant summary report.
9. Administrator will monitor plan utilization and assure that the plan remains nondiscriminatory within the definition of IRS regulations.
10. Administrator will train County staff with respect to any activities required in support of flex plan administration.
11. Administrator will provide debit card option that allows plan participants the ability to utilize the card at the point of sale for purchases of qualified items.
12. Administrator will work with the County to increase participation in the Flex IRC Section 132 Mass Transit and qualified Parking Plans through education and communication materials.
13. Consistent with the County's protocol as it relates to security, the Administrator must provide a public key to allow for information to be encrypted to be transmitted securely.

**B. Employee Communication (See Exhibit A for current year materials):**

1. Describe the strategies and methods by which information covering the proposed programs will be communicated to employees, both initially and on an ongoing basis.
2. Proposals are expected to provide prepared communications materials which provide an example of the type of material you will use in communicating the County flex plan; please include copies and addresses or links to sample websites.
3. Proposals are expected to explain how the vendor will maximize the use of technology for easy submission of claims, checking account balances and communication.

**C. Enrollment Process (See Exhibit B for current sample of enrollment form):**

1. Describe your enrollment consultation services, both at implementation of the flex plan and at annual re-enrollment, and the role the County will be expected to assume in the process.
2. Describe your procedures and process for providing enrollment consultation services for enrolling new employees in the Flex Benefit plan.

**D. Implementation Schedule**

Describe the steps necessary to implement the proposed program, the timetable proposed for each step, and the party(ies) responsible for each step from the date that a formal contract is fully executed.

**E. Payment for Benefits and Plan Administration**

Participants requesting a reimbursement of an expense must provide proof of the expense to the administrator. The current administrator issues a check that is mailed directly to the participant, or utilizes direct deposit upon the participant's request. Employees also currently have the option of signing up for a debit card that is loaded with their annual election for health care expenses, and their biweekly dependent care contributions are deposited to the card each pay day. Employees who utilize the debit card have online access to their account information.

1. Describe the process for transmitting biweekly employee contributions from the County to the administrator.

2. Describe the accounting methods and reports you will use to administer this plan. Include the frequency of the reports and indicate who will receive each type of report.
3. Describe the process for payment of benefits which do not conform to a periodic premium schedule, e.g., child care expenses. Include the procedures for authorization of payments, issuance of checks, verification of services received, and the expected turnaround time for checks to be issued.
4. Describe the system you propose for changes in benefit payments, such as a change in the level of ongoing costs or a new provider of a specified service.
5. Describe the internal controls in your accounting system, if any, that limit the purposes for which expenditures will be allowed from a participant's account.
6. Describe the tracking and handling of stale dated checks (not cashed within 6 months).

F. County Resources Necessary

Describe the County resources necessary to operate the flexible benefit plan as you would administer it. The County currently maintains eligibility of the program, processes the biweekly premiums, prepares the biweekly deduction report, and reports who is eligible to participate.

1. Of the functions the County performs mentioned above, are there any you expect to assume as it pertains to plan participants?
2. What new responsibilities must be fulfilled from County resources?
3. Describe the information you anticipate requiring from the County's payroll system. Include the resources the County must provide and the support you will provide. Describe any modifications or changes to the County payroll system to accommodate your system needs. (Reference H-2)

G. Backup System

The successful bidder will be able to demonstrate the availability of a backup system in the event of destruction of the primary system so that administration and accounting for the flex plan would not be disrupted by fire, equipment failure, or other catastrophe.

H. Other

1. Payroll versus Plan Year – Fresno County's payroll year begins December 8, 2014 for purposes of flex plan deductions (see **Exhibit C** – Biweekly Pay Calendar). The official "plan" year will begin January 1, 2015 as defined by the IRS. Spending account claims must be incurred during the calendar year beginning January 1 and ending December 31 per section 125 regulations. Participants with monies remaining in their account after December 31 may take advantage of a grace period for expenses incurred through March 15 of the following year. Participants will have until May 15 of the year following the plan year to submit receipts to the administrator for reimbursement.
2. Fresno County utilizes the PeopleSoft HRMS system. Fresno County is able to accommodate providing payroll deduction information to the administrator via secure data exchange on a bi-weekly basis (reports include pay period ending date, participants name, employee id number and the bi-weekly amount deducted). Information will be transmitted from one centralized County department. Your proposal response should specifically detail the secure process in which data will be exchanged securely.

## COST PROPOSAL

- A. Please show the fee you propose to charge based upon an eligible County work force of approximately 6,545 employees. Indicate the enrollment fee, biweekly cost and total annual cost based upon the expected number of participants on a per-participant basis. Include the bi-weekly fee per individual employee and in the appropriate box provided include the calculation based on the number of current participant's enrollment.

### Option 1- paper statements

	<b>Section 125 and 129 Health Spending Accounts/DCAP 1,738 participants</b>	<b>Section 132, Transit/Parking Plan39 participants</b>	<b>Fee proposed for administering both Plans</b>
Enrollment Fee for eligible employees (Fee if any \$_____)			
Biweekly Administration Fee for participants (Fee \$_____)			
Total Annual Administration Cost			

### Option 2- on-line statements

	<b>Section 125 and 129 Health Spending Accounts/DCAP 1,738 participants</b>	<b>Section 132, Transit/Parking Plan 39 participants</b>	<b>Fee proposed for administering both Plans</b>
Enrollment Fee for eligible employees (Fee if any \$_____)			
Biweekly Administration Fee for participants (Fee \$_____)			
Total Annual Administration Cost			

- B. Please detail any and all other possible charges/expenses/fees applicable to the administration of the programs or plan document amendment.

## PROPOSAL CONTENT REQUIREMENTS

**It is important that the vendor submit his/her proposal in accordance with the format and instructions provided under this section. Doing so will facilitate the evaluation of the proposal. It will limit the possibility of a poor rating due to the omission or mis-categorization of the requested information. Responding in the requested format will enhance the evaluation team's item by item comparison of each proposal item. The vendor's proposal may be placed at a disadvantage if submitted in a format other than that identified below.**

Bidders are requested to submit their proposals in a binder (one that allows for easy removal of pages) with index tabs separating the sections identified. Each page should be numbered.

**Each binder is to be clearly marked on the cover with the proposal name, number, closing date, "Original" or "Copy", and bidder's name.**

Merely offering to meet the specifications is insufficient and will not be accepted. Each bidder shall submit a complete proposal with all information requested. Supportive material may be attached as appendices. All pages, including the appendices, must be numbered.

**Vendors are instructed not to submit confidential, proprietary and related information within the request for proposal. If you are submitting trade secrets, it must be submitted in a separate binder clearly marked "TRADE SECRETS", see Trade Secret Acknowledgement section.**

The content and sequence of the proposals will be as follows:

- I. RFP PAGE 1 AND ADDENDUM(S) PAGE 1 (IF APPLICABLE) completed and signed by participating individual or agency.
- II. COVER LETTER: A one-page cover letter and introduction including the company name and address of the bidder and the name, address and telephone number of the person or persons to be used for contact and who will be authorized to make representations for the bidder.
  - A. Whether the bidder is an individual, partnership or corporation shall also be stated. It will be signed by the individual, partner, or an officer or agent of the corporation authorized to bind the corporation, depending upon the legal nature of the bidder. A corporation submitting a proposal may be required before the contract is finally awarded to furnish a certificate as to its corporate existence, and satisfactory evidence as to the officer or officers authorized to execute the contract on behalf of the corporation.
- III. TABLE OF CONTENTS
- IV. CONFLICT OF INTEREST STATEMENT: The Contractor may become involved in situations where conflict of interest could occur due to individual or organizational activities that occur within the County. In this section the bidder should address the potential, if any, for conflict of interest and indicate plans, if applicable, to address potential conflict of interest. This section will be reviewed by County Counsel for compliance with conflict of interest as part of the review process. The Contractor shall comply with all federal, state and local conflict of interest laws, statutes and regulations.



V. TRADE SECRET:

A. Sign where required.

VI. CERTIFICATION – DISCLOSURE – CRIMINAL HISTORY & CIVIL ACTIONS

VII. REFERENCES

VIII. PARTICIPATION

IX. EXCEPTIONS: This portion of the proposal will note any exceptions to the requirements and conditions taken by the bidder. If exceptions are not noted, the County will assume that the bidder's proposals meet those requirements. The exceptions shall be noted as follows:

- A. Exceptions to General Conditions.
- B. Exceptions to General Requirements.
- C. Exceptions to Specific Terms and Conditions.
- D. Exceptions to Scope of Work.
- E. Exceptions to Proposal Content Requirements.
- F. Exceptions to any other part of this RFP.

X. VENDOR COMPANY DATA: This section should include:

- A. A narrative which demonstrates the vendor's basic familiarity or experience with problems associated with this service/project.
- B. Descriptions of any similar or related contracts under which the bidder has provided services.
- C. Descriptions of the qualifications of the individual(s) providing the services.
- D. Any material (including letters of support or endorsement) indicative of the bidder's capability.
- E. A brief description of the bidder's current operations, and ability to provide the services.
- F. Copies of the audited Financial Statements for the last three (3) years for the agency or program that will be providing the service(s) proposed. If audited statements are not available, compiled or reviewed statements will be accepted with copies of three years of corresponding federal tax returns. This information is to be provided after the RFP closes, if requested. **Do not provide with your proposal.**

- G. Describe all contracts that have been terminated before completion within the last five (5) years:
  - 1. Agency contract with
  - 2. Date of original contract
  - 3. Reason for termination
  - 4. Contact person and telephone number for agency
- H. Describe all lawsuit(s) or legal action(s) that are currently pending; and any lawsuit(s) or legal action(s) that have been resolved within the last five (5) years:
  - 1. Location filed, name of court and docket number
  - 2. Nature of the lawsuit or legal action
- I. Describe any payment problems that you have had with the County within the past three (3) years:
  - 1. Funding source
  - 2. Date(s) and amount(s)
  - 3. Resolution
  - 4. Impact to financial viability of organization.

XI. SCOPE OF WORK:

- A. Bidders are to use this section to describe the essence of their proposal.
- B. This section should be formatted as follows:
  - 1. A general discussion of your understanding of the project, the Scope of Work proposed and a summary of the features of your proposal.
  - 2. A detailed description of your proposal as it relates to each item listed under the "Scope of Work" section of this RFP. Bidder's response should be stated in the same order as are the "Scope of Work" items. Each description should begin with a restatement of the "Scope of Work" item that it is addressing. Bidders must explain their approach and method of satisfying each of the listed items.
- C. When reports or other documentation are to be a part of the proposal a sample of each must be submitted. Reports should be referenced in this section and submitted in a separate section entitled "REPORTS."
- D. A complete description of any alternative solutions or approaches to accomplishing the desired results.

XII. COST PROPOSAL: Quotations may be prepared in any manner to best demonstrate the worthiness of your proposal. Include details and rates/fees for all services, materials, equipment, etc. to be provided or optional under the proposal.

XIII. CHECK LIST

## AWARD CRITERIA

### **Fees**

Include all fees associated with your administration in the "Cost Proposal" section.

### **Enrollment**

Education/Resources - Looking for an administrator who has the ability to offer education/resources to expand participation. Currently there are 6,524 employees eligible to enroll and 1,777 are currently participating.

### **Claim Reimbursement**

Currently, reimbursements occur 2 times weekly.

### **Experience/Knowledge/Technology**

Searching for an administrator with extensive experience in flex benefits administration and is thoroughly knowledgeable in State and Federal regulations that govern flexible benefits while utilizing appropriate available technology to administer the program.

### **COST**

A. As submitted under the "COST PROPOSAL" section.

### **CAPABILITY AND QUALIFICATIONS**

- A. Do the service descriptions address all the areas identified in the RFP? Will the proposed services satisfy County's needs and to what degree?
- B. Does the bidder demonstrate knowledge or awareness of the problems associated with providing the services proposed and knowledge of laws, regulations, statutes and effective operating principles required to provide this service?
- C. The amount of demonstrated experience in providing the services desired in a California County.

### **MANAGEMENT PLAN**

- A. Is the organizational plan and management structure adequate and appropriate for overseeing the proposed services?

## CHECK LIST

This Checklist is provided to assist vendors in the preparation of their RFP response. Included in this list, are important requirements and is the responsibility of the bidder to submit with the RFP package in order to make the RFP compliant. Because this checklist is just a guideline, the bidder must read and comply with the RFP in its entirety.

*Check off each of the following:*

1. \_\_\_\_\_ The Request for Proposal (RFP) has been signed and completed.
2. \_\_\_\_\_ Addenda, if any, have been completed, signed and included in the bid package.
3. \_\_\_\_\_ **One (1) original plus five (5) copies** of the RFP have been provided.
4. \_\_\_\_\_ The completed *Trade Secret Form* as provided with this RFP (Confidential/Trade Secret Information, if provided must be in a separate binder).
5. \_\_\_\_\_ The completed *Criminal History Disclosure Form* as provided with this RFP.
6. \_\_\_\_\_ The completed *Participation Form* as provided with this RFP.
7. \_\_\_\_\_ The completed *Reference List* as provided with this RFP.
8. \_\_\_\_\_ Indicate all of bidder exceptions to the County's requirements, conditions and specifications as stated within this RFP.
9. \_\_\_\_\_ Lastly, on the **LOWER LEFT HAND CORNER** of the sealed envelope, box, etc. transmitting your bid include the following information:

County of Fresno RFP No.	<u>964-5279</u>
Closing Date:	<u>July 3, 2014</u>
Closing Time:	<u>2:00 P.M.</u>
Commodity or Service:	<u>Flex Plan Administrator</u>

**Return Checklist with your RFP response.**

## EXHIBIT A

Flexible Benefit Plan 2014 Booklet

# 2014 Flex Spending Accounts



PERSONNEL SERVICES  
EMPLOYEE BENEFITS

## ENROLL IN FLEX TODAY!

Sign up for a Flexible Spending Account (FSA) and keep more of the money you've earned.

- HEALTHCARE EXPENSES
- DEPENDENT CARE EXPENSES
- PARKING EXPENSES
- TRANSIT EXPENSES

It's your money.  
Why not keep more of it?  
**WITH AN FSA YOU CAN**



ALL VALLEY ADMINISTRATORS, LLC

Don't Think A  
Flexible Spending Account  
Is Right For You?

# Think Again



Save time,  
money and  
paperwork!

With the All  
Valley  
Administrators  
Benny™ Prepaid  
Benefits Card,  
your FSAs are:

**Cash-flow friendly** –  
No cash to pay  
at the time of  
purchase

**Easy** – Simply a swipe  
of the Card

**Convenient** – No  
forms to fill out

**Fast** – Funds auto-  
matically deducted  
from your FSA

**Simple to track** –  
Your current balance  
available online 24/7

What are YOU  
waiting for?

Sign up now and let  
your savings begin!

## An FSA adds spendable income.

Let's face it, you work hard for your money and you want to keep as much of it as you can. An FSA helps you do just that!

You can elect to have your annual health care, dependent care, work related mass transit and work related parking contributions deducted from your paycheck each pay period in equal installments throughout the year – before Federal Income, State Income and Social Security taxes are taken out. **So every dollar you put in your FSAs is tax-free, spendable income.**

## Tax Saving Options!

- Out of Pocket Healthcare expenses. Your tax-free Healthcare FSA dollars are ready to pay for health-related, out-of-pocket costs not covered by your insurance for you, and for your spouse and dependents - things like copayments, deductibles, prescriptions, dental bills and vision expenses. And don't forget eligible over-the-counter (OTC) items\*. Even if your annual health care expenses are just a few hundred dollars, an FSA can keep more money in your wallet. The maximum for the Healthcare FSA will be \$2,500.00 for each spouse in a plan.
- Out of Pocket Dependent Care expenses. You can use a Dependent Care Flexible Spending Account to pay for eligible dependent care expenses that allow you (and your spouse if you're married) to work, look for work, or attend school full-time. The maximum for the Dependent Care FSA will be **\$5,000** (\$2,500 each, if you are married and file your taxes separately) each year.
- Out of Pocket Qualified Transit expenses. Your tax-free transit expense dollars can be used for those expenses directly related to your commute to work such as bus vouchers, tokens and passes, van-pooling and commuter rail expenses. You may elect up to **\$245** each month.
- Out of Pocket Qualified Parking expenses. You can use your parking reimbursement dollars for expenses directly related to your commute to work including parking costs associated with a lot at or near your place of work and parking costs associated with a lot at or near a place you commute from to your work. **Note:** you cannot include costs already deducted from your paycheck for the parking conversion benefit offered by the County. You may elect up to **\$245** each month.

# And how do you get your Benny?

Sign up for the Flexible Spending Account(s) today and elect the Debit Card Option on your enrollment form(s).

## And how do you sign up?

Enroll online during annual open enrollment from

**October 21, 2013** to **November 8, 2013** by logging into

<http://www.co.fresno.ca.us/openenrollment> or by filling out an enrollment form(s) during the designated enrollment period or within 30 days of your employment date.

For additional information see the FAQ section or contact:

All Valley  
Administrators  
(559) 447-1600  
or  
Employee Benefits  
(559) 600-1810

- Out of Pocket Health Insurance Premiums. These premium contributions are automatically deducted pre-tax (flexed). If you would like to decline this tax savings benefit, you must complete a health enrollment form and check the box at the bottom.
- Cigna Disability Premiums. These premiums can be flexed pre-tax only for unrepresented and Unit 30 employees enrolled in Cigna disability.
- Supplemental Life Insurance Premiums. These premiums can be flexed pre-tax only for employees in Units 19, 22, 30 and 36.

## Your FSA includes Benny™, the fast and easy way to access your account.

FSAs are a good idea, and here's a feature that makes them even better – the Benny™ Prepaid Benefits Card. The Card contains the annual value of your elected Healthcare FSA or incremental contributions of your Dependent Care, Qualified Mass Transit or Qualified Parking account(s), so you can use Benny to pay for eligible out-of-pocket expenses based on the Flexible Spending Accounts you elect.

## Say hello to Benny and good-bye to “paying twice.”

Using the Card helps you keep cash in your wallet. You won't “pay twice” with the Card – first from your paycheck into your FSA and then again at the time of purchase. You'll have no claim forms to complete and you won't have to wait to get a check in the mail. You can check balances or account details online anytime, or with a quick phone call.

Simply swipe your Card and the amount of your eligible expense will be automatically deducted from your account. And, there are now tens of thousands of merchant locations where you can use the Card for eligible out-of-pocket expenses.

## An FSA is a valuable benefit – and the Card can make it even better. Now's the time to enroll!



\* Effective 1/1/11, the list of eligible OTC items has changed per the Affordable Care Act of 2010 (H.R. 3590).

\*\*Effective 1/1/2013 the maximum pre-tax amount you can set aside in a Health Care FSA has changed per the Affordable Care Act of 2010 (H.R. 3590) U.S.C. § 1.125(i).



# 2014 Plan Overview

## Flexible Spending Accounts



### IMPORTANT PROGRAM INFORMATION TO REMEMBER

- If you are not currently enrolled in an FSA because your spouse holds the account, then you need to sign up for an FSA as well and coordinate your contributions so they are each within the \$2,500 limit. If you are the current FSA accountholder for the household, then you need to make sure your spouse also enrolls, mindful of the \$2,500 individual maximum. Now with you and your spouse each contributing up to \$2,500 to individual FSAs, you will have up to \$5,000 to spend.
- Eligible healthcare and dependent care expenses must be incurred between January 1, 2014 to December 31, 2014 to be eligible for reimbursement from your 2014 account/s balances as an active employee.
- Your Healthcare and Dependent care FSA has a grace period. You will have until **March 15, 2015** to use any unused funds left in your 2014 Healthcare and/or Dependent care FSA account(s). Make sure you check your balances often so you utilize those funds first, before spending any of your elected 2015 funds. If you utilize the Benny© Prepaid MasterCard® for your expenses, the card will automatically apply any purchases made during the grace period to the remaining balance in your 2014 plan year account, prior to utilizing your new 2015 election balance. All claims for healthcare and/or dependent care FSAs for the 2014 plan year must be sent to All Valley Administrators no later than **May 15, 2015** for reimbursement out of your 2014 plan year account. After May 15<sup>th</sup>, 2015 any monies remaining in your 2014 account will be forfeited.
- You must enroll each plan year to participate in the Healthcare and Dependent care FSA. It is very important to carefully estimate your expenses when completing the 2014 healthcare and/or dependent care FSA enrollment, as regulations require that your election be binding for the entire plan year unless you have a Qualified Status Change such as a marriage or divorce.
- Qualified transportation FSA deduction amounts for your parking and/or transit related expenses for work can be enrolled for or changed anytime. The maximum amount of time you have to submit a claim for reimbursement is 90 days after the expense is incurred. Any unused/unclaimed monies in your accounts are rolled over each month during the plan year for future use and rolled over 90 days after the end of the plan year, on April 1, 2015, for use in the next plan year.
- Participants can visit their personal account website at <https://hrbenefitsdirect.com/AVA> and view their account activity, get current balances and file claims online, 24 hours a day, 7 days a week. Or they can call All Valley Administrators at (559) 447-1600 or the phone number on the back of their Benny© Prepaid MasterCard® for assistance during regular business hours.
- Participants and their other eligible users should always save itemized receipts for purchases on their Benny MasterCard® as they may be asked to submit them as substantiation to comply with IRS guidelines.

# 2014 Plan Overview

## Why have a Flex Spending Account?



**You work hard for your paycheck, and we want you to keep as much of it as you can.**

An FSA is a valuable benefit the County of Fresno offers. With an FSA, every dollar you set aside saves you on taxes and increases your spendable income. Those pre-tax dollars pay for employee portions of health insurance premiums, qualified dependent care and qualified healthcare-related, out-of-pocket costs not covered by your insurance. You elect to have your annual contribution deducted from your paycheck each pay period, in equal installments throughout the year – before Federal Income, State Income (in most cases) and Social Security taxes are taken out. So, when tax season rolls around, you won't be taxed on the amount you set aside through your FSA.

### **Already have an FSA?**

Perhaps now's the time to increase your contribution. You have the opportunity to elect a new amount each year at open enrollment. **Sign up today**, and let the savings begin! Contact All Valley Administrators for more information about the program.

### ***Here are examples of how you can save:***

**Healthcare FSA**-The average family of four in the U.S. can expect to pay around \$3,600 on out of pocket healthcare expenses like office visits, prescription copayments, dental care, new glasses – or an unexpected hospital stay.

<i><b>Out of Pocket Healthcare Expenses</b></i>	<i><b>Annual Average</b></i>	<i><b>Taxes Saved (27% Tax Bracket)</b></i>
Physician	\$1,151	\$311
Inpatient Hospital	\$1,157	\$312
Pharmacy	\$576	\$156
Outpatient Hospital	\$581	\$157
Other	\$135	\$36
<b>Total</b>	<b>\$3,600</b>	<b>\$972</b>

*Out-of-Pocket expenses through member cost sharing at time of service. Per Milliman Medical Index 2013, published May 2013*

**Dependent Care FSA**-Families often need help with child and elder care. Make child and elder care more cost effective with a Dependent Care FSA, it lets you save on dependent care expenses using pre-tax dollars. You can spend your Dependent Care FSA funds on a wide range of care for eligible members of your family. Some of the expenses covered include child day care, babysitting, before-and-after school programs, sick child care and senior day care.

<i><b>Dependent Care Expenses</b></i>	<i><b>Annual Average</b></i>	<i><b>Taxes Saved (27% Tax Bracket)</b></i>
Day	\$4,220	\$1,139
Summer Day Camp	\$780	\$210
<b>Total</b>	<b>\$5,000</b>	<b>\$1,349</b>

**If the annual average costs were put into an FSA before taxes,  
the family could save over \$2,321 per year!**

# 2014 Plan Overview

## Guidelines to Purchase Over the Counter Products



The Affordable Care Act of 2010 changed the rules for the purchase of over the counter (OTC) products using your Healthcare Flexible Spending Account (FSA) pre-tax funds.

1. FSA funds can **no longer be used to purchase OTC medicines and drugs** unless the medicine or drug is prescribed. A “prescription” means a written or electronic order for a medicine or drug that meets the legal requirements of a prescription in the state in which the medical expense is incurred and that is issued by an individual who is legally authorized to issue a prescription in that state.

The OTC drugs and medicines affected include items in the following categories:

- Acid controllers
- Acne medications
- Allergy & sinus
- Antibiotic products
- Antifungal (Foot)
- Antiparasitic treatments
- Antiseptics & wound cleansers
- Anti-diarrheals
- Anti-gas
- Anti-itch & insect bite
- Baby rash ointments & creams
- Baby teething pain
- Cold sore remedies
- Contraceptives
- Cough, cold & flu
- Denture pain relief
- Digestive aids
- Ear care
- Eye care
- Feminine antifungal & anti-itch
- Fiber laxatives (bulk forming)
- First aid burn remedies
- Foot care treatment
- Hemorrhoidal preps
- Homeopathic remedies
- Incontinence protection & treatment products
- Laxatives (non-fiber)
- Medicated nasal sprays, drops, & inhalers
- Medicated respiratory treatments & vapor products
- Motion sickness
- Oral remedies or treatments
- Pain relief (includes aspirin)
- Skin treatments
- Sleep aids & sedatives
- Smoking deterrents
- Stomach remedies
- Unmedicated nasal sprays, drops & inhalers
- Unmedicated vapor products

2. If you have a prescription for an OTC medicine or drug, **you can use your Benny Prepaid Benefits Card for this purchase as long as the prescription is filled by the pharmacist with an Rx number assigned. If your OTC prescription is not filled by a pharmacist, you must pay out of pocket and submit a manual claim requesting reimbursement, along with a copy of the prescription, to All Valley Administrators.**
3. You can continue to use your FSA funds to purchase eligible OTC items that are not considered a medicine or drug (e.g. bandages, splints, contact lens solution, etc.) Please note that **insulin remains an eligible expense** with or without a prescription. **So, your Benny Prepaid Benefits Card can continue to be used for these purchases.**

**If you have questions about this OTC change or need more information, please contact All Valley Administrators at (559) 447-1600.**

# 2014 Plan Overview

## Know your Health Care FSA Eligible and Ineligible Expenses



**Maximize the Value of Your Reimbursement Account** - Your Healthcare Flexible Spending Account (FSA) dollars can be used for a variety of out-of-pocket healthcare expenses. The following is based on a list of eligible and ineligible items. **You can use your Benny® Prepaid Benefits card to purchase eligible items. Items marked with an asterisk(\*) may be purchased with your Benny card only with a prescription and if filled by a pharmacist with an RX number.**

### Eligible Expenses

#### BABY/CHILD TO AGE 13

- Lactation Consultant\*
- Lead-Based Paint Removal
- Special Formula\*
- Tuition: Special School/Teacher for Disability or Learning Disability\*
- Well Baby /Well Child Care

#### DENTAL

- Dental X-Rays
- Dentures and Bridges
- Exams and Teeth Cleaning
- Extractions and Fillings
- Oral Surgery
- Orthodontia
- Periodontal Services

#### EYES

- Eye Exams
- Eyeglasses and Contact Lenses
- Laser Eye Surgeries
- Prescription Sunglasses
- Radial Keratotomy

#### HEARING

- Hearing Aids and Batteries
- Hearing Exams

#### LAB EXAMS/TESTS

- Blood Tests and Metabolism Tests
- Body Scans
- Cardiograms
- Laboratory Fees
- X-Rays

#### MEDICAL EQUIPMENT/SUPPLIES

- Air Purification Equipment\*
- Arches and Orthotic Inserts
- Contraceptive Devices
- Crutches, Walkers, Wheel Chairs
- Exercise Equipment\*
- Hospital Beds\*
- Mattresses\*
- Medic Alert Bracelet or Necklace
- Nebulizers
- Orthopedic Shoes\*
- Oxygen\*
- Post-Mastectomy Clothing
- Prosthetics
- Syringes
- Wigs\*

#### MEDICAL PROCEDURES/SERVICES

- Acupuncture
- Alcohol and Drug/Substance Abuse (inpatient treatment and outpatient care)
- Ambulance
- Fertility Enhancement and Treatment
- Hair Loss Treatment\*
- Hospital Services
- Immunization
- In Vitro Fertilization
- Physical Examination (not employment-related)
- Reconstructive Surgery (due to a congenital defect, accident, or medical treatment)
- Service Animals
- Sterilization/Sterilization Reversal
- Transplants (including organ donor)
- Transportation\*

#### MEDICATIONS

- Insulin
- Prescription Drugs

#### OBSTETRICS

- Breast Pumps and Lactation Supplies
- Doulas\*
- Lamaze Class
- OB/GYN Exams
- OB/GYN Prepaid Maternity Fees (reimbursable after date of birth)
- Pre- and Postnatal Treatments

#### PRACTITIONERS

- Allergist
- Chiropractor
- Christian Science Practitioner
- Dermatologist
- Homeopath
- Naturopath\*
- Optometrist
- Osteopath
- Physician
- Psychiatrist or Psychologist

#### THERAPY

- Alcohol and Drug Addiction
- Counseling (not marital or career)
- Exercise Programs\*
- Hypnosis
- Massage\*
- Occupational
- Physical
- Smoking Cessation Programs\*
- Speech
- Weight Loss Programs\*

**Note:** This list is not meant to be all-inclusive, as other expenses not specifically mentioned may also qualify. Also, expenses marked with an asterisk (\*) are "potentially eligible expenses" that require a Note of Medical Necessity from your health care provider to qualify for reimbursement. For additional information contact ALL VALLEY ADMINISTRATORS.



Eligible expenses only with a prescription from your healthcare provider. **Please Note:** The IRS does not allow Over-the-Counter (OTC) medicines or drugs to be purchased with Healthcare FSA funds unless accompanied by a prescription. If the prescription is filled by a pharmacist with an RX number, you can use your Benny® Prepaid Benefits card for these purchases.

<ul style="list-style-type: none"> <li>■ Acid controllers</li> <li>■ Acne medications</li> <li>■ Allergy &amp; sinus</li> <li>■ Antibiotic products</li> <li>■ Antifungal (Foot)</li> <li>■ Antiparasitic treatments</li> <li>■ Antiseptics &amp; wound cleansers</li> <li>■ Anti-diarrheals</li> <li>■ Anti-gas</li> <li>■ Anti-itch &amp; insect bite</li> <li>■ Baby rash ointments &amp; creams</li> <li>■ Baby teething pain</li> <li>■ Cold sore remedies</li> <li>■ Contraceptives</li> </ul>	<ul style="list-style-type: none"> <li>■ Cough, cold &amp; flu</li> <li>■ Denture pain relief</li> <li>■ Digestive aids</li> <li>■ Ear care</li> <li>■ Eye care</li> <li>■ Feminine antifungal &amp; anti-itch</li> <li>■ Fiber laxatives (bulk forming)</li> <li>■ First aid burn remedies</li> <li>■ Foot care treatment</li> <li>■ Hemorrhoidal preps</li> <li>■ Homeopathic remedies</li> <li>■ Incontinence protection &amp; treatment products</li> <li>■ Laxatives (non-fiber)</li> </ul>	<ul style="list-style-type: none"> <li>■ Medicated nasal sprays, drops, &amp; inhalers</li> <li>■ Medicated respiratory treatments &amp; vapor products</li> <li>■ Motion sickness</li> <li>■ Oral remedies or treatments</li> <li>■ Pain relief (includes aspirin)</li> <li>■ Skin treatments</li> <li>■ Sleep aids &amp; sedatives</li> <li>■ Smoking deterrents</li> <li>■ Stomach remedies</li> <li>■ Unmedicated nasal sprays, drops &amp; inhalers</li> <li>■ Unmedicated vapor products</li> </ul>
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OTC items that are not medicines or drugs are eligible for purchase with FSAs. You can use your Benny card for these items.

**Eligible Over-the-Counter Items** (Product categories are listed in bold face; common examples are listed in regular face.)

<ul style="list-style-type: none"> <li>■ <b>Baby Electrolytes and Dehydration</b> Pedialyte, Enfalyte</li> <li>■ <b>Contraceptives</b> Unmedicated condoms</li> <li>■ <b>Denture Adhesives, Repair, and Cleansers</b> PoliGrip, Benzodent, Plate Weld, Efferdent</li> <li>■ <b>Diabetes Testing and Aids</b> Ascencia, One Touch, Diabetic Tussin, insulin syringes; glucose products</li> <li>■ <b>Diagnostic Products</b> Thermometers, blood pressure monitors, cholesterol testing</li> <li>■ <b>Ear Care</b> Unmedicated ear drops, syringes, ear wax removal</li> </ul>	<ul style="list-style-type: none"> <li>■ <b>Elastics/Athletic Treatments</b> ACE, Futuro, elastic bandages, braces, hot/cold therapy, orthopedic supports, rib belts</li> <li>■ <b>Eye Care</b> Contact lens care</li> <li>■ <b>Family Planning</b> Pregnancy and ovulation kits</li> <li>■ <b>First Aid Dressings and Supplies</b> Band Aid, 3M Nexcare, non-sport tapes</li> <li>■ <b>Foot Care Treatment</b> Unmedicated corn and callus treatments (e.g., callus cushions), devices, therapeutic insoles</li> <li>■ <b>Glucosamine &amp;/or Chondroitin</b> Osteo-Bi-Flex, Cosamin D, Flex-a-min Nutritional Supplements</li> </ul>	<ul style="list-style-type: none"> <li>■ <b>Hearing Aid/Medical Batteries</b></li> <li>■ <b>Home Healthcare (limited segments)</b> Ostomy, walking aids, decubitis/pressure relief, enteral/parenteral feeding supplies, patient lifting aids, orthopedic braces/supports, splints &amp; casts, hydrocollators, nebulizers, electrotherapy products, catheters, unmedicated wound care, wheel chairs</li> <li>■ <b>Incontinence Products</b> Attends, Depend, GoodNites for juvenile incontinence, Prevail</li> <li>■ <b>Prenatal Vitamins</b> Stuart Prenatal, Nature's Bounty Prenatal Vitamins</li> <li>■ <b>Reading Glasses and Maintenance Accessories</b></li> </ul>
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The IRS does NOT allow the following expenses to be reimbursed under Healthcare FSAs, as they are not prescribed by a physician for a specific ailment.

**Ineligible Expenses**

<ul style="list-style-type: none"> <li>■ Contact Lens or Eyeglass Insurance</li> <li>■ Cosmetic Surgery/Procedures</li> <li>■ Electrolysis</li> </ul>	<ul style="list-style-type: none"> <li>■ Insurance Premiums and Interest</li> <li>■ Long Term Care Premiums</li> <li>■ Marriage or Career Counseling</li> </ul>	<ul style="list-style-type: none"> <li>■ Personal Trainers</li> <li>■ Sunscreen (spf less than 30)</li> <li>■ Swimming Lessons</li> </ul>
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*Note: This list is not meant to be all-inclusive.*

For additional information, please contact ALL VALLEY ADMINISTRATORS.

# Parking Reimbursement Account



## 1. WHAT IS IT?

A **Parking Reimbursement Account** allows you to save both Social Security (FICA), Federal & State Income Tax on your qualified parking expenses. You can receive up to \$245.00 per month of tax-free benefits.

## 2. WHAT ARE QUALIFIED PARKING EXPENSES?

Qualified parking expenses are those directly related to your commute to work. These include:

- Parking costs associated with a lot at or near your place of work.
- Parking costs associated with a lot at or near a place you commute from to your work.

## 3. WHAT KIND OF EXPENSES ARE NOT ELIGIBLE?

- Parking costs that are reimbursed by your company
- Parking costs for business meetings
- Parking expenses already deducted from your paycheck

## 4. HOW DOES THE PLAN WORK?

Each pay period, your employer will deduct the amount you elected to have withheld from your paycheck. No FICA, Federal or State income taxes will be deducted from your elected amount. These funds will be held in a disbursement account in your name until you make a claim for qualifying expenses or use your debit card at the point of service.

**You can only be reimbursed up to \$245.00 for every month of service you will be claiming.**

## 5. WHEN DO I ELECT TO PARTICIPATE?

You can enroll in Flexible Spending Account at anytime. You do not have to wait until open enrollment.

## 6. CAN I CHANGE MY ELECTION?

Annual election amounts may be changed anytime prior to the effective date of the change. Changes to your election amount will go into effect the first day of the following month.

## 7. HOW MUCH CAN I DEDUCT FROM MY PAYCHECK?

IRS regulations allow you to deduct up to \$245.00 per month.

## 8. HOW MUCH MONEY DO I SAVE?

Your savings will be your share of FICA, Federal and State Income Tax rate. (10% to 30%). See the savings example.

### EXAMPLE OF SAVINGS\*

Jack earns \$36,000 annually and pays \$185.00 per month for his parking costs to park near his work.

**Jack's Total Annual Election for this year is \$2,220.00**

#### Without Parking Reimbursement

Gross (taxable) Pay	\$36,000
Taxes @ 24.5%	<u>(-8,820)</u>
Net Take Home	\$27,180
Parking costs	<u>(-2,220)</u>
<b>Spendable Income after Parking Costs</b>	<b>\$24,960</b>

#### With Parking Reimbursement

Gross (taxable) Pay	\$36,000
Pre-Tax Parking Deduction	<u>(-2,220)</u>
Taxable Pay	\$33,780
Taxes @ 23.8%	<u>(-8,051)</u>
<b>Spendable Income after Parking Costs</b>	<b>\$25,729</b>

\*Example is an estimate based on single filing status & does not include deduction or exemptions

Jack has **increased** his take home pay by over **\$760.00 per year** (approximately \$63.00 per month) by participating in the Parking Reimbursement Account

## 9. WHAT IS A VALID FORM OF DOCUMENTATION?

A copy of your monthly parking contract will suffice. If you park on an infrequent basis, copies of the individual receipts or tickets are required. Documentation should include cost and parking date(s). For metered parking or where a receipt is not available, submit a claim form and an expense certification form that includes dates, cost and signature.

## 10. HOW DO I GET REIMBURSED?

You can use your prepaid benefit debit card or email, mail or fax a reimbursement claim form and documentation of the expense. You must submit a claim within 90 days from the date the expense is incurred. If your claim is more than the amount in your account, you will be reimbursed only the available balance in your account. Any remaining balance will be reimbursed once additional monies are in your account, up to the monthly maximum of \$245.00.

# Transit Reimbursement Account



## 1. WHAT IS IT?

A **Transit Reimbursement Account** allows you to save on Social Security (FICA), Federal & State Income Taxes on your qualified commuting expenses. You can receive up to \$245.00 per month of tax-free benefits.

## 2. WHAT ARE QUALIFIED MASS TRANSIT EXPENSES?

Qualified mass transit expenses are those directly related to your commute to work. These include:

- Bus vouchers, tokens, and passes
- Van-pooling expenses
- Commuter rail (ex. Caltrain, DC Metro, BART, "T")

## 3. WHAT KIND OF EXPENSES ARE NOT ELIGIBLE?

- Mass transit expenses that are reimbursed by your company
- Mass transit expenses for people other than yourself
- Mass transit expenses already deducted from your paycheck
- Bus transfer tickets

## 4. HOW DOES THE PLAN WORK?

Each pay period, your employer will deduct the amount you elected to have withheld from your paycheck. No FICA, Federal or State income taxes will be deducted from your elected amount. These funds will be held in a disbursement account in your name until you make a claim for qualifying expenses or utilize your debit card at the point of service. **You can only be reimbursed up to \$245.00 for every month of service you will be claiming.**

## 5. WHEN DO I ELECT TO PARTICIPATE?

At anytime! You do not need to wait until open enrollment to enroll.

## 6. CAN I CHANGE MY ELECTION?

Annual election amounts may be changed anytime prior to the effective date of the change. Changes to your election amount will go into effect the first day of the following month.

## 7. HOW MUCH CAN I DEDUCT FROM MY PAYCHECK?

Your savings will be your share of FICA, Federal & State Income Taxes rate. IRS regulations allow you to deduct up to \$245.00 per month.

## 8. HOW MUCH MONEY DO I SAVE?

Your savings will be your share of Social Security, Federal and State Income Tax rate (10% to 35%).

### EXAMPLE OF SAVINGS\*

Jack earns \$36,000 annually and pays \$100.00 per month for his commuting costs from his home to work.

**Jack's Total Annual Election for this year is \$1,200.00**

#### Without Mass Transit Reimbursement

Gross (taxable) Pay	\$36,000
Taxes @ 24.5%	(-8,820)
Net Take Home	\$27,180
Mass Transit costs	(-1,200)
<b>Spendable Income after Mass Transit Costs</b>	<b>\$25,980</b>

#### With Mass Transit Reimbursement

Gross (taxable) Pay	\$36,000
Pre-Tax Mass Transit Deduction	(-1,200)
Taxable Pay	\$34,800
Taxes @ 24.1%	(-8,404)
<b>Spendable Income after Mass Transit Costs</b>	<b>\$26,396</b>

\*Example is an estimate based on single filing status & does not include deductions or exemptions

Jack has **increased** his take home pay by over **\$415.00 per year** (approximately \$34.00 per month) by participating in the Mass Transit Reimbursement Account.

## 9. WHAT IS A VALID FORM OF DOCUMENTATION?

A copy of your receipt for your pass or ticket book or a copy of the pass itself (only if it indicates the dollar amount on the pass). Documentation should include the date(s) and cost of expense. For bus fare where a receipt is not available, submit a claim form and an expense certification form that includes dates, cost and signature.

## 10. HOW DO I GET REIMBURSED?

You can use your prepaid benefit debit card or email, mail or fax a reimbursement claim form. You must submit a claim within 90 days from the date the expense is incurred. If your claim is more than the amount in your account, you will be reimbursed only the available balance in your account. Any remaining balance will be reimbursed once additional monies are in your account up to the monthly maximum of \$245.00.

# 2014 FREQUENTLY ASKED QUESTIONS-FAQs



## 1. What is Flex Spending?

A tax-advantaged benefit regulated by the Internal Revenue Service (IRS), which allows you to use **tax free** dollars to pay for out-of-pocket healthcare expenses such as office and prescription co-pays, dependent care expenses such as child care, parking expenses such as daily parking fees you pay to a lot near work, and transportation expenses such as bus vouchers and van pooling. You pay no Federal, State or Social Security taxes on the amount of money you elect, thereby resulting in significant tax savings for you.

## 2. How do Tax savings work?

For Healthcare, you determine the approximate amount annually you would pay in out of pocket healthcare expenses (*expenses not paid by health, vision or dental insurance*). For Dependent Care, you determine the approximate annual expenses you would pay for dependent care (*child care expenses*). Your annual election is divided by 26 pay periods; this is the amount that will be deducted from your paycheck (TAX FREE) each pay period. For Parking and Transportation you would elect the monthly amount you would pay out of pocket for each expense and divide it by the pay periods for the month, this amount would be deducted from your paycheck (TAX FREE) each pay period. You may then use the TAX FREE monies to pay for eligible expenses.

## 3. What Benefits can be Flexed?

Eligible out of pocket expenses as follows:

- Healthcare expenses not paid by your health plan (e.g. office co-pay, prescriptions co-pay).
- Child care expenses that are necessary to allow you and your spouse to be employed or expenses you pay for caring for a qualifying disabled adult.
- Expenses you pay for parking for work.
- Expenses you pay for transportation and vanpooling for work.
- If you are enrolled in Cigna Disability benefit, you may elect to flex your premium.
- If you are enrolled in Supplemental Life Insurance, you may elect to flex your premium.

## 4. Is there a maximum I can Flex?

- \$2,500 for Healthcare flexible spending accounts (FSA). As enacted by the Affordable Care Act of 2010 (H.R. 3590) U.S.C. §1.125(i), effective January 1, 2014 the maximum for an individual Healthcare FSA will be \$2,500 each Plan year and adjusted for inflation thereafter.
- \$5,000 for dependent care flexible spending accounts (FSA) each year. For child care, if you and your spouse are flexing, your combined election cannot exceed \$5,000 per year but no more than the lesser of the earned income of the participant or his or her spouse. *Please consult your tax advisor for assistance with your individual situation.*
- \$245 for Parking per month.
- \$245 for Transit/Vanpooling per month.

## 5. How is the Flex Spending Administered?

The County contracts with All Valley Administrators (AVA) to provide administration services for this benefit for three (3) years beginning in plan year 2012. To learn more about AVA you can visit their website at <http://www.allvalleyadmin.com> or contact them at (559) 447-1600.

## 6. When does Flex spending for 2014 begin?

The 2014 plan year begins January 1, 2014 and ends December 31, 2014. The Plan allows for a grace period so you can continue to incur expenses for plan year 2014 through March 15, 2015. You may begin to submit for reimbursement and/or use your debit card beginning January 1, 2014 for reimbursement out of your 2014 plan year. Expenses must be incurred during the 2014 plan year (January 1, 2014 to December 31, 2014) and grace period (January 1, 2015 to March 15, 2015) to qualify.



**7. When & How do I enroll in Flexible Spending for healthcare or dependent care for 2014?**

IRS regulations include that you MUST ENROLL each plan year during your employer's Open Enrollment period, regardless of whether or not you were previously enrolled. To enroll online you may visit the Employee Benefits website at <http://www.co.fresno.ca.us/openenrollment> or complete an enrollment application and deliver it to Employee Benefits.

New hires are eligible to enroll upon your hire date with the County. You must complete an enrollment application and deliver it to Employee Benefits within 30 days of your hire date. Contact Employee Benefits at (559) 600-1810 for more details on enrolling.

**8. When is Open Enrollment for Plan Year 2014?**

Open Enrollment begins October 21, 2013 and runs through November 8, 2013. During this period, you can enroll in Flex Spending accounts for healthcare and dependent care out of pocket expenses you will be incurring during 2014 (including the grace period of January 1, 2015 through March 15, 2015).

**9. When and How do I Enroll in Flexible Spending for parking/transportation/ vanpooling?**

You may enroll and change your election for these benefits at anytime. Regulations do not require that you enroll during Open Enrollment for these benefits. You may enroll/cancel or change your elections at anytime. You can obtain an enrollment/change form on the Employee Benefits website <http://www.co.fresno.ca.us> or at Employee Benefits located on the 14<sup>th</sup> Floor of the County Plaza building. **Note:** if you are currently paying for parking through bi-weekly County payroll deductions, your expense is already taken pre-tax (*unless you declined the pre-tax option*) and therefore, you would not need to enroll.

**10. If I enroll and decide I do not want to participate in Flex Spending, can I cancel my election?**

**Maybe**, you cannot make changes to your healthcare or dependent care election unless you experience a qualifying event as defined by IRS regulations as a "change in family status" (e.g. a birth, death, divorce, or change of job status).

**Note:** If you are expecting to receive a medical service in 2014 (e.g. orthodontics, lasik surgery) be absolutely sure you will incur the expense for that service because if it is cancelled **for any reason**, you will not be allowed to change your election (*cancellation of a service is not a qualifying event*).

**11. How am I able to use my pre-tax dollars to pay for qualifying expenses?**

You may utilize a "Benny Card" or submit a claim for reimbursement to All Valley Administrators (AVA) and receive reimbursement by direct deposit or a manual check paid directly to you.

**"Benny Card"** – Your Benny Card is actually a prepaid card. But, since there is no "prepaid" selection available, participants have the option to select either "Credit" or "Debit." Participants cannot get cash with the Prepaid Benefits Card. To create a PIN, please call 1-866-898-9795

Your annual healthcare election amount will be loaded on the card. If you participate in dependent care, parking or transportation/vanpooling, your bi-weekly election will be loaded after each pay date, all on the same card. Dependent care, parking and transportation accounts are funded incrementally each pay date so it is especially important to be aware of account balances in order to avoid card declines at the point of service. If you wish to have a Benny Card issued to you, you must complete the debit card section of the enrollment forms. You will receive two Benny Cards for you and your qualifying spouse/dependent to use. For information on what merchants accept debit cards visit <https://hrbenefitsdirect.com/AVA> and log into your account, then under document library click on the "IIAS Merchant" or "90% Merchant" link to view participating merchants.

**Claim Form** – You can submit a claim form with a copy of the receipt to AVA by email to [claims@allvalleyadmin.com](mailto:claims@allvalleyadmin.com), by mail to 7525 North Cedar Ave. Suite 109, Fresno, CA 93720 or by fax to (559) 447-1889. You can also file an online claim on your personal web access page at <https://hrbenefitsdirect.com/AVA>. Claims will be processed 2 times per week; claims received by 4:00 p.m. Monday will be processed and payment mailed on Tuesday, and claims received by 4:00 p.m. on Thursday will be processed and payment mailed on Friday. Your reimbursement will be mailed to your current address on file. Please update Employee Benefits and All Valley Administrators of any address changes.

**Direct Deposit** – You may also elect to have your reimbursement directly deposited into your bank account. You must complete the Direct Deposit section of the enrollment form and attach a voided check. Your prior years information with AVA will rollover each year you enroll. If you wish to cancel direct deposit simply elect that option on the enrollment form.

If your debit card is lost or stolen, contact AVA at (559) 447-1600. or [Benny@allvalleyadmin.com](mailto:Benny@allvalleyadmin.com)

- 12. If I am enrolled in plan year 2013 what is the deadline to submit for reimbursement?**  
For your healthcare or dependent care FSAs you have until March 15, 2014 to incur expenses and until May 15, 2014 to submit for reimbursement. Claims received after May 15, 2014 will not be processed and any remaining balance in your 2013 account will be forfeited.  
For parking or transportation/vanpooling you have up to 90 days after the expense is incurred to submit for reimbursement. Any unused/unclaimed monies in your accounts are rolled over each month during the plan year for future use in the 2013 plan year. After March 31, 2014 your remaining 2013 account balances are rolled over for use in the 2014 plan year.
- 13. Who do I contact for my account information?**  
Participants have direct access to their account information by going to <https://hrbenefitsdirect.com/AVA>. Enter your 8 digit employee ID# including one additional zero at the beginning of your ID# and two additional zeros at the end in both the username and password fields. There should be a total of 11 digits in each field. Do not use spaces or dashes. We suggest you change your username and password by clicking on "Profile" then "Username and Password". You can view your balances, check activity and submit claims anytime. You can also call AVA at (559 ) 447-1600 or email to [Benny@allvalleyadmin.com](mailto:Benny@allvalleyadmin.com) for assistance with your Flex Spending questions.
- 14. If I utilize the debit card, do I need to save my receipts?**  
**Yes.** Regulations governing Flexible Spending Accounts requires all expenses must be substantiated even if you use the Benny Card. The Regulations allow auto substantiation under three approved methods. However, if your Benny Card expense does not fall under one of those methods, AVA may contact you requesting a detailed receipt, statement or Explanation of Benefits showing the date of service, service provided and amount of expense incurred. If you do not respond to the request in a timely manner your debit card could be disabled and you could be liable for the taxes on the expense in question.
- 15. Is there an age limit for Dependent Care Spending?**  
**Yes.** IRS regulations include that child daycare is allowable through age 12. Dependents over 12 must be physically or mentally unable to care for themselves to qualify. Once your child turns 13 years of age, you can no longer flex your child care expense. You must contact Employee Benefits as soon as your child becomes 13 years of age to terminate your enrollment as you would no longer be eligible. You must submit a change form to cancel your flex election once your dependent no longer meets the qualifying criteria.
- 16. What happens if I enroll in Flex Spending and go on a leave of absence?**  
If you flex your healthcare expenses, you have the option of either continuing your flex spending account during your leave of absence or you may choose not to participate during your leave. Contact Employee Benefits at (559) 600-1810 to obtain additional information.
- 17. If I enroll in flex spending and terminate employment, can I continue to participate in Flex for the remainder of the plan year?**  
**Yes.** If you have money remaining in your flex account, you can elect **COBRA**. Contact Employee Benefits at (559) 600-1810 for more information.
- 18. Can I enroll in the flex plan if I am going to be retiring?**  
**Yes.** When enrolling you should inform Employee Benefits staff that you will be retiring and they will assist you with details on your election as it pertains to your retirement.
- 19. If I currently flex my CIGNA disability (applicable only to enrolled unrepresented employees) or Supplemental Life Insurance (applicable only to employees in Units 19, 22, 30 or 36), do I need to re-enroll to continue flexing my disability premiums?**  
**Yes.** You must complete a new enrollment form each plan year.
- 20. If I currently flex my parking and or transportation expenses do I need to complete a flex enrollment form during open enrollment?**  
**No.** IRS regulations include that you may enroll, make changes and/or cancel your election at anytime. Contact Employee Benefits at (559) 600-1810 or AVA at (559) 600-1600 for more information.

# **ADDITIONAL RESOURCES FOR EMPLOYEES**

**[www.co.fresno.ca.us/openenrollment](http://www.co.fresno.ca.us/openenrollment)**

**FLEX SPENDING ACCOUNT ADMINISTRATOR:**

**ALL VALLEY ADMINISTRATORS, LLC**

**7525 NORTH CEDAR AVENUE, SUITE 109**

**FRESNO, CALIFORNIA 93720**

**PHONE (559) 447-1600**

**[www.allvalleyadmin.com](http://www.allvalleyadmin.com)**



**PERSONNEL SERVICES  
EMPLOYEE BENEFITS**

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**2220 Tulare Street, 14<sup>th</sup> Floor  
Fresno, California 93721  
Phone (559) 600-1810**

## EXHIBIT B

Flexible Benefits Program Enrollment/Change Form 2014



## 2014 Flexible Benefits Program – Enrollment / Change Form

- ☐ **New Employee**  
☐ **Open Enrollment**

- ☐ **Change – Qualifying Event** (Check box below)

- ☐ Legal marital status  
☐ Dependent status  
☐ Employment status  
☐ Request debit cards  
☐ Other \_\_\_\_\_

Check appropriate box above and complete both pages of this form. If making a change due to a “qualifying event”, indicate reason and attach supporting documentation (must be submitted within 30 days of qualifying event). Return completed form to Employee Benefits.

**Please include supporting documentation.**

### Employee Information:

Name \_\_\_\_\_ Employee ID Number \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Date of Birth \_\_\_\_\_ Male ☐ Female ☐ Home Phone \_\_\_\_\_ Work Phone \_\_\_\_\_

Date of Hire \_\_\_\_\_ Current Job Title \_\_\_\_\_

Employment Status: Full time ☐ Part time ☐ On Leave ☐ Other: \_\_\_\_\_

Flexible benefit elections are for expenses incurred **between January 1, 2014 and December 31, 2014**. In addition, the Flexible Spending Program allows a **grace period** for expenses incurred from **January 1, 2015 through March 15, 2015** if you have monies remaining in your flexible spending account on December 31, 2014.

**CLAIMS MUST BE SENT TO ALL VALLEY ADMINISTRATORS BY MAY 15, 2015 OR MONIES WILL BE FORFEITED.**

### Spending Account Elections

I request the following amounts be deducted from my pay with pre-tax dollars:

	<b>\$ Per Pay Period</b>	<b># Pay Periods</b>	<b>Total \$ for Plan Year</b>	
<b>Health Care</b> Spending Account	\$ _____	X _____	= \$ _____ \$2,500 Maximum	26 pay periods in a Plan Year
<b>Dependent Day Care</b> Spending Account	\$ _____	X _____	= \$ _____ \$5,000 Maximum	If you are married and you and your spouse file a separate tax return, IRS regulations limit you each to a \$2,500 annual election to the Dependent Day Care Spending Account.

### Eligible Premiums Elections

I also request the following eligible contributions be deducted from my pay with pre-tax dollars:

Cigna Disability Insurance Premium: ☐ Yes ☐ No **Note:** If you elect “Yes” to have your premium pretax and you receive disability benefits, those dollars will be taxable income.  
(Applicable to enrolled unrepresented and Unit 30 employees)

Supplemental Life Insurance Premium: ☐ Yes ☐ No (Applicable to **Units 19, 22, 30 and 36**)

### Agreement for Spending Accounts

I understand the amount(s) I have elected will be taken from my pay in equal installments. My election(s) will continue throughout the plan year or until I notify the County in writing of a qualifying status change. For Dependent Day Care Spending Account claims, I understand that I must submit the caregiver’s tax identification number with each claim to obtain reimbursement for claims. **I understand that if I fail to submit eligible claims to All Valley Administrators by May 15, 2015, I will forfeit any remaining unused balance. I further understand that if I do not incur qualifying expenses for my entire annual election, I cannot collect reimbursement and any remaining balance in my account will be forfeited.**

Signature \_\_\_\_\_ Date \_\_\_\_\_



**2014 Flexible Benefits Program**  
Enrollment/Change Form

Employee Name: \_\_\_\_\_

**Beneficiary Information**

(In the event of the participant's death, the assigned beneficiary may continue to submit claims for qualified expenses through the remainder of the plan year until the funds are exhausted. These may be for previously unclaimed qualified expenses incurred by the participant and his/her dependents or new qualified expenses incurred by the dependents.)

Beneficiary Name \_\_\_\_\_ Relationship \_\_\_\_\_

Beneficiary Address \_\_\_\_\_ Phone \_\_\_\_\_

**Debit Card Agreement**

**Note: You must complete this section if you wish to have a debit card issued.**

*Participants who have a Benny card will keep using the same card up to the expiration date on the card.*

**By requesting a debit card, I agree to the following:**

1. Once I activate my card, I am agreeing to the terms and conditions of the use of the debit card (you will receive the terms and conditions in the mail with your debit card).
2. The card will only be used to pay for eligible expenses (not covered by insurance or another plan) incurred during the plan year for me and my eligible dependents.
3. I will maintain copies of receipts for eligible expenses in the event our third party administrator requests verification.
4. I understand that I will be issued two (2) cards; one for me and the other for a qualified dependent. If I need additional cards for eligible dependents or if my card is lost or stolen, I understand I will be charged a \$10.00 fee for each request for additional cards. I understand that the \$10.00 fee will automatically be taken from my flex account. (Cards are issued in sets of two).

**Debit cards will automatically be cancelled when an employee terminates or for misuse of the card. Please provide the e-mail address you would like All Valley Administrators to use to send you important information about your account.**

**Changes: Check appropriate box or boxes:**

- ☐ My card(s) were lost or stolen, issue replacement (\$10.00 fee)  
☐ Request additional cards (\$10.00 fee)

Employee Signature \_\_\_\_\_ Date \_\_\_\_\_ E-mail \_\_\_\_\_

**Authorization for Direct Deposit**

By signing below I authorize All Valley Administrators to deposit expense reimbursements for my qualified health care/dependent day care expenses directly to my bank account indicated on the attached voided check. Prior information will rollover each year unless cancelled.

**Please attach voided check; deposit slips are not acceptable.**

**Changes: Mark the appropriate box**

- ☐ I wish to cancel my direct deposit ☐ Change direct deposit information (new bank account)

Signature \_\_\_\_\_ Date \_\_\_\_\_

**Employer's use only**

Effective date: \_\_\_\_\_ Payroll deduction date: \_\_\_\_\_ ☐ Termination

Plan Administrator's approval: \_\_\_\_\_ Date: \_\_\_\_\_

## EXHIBIT C

2015 Schedule of Pay dates

# SCHEDULE OF PAYDATES - 2015

PAYPERIOD DATES					END OF MO/QTR
PAY RUN ID	BEGIN		END	PAYDATE	
1501	12/08/14	TO	12/21/14	01/02/15	
1502	12/22/14	TO	01/04/15	01/16/15	
1503	01/05/15	TO	01/18/15	01/30/15	M
1504	01/19/15	TO	02/01/15	02/13/15	
1505	02/02/15	TO	02/15/15	02/27/15	M
1506	02/16/15	TO	03/01/15	03/13/15	
1507	03/02/15	TO	03/15/15	03/27/15	Q1
1508	03/16/15	TO	03/29/15	04/10/15	
1509	03/30/15	TO	04/12/15	04/24/15	M
1510	04/13/15	TO	04/26/15	05/08/15	
1511	04/27/15	TO	05/10/15	05/22/15	M
1512	05/11/15	TO	05/24/15	06/05/15	
1513	05/25/15	TO	06/07/15	06/19/15	Q2
1514	06/08/15	TO	06/21/15	07/03/15	
1515	06/22/15	TO	07/05/15	07/17/15	
1516	07/06/15	TO	07/19/15	07/31/15	M
1517	07/20/15	TO	08/02/15	08/14/15	
1518	08/03/15	TO	08/16/15	08/28/15	M
1519	08/17/15	TO	08/30/15	09/11/15	
1520	08/31/15	TO	09/13/15	09/25/15	Q3
1521	09/14/15	TO	09/27/15	10/09/15	
1522	09/28/15	TO	10/11/15	10/23/15	M
1523	10/12/15	TO	10/25/15	11/06/15	
1524	10/26/15	TO	11/08/15	11/20/15	M
1525	11/09/15	TO	11/22/15	12/04/15	
1526	11/23/15	TO	12/06/15	12/18/15	Q4



## EXHIBIT D

Current Agreement with All Valley Administrators, LLC

FLEXIBLE SPENDING AND MASS TRANSIT AND PARKING PLAN ADMINISTRATION  
AGREEMENT

THIS AGREEMENT (hereinafter Agreement) is made and entered into this 27<sup>th</sup> day of September, 2011 by and between the COUNTY OF FRESNO, a Political Subdivision of the State of California, hereinafter referred to as "COUNTY", and All Valley Administrators, LLC, whose address is 7525 North Cedar Avenue, Suite 109, Fresno, CA 93720 hereinafter referred to as "CONTRACTOR".

WITNESSETH:

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

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

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

NOW, THEREFORE, it is agreed as follows:

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

1. OBLIGATIONS OF THE CONTRACTOR:

A. CONTRACTOR shall provide the administrative system, to operate the Plan, as described in this Agreement, in COUNTY's Request to Proposal No. 964-4964 (including Addendum Number One thereto) attached hereto as Exhibit A and incorporated herein by reference, in CONTRACTOR's response to COUNTY's Request for Proposal No. 964-4964,

1 attached hereto as Exhibit B and incorporated herein by reference and COUNTY's Proposal  
2 Clarification Questions and CONTRACTOR's responses thereto, attached hereto as Exhibit C and  
3 incorporated herein by reference.

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

8 C. The CONTRACTOR shall receive requests for reimbursement; evaluate  
9 them under the terms of the Plan, and issue reimbursement subject to availability of funds in the  
10 account, pursuant to a defined schedule and at least two (2) times per week. Interpretations of  
11 benefits shall be governed by the Plan Document. The Plan Document may be amended only  
12 upon the written approval of COUNTY. CONTRACTOR may not vary from Plan Document  
13 language without the prior written approval of COUNTY, unless otherwise required by law.  
14 CONTRACTOR shall provide immediate written notice of to COUNTY of any legally required  
15 changes to the Plan Document.

16 D. CONTRACTOR shall provide consulting services in regard to the design of  
17 the Plan as well as advising COUNTY as reflected in paragraph H.

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

23 F. CONTRACTOR shall maintain records of claims entered and claims paid  
24 for each COUNTY participating employee and covered dependent. CONTRACTOR's obligation  
25 to reimburse outstanding claims for the 2014 Plan year shall survive the expiration date of this  
26 Agreement for a period until all such claims are paid, not to exceed one-hundred eighty (180)  
27 days.

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



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

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

6                   2) COUNTY: CONTRACTOR to provide to COUNTY:

- 7                   a. The fund account statements including monthly reconciliation  
8 statements detailing the receipts and disbursements of the Plan;  
9                   b. Check listing, detailing the disbursements made by check number;  
10 and  
11                   c. The Participant Summary Report, detailing the current balance in  
12 each participating employee's account.

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

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

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

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

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

25                   L. CONTRACTOR shall furnish all forms and supplies required for the  
26 processing of claims and enrollment and re-enrollment of COUNTY participating employees into  
27 the Plan and shall pay all costs of such forms and supplies. Should the COUNTY provide any  
28 such materials on behalf of the CONTRACTOR, the CONTRACTOR shall pay for all costs

1 associated therewith.

2 M. CONTRACTOR shall, consistent with industry standards, monitor and keep  
3 COUNTY informed of any pending or enacted legislation potentially impacting the Plan.

4 N. CONTRACTOR agrees to keep full and accurate records and shall follow  
5 generally accepted industry accounting methods and practices. The COUNTY or its duly  
6 authorized representatives shall have full and free access to said records during normal working  
7 hours.

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

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

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

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

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

28 2. OBLIGATIONS OF THE COUNTY



1 A. COUNTY shall provide timely notification of employee new hires and  
2 terminations, and shall ensure that the Plan will be funded. COUNTY will provide all information  
3 reasonably necessary for CONTRACTOR to properly administer the Plan to the best of its ability.

4 3. TERM

5 This Agreement shall become effective on the 1st day of January, 2012 and  
6 shall terminate on the 31st day of December, 2014.

7 4. TERMINATION

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

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

- 15 1) An illegal or improper use of funds;  
16 2) A failure to comply with any term of this Agreement;  
17 3) A substantially incorrect or incomplete report submitted to the  
18 COUNTY;  
19 4) Improperly performed service.

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

28 C. Without Cause - Under circumstances other than those set forth above,

1 this Agreement may be terminated by COUNTY upon the giving of thirty (30) days advance written  
2 notice of an intention to terminate to CONTRACTOR.

3 5. COMPENSATION/INVOICING:

4 COUNTY agrees to pay CONTRACTOR and CONTRACTOR agrees to  
5 receive compensation as follows: COUNTY shall pay CONTRACTOR administrative fees of one  
6 dollar and sixty-five (\$1.65) cents per participating employee enrolled in the Dependent Care  
7 and/or Health Care Spending Account and fifty (\$0.50) cents per participating employee enrolled  
8 in the Mass Transit and Parking Plan, on a bi-weekly basis, based on participants' bi-weekly  
9 election deduction.

10 In no event shall services performed under this Agreement be in excess of  
11 \$250,000 during the term of this Agreement. It is understood that all expenses incidental to  
12 CONTRACTOR'S performance of services under this Agreement shall be borne by  
13 CONTRACTOR.

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

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

26 Because of its status as an independent contractor, CONTRACTOR shall have  
27 absolutely no right to employment rights and benefits available to COUNTY employees.  
28 CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its



1 employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely  
2 responsible and save COUNTY harmless from all matters relating to payment of  
3 CONTRACTOR'S employees, including compliance with Social Security withholding and all other  
4 regulations governing such matters. It is acknowledged that during the term of this Agreement,  
5 CONTRACTOR may be providing services to others unrelated to the COUNTY or to this  
6 Agreement.

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

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

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

20           10.    INSURANCE

21                   Without limiting the COUNTY's right to obtain indemnification from  
22 CONTRACTOR or any third parties, CONTRACTOR, at its sole expense, shall maintain in full  
23 force and effect, the following insurance policies or a program of self-insurance, throughout the  
24 term of the Agreement:

25                   A.   Commercial General Liability

26                   Commercial General Liability Insurance with limits of not less than One  
27 Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Two Million Dollars  
28 (\$2,000,000). This policy shall be issued on a per occurrence basis. COUNTY may require



specific coverages including completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal liability or any other liability insurance deemed necessary because of the nature of this contract.

B. Automobile Liability

Comprehensive Automobile Liability Insurance with limits for bodily injury of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per person, Five Hundred Thousand Dollars (\$500,000.00) per accident and for property damages of not less than Fifty Thousand Dollars (\$50,000.00), or such coverage with a combined single limit of Five Hundred Thousand Dollars (\$500,000.00). Coverage should include owned and non-owned vehicles used in connection with this Agreement.

C. Professional Liability

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

D. Worker's Compensation

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

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

Within Thirty (30) days from the date CONTRACTOR executes this Agreement, CONTRACTOR shall provide certificates of insurance and endorsement as stated

1 above for all of the foregoing policies, as required herein, to the County of Fresno, Nancy Aragon,  
2 2220 Tulare Street, 14<sup>th</sup> Floor, Fresno, CA 93721, stating that such insurance coverages have  
3 been obtained and are in full force; that the County of Fresno, its officers, agents and employees  
4 will not be responsible for any premiums on the policies; that such Commercial General Liability  
5 insurance names the County of Fresno, its officers, agents and employees, individually and  
6 collectively, as additional insured, but only insofar as the operations under this Agreement are  
7 concerned; that such coverage for additional insured shall apply as primary insurance and any  
8 other insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees,  
9 shall be excess only and not contributing with insurance provided under CONTRACTOR's policies  
10 herein; and that this insurance shall not be cancelled or changed without a minimum of thirty (30)  
11 days advance, written notice given to COUNTY.

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

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

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

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

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



COUNTY

Paul Nerland  
COUNTY OF FRESNO  
2220 Tulare Street, 14<sup>th</sup> Floor  
Fresno, CA 93721

CONTRACTOR

S. Tom Tsaris  
ALL VALLEY ADMINISTRATORS, LLC  
7525 N. Cedar Avenue, Suite 109  
Fresno, CA 93720

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

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

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

14. Disclosure of Self-Dealing Transactions:

This provision is only applicable if the CONTRACTOR is operating as a corporation (a for-profit or non-profit corporation) or if during the term of this agreement, the CONTRACTOR changes its status to operate as a corporation.

Members of the CONTRACTOR's Board of Directors shall disclose any self-dealing transactions that they are a party to while CONTRACTOR is providing goods or performing services under this agreement. A self-dealing transaction shall mean a transaction to which the CONTRACTOR is a party and in which one or more of its directors has a material financial interest. Members of the Board of Directors shall disclose any self-dealing transactions that they are a party to by completing and signing a *Self-Dealing Transaction Disclosure Form* (Exhibit #D) and submitting it to the COUNTY prior to commencing with the self-dealing transaction or immediately thereafter.

15. CONFIDENTIALITY:

All data, programs and other materials provided to CONTRACTOR by COUNTY, its Eligible Employees and/or Participants in connection with this Agreement shall be deemed confidential as to the COUNTY and/or such Eligible Employees and/or Participants. Neither the CONTRACTOR, its officers, agents nor employees shall disclose such data to any third party

1 without the express prior written consent of the COUNTY, the affected Eligible Employees and/or  
2 Participants.

3           A. CONTRACTOR shall protect confidential information from inadvertent  
4 disclosure to any third party in the same manner that they protect their own confidential  
5 information, unless such disclosure is required in response to a validly issued subpoena or other  
6 process of law. The provisions of this section shall survive the expiration or termination of this  
7 Agreement.

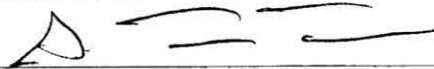
8           B. The COUNTY agrees to provide CONTRACTOR (or its authorized agents  
9 or subcontractors), personnel and payroll information including, but not limited to, employee  
10 names, addresses, phone numbers, salary, certain pay deductions and other personnel and  
11 payroll data base information on all of its PLAN eligible employees for the sole and exclusive  
12 purpose of conducting automated employee eligibility administration for client.

13           C. CONTRACTOR agrees to keep in confidence all personnel and payroll  
14 information and all health and fiscal data provided by COUNTY and COUNTY'S employees.  
15 CONTRACTOR shall treat such information with at least the same degree of care as  
16 CONTRACTOR exercises toward its own employees' personnel and payroll information and  
17 health and fiscal data.

18           16. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement  
19 between the CONTRACTOR and COUNTY with respect to the subject matter hereof and  
20 supersedes all previous Agreement negotiations, proposals, commitments, writings,  
21 advertisements, publications, and understandings of any nature whatsoever unless expressly  
22 included in this Agreement. In the event of any inconsistency in interpreting the documents which  
23 constitute this Agreement, the inconsistency shall be resolved by giving precedence in the  
24 following order of priority: (1) the text of this Agreement (excluding Exhibits A, B and C); (2) Exhibit  
25 A; (3) Exhibit B; (4) Exhibit C; and (5) Exhibit D.

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

3 CONTRACTOR

4 

5 (Authorized Signature)

6 S. Tom Tsaris, President  
7 Print Name & Title

8 All Valley Administrators, LLC.

9 7525 N. Cedar Ave., Suite 109

10 Fresno California 93720

11 DATE: August 29, 2011

12  
13  
14  
15 CA Sales Tax Permit No.  
16 (Out-of-State vendors):  
17

18 APPROVED AS TO LEGAL FORM

19   
20 County Counsel

21 FOR ACCOUNTING USE ONLY:

22 ORG No.: ~~89250200~~ Various Orgs  
23 Account No.: ~~7205~~ 6600  
24 Requisition No.: 8921100143

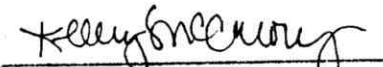
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COUNTY OF FRESNO

  
Chairman, Board of Supervisors 9/27/11

ATTEST:

BERNICE E. SEIDEL, Clerk  
Board of Supervisors

By   
Deputy

DATE: 9/2/11

REVIEWED & RECOMMENDED FOR APPROVAL

  
Department Head's Signature

APPROVED AS TO ACCOUNTING FORM

  
Auditor-Controller/Treasurer/Tax Collector

**EXHIBIT A**

**RFP No. 964-4964**

**ADDENDUM: ONE (1)**

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## EXHIBIT E

Section 125 Plan Document

COUNTY OF FRESNO FLEXIBLE BENEFIT PLAN  
AND ALL SUPPORTING FORMS HAVE BEEN PRODUCED FOR  
TOTAL BENEFIT SERVICES, INC.



COUNTY OF FRESNO FLEXIBLE BENEFIT PLAN

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## COUNTY OF FRESNO FLEXIBLE BENEFIT PLAN

### INTRODUCTION

The Employer has amended this Plan effective January 1, 2006, to recognize the contribution made to the Employer by its Employees. Its purpose is to reward them by providing benefits for those Employees who shall qualify hereunder and their dependents and beneficiaries. The concept of this Plan is to allow Employees to choose among different types of benefits based on their own particular goals, desires and needs. This Plan is a restatement of a Plan which was originally effective on July 1, 1988. The Plan shall be known as County of Fresno Flexible Benefit Plan (the "Plan").

The intention of the Employer is that the Plan qualify as a "Cafeteria Plan" within the meaning of Section 125 of the Internal Revenue Code of 1986, as amended, and that the benefits which an Employee elects to receive under the Plan be excludable from the Employee's income under Section 125(a) and other applicable sections of the Internal Revenue Code of 1986, as amended.

### ARTICLE I DEFINITIONS

1.1 **"Administrator"** means the individual(s) or corporation appointed by the Employer to carry out the administration of the Plan. The Employer shall be empowered to appoint and remove the Administrator from time to time as it deems necessary for the proper administration of the Plan. In the event the Administrator has not been appointed, or resigns from a prior appointment, the Employer shall be deemed to be the Administrator.

1.2 **"Affiliated Employer"** means the Employer and any corporation which is a member of a controlled group of corporations (as defined in Code Section 414(b)) which includes the Employer; any trade or business (whether or not incorporated) which is under common control (as defined in Code Section 414(c)) with the Employer; any organization (whether or not incorporated) which is a member of an affiliated service group (as defined in Code Section 414(m)) which includes the Employer; and any other entity required to be aggregated with the Employer pursuant to Treasury regulations under Code Section 414(o).

1.3 **"Benefit"** means any of the optional benefit choices available to a Participant as outlined in Section 4.1.

1.4 **"Cafeteria Plan Benefit Dollars"** means the amount available to Participants to purchase Benefit Options as provided under Section 4.1. Each dollar contributed to this Plan shall be converted into one Cafeteria Plan Benefit Dollar.

1.5 **"Code"** means the Internal Revenue Code of 1986, as amended or replaced from time to time.

1.6 **"Compensation"** means the amounts received by the Participant from the Employer during a Plan Year.

1.7 **"Dependent"** means any individual who qualifies as a dependent under an Insurance Contract or under Code Section 152 (as modified by Code Section 105(b)).

1.8 **"Effective Date"** means July 1, 1988.

1.9 **"Election Period"** means the period immediately preceding the beginning of each Plan Year established by the Administrator, such period to be applied on a uniform and nondiscriminatory basis for all Employees and Participants. However, an Employee's initial Election Period shall be determined pursuant to Section 5.1.

1.10 **"Eligible Employee"** means any Employee who has satisfied the provisions of Section 2.1.

An individual shall not be an "Eligible Employee" if such individual is not reported on the payroll records of the Employer as a common law employee. In particular, it is expressly intended that individuals not treated as common law employees by the Employer on its payroll records are not "Eligible Employees" and are excluded from Plan participation even if a court or administrative agency determines that such individuals are common law employees and not independent contractors.

However, any Employee who is a "part-time" Employee shall not be eligible to participate in this Plan. A "part-time" Employee is any Employee who works, or is expected to work on a regular basis, less than 20 hours a week and is designated as a part-time Employee on the Employer's personnel records.

1.11 **"Employee"** means any person who is employed by the Employer. The term Employee shall include leased employees within the meaning of Code Section 414(n)(2).

1.12 **"Employer"** means County of Fresno and any successor which shall maintain this Plan; and any predecessor which has maintained this Plan.

1.13 **"Grace Period"** means, with respect to any Plan Year, the time period ending on the fifteenth day of the third calendar month after the end of such Plan Year, during which Medical Expenses and Employment-Related Dependent Care Expenses incurred by a Participant will be deemed to have been incurred during such Plan Year.

1.14 **"Insurance Contract"** means any contract issued by an Insurer underwriting a Benefit.

1.15 **"Insurance Premium Payment Plan"** means the plan of benefits contained in Section 4.1 of this Plan, which provides for the payment of Premium Expenses.

1.16 **"Insurer"** means any insurance company that underwrites a Benefit under this Plan.

1.17 **"Key Employee"** means an Employee described in Code Section 416(i)(1) and the Treasury regulations thereunder.

1.18 **"Participant"** means any Eligible Employee who elects to become a Participant pursuant to Section 2.3 and has not for any reason become ineligible to participate further in the Plan.

1.19 **"Plan"** means this instrument, including all amendments thereto.

1.20 **"Plan Year"** means the 12-month period beginning January 1 and ending December 31. The Plan Year shall be the coverage period for the Benefits provided for under this Plan. In the event a Participant commences participation during a Plan Year, then the initial coverage period shall be that portion of the Plan Year commencing on such Participant's date of entry and ending on the last day of such Plan Year.

1.21 **"Premium Expenses" or "Premiums"** mean the Participant's cost for the Benefits described in Section 4.1.

1.22 **"Premium Reimbursement Account"** means the account established for a Participant pursuant to this Plan to which part of his Cafeteria Plan Benefit Dollars may be allocated and from which Premiums of the Participant shall be paid or reimbursed. If more than one type of insured Benefit is elected, sub-accounts shall be established for each type of insured Benefit.

1.23 **"Salary Redirection"** means the contributions made by the Employer on behalf of Participants pursuant to Section 3.1. These contributions shall be converted to Cafeteria Plan Benefit Dollars and allocated to the funds or accounts established under the Plan pursuant to the Participants' elections made under Article V.

1.24 **"Salary Redirection Agreement"** means an agreement between the Participant and the Employer under which the Participant agrees to reduce his Compensation or to forego all or part of the increases in such Compensation and to have such amounts contributed by the Employer to the Plan on the Participant's behalf. The Salary Redirection Agreement shall apply only to Compensation that has not been actually or constructively received by the Participant as of the date of the agreement (after taking this Plan and Code Section 125 into account) and, subsequently does not become currently available to the Participant.

1.25 **"Spouse"** means "spouse" as defined in an Insurance Contract or the legally married husband or wife of a Participant, unless legally separated by court decree.

## **ARTICLE II PARTICIPATION**

### **2.1 ELIGIBILITY**

Any Eligible Employee shall be eligible to participate hereunder as of his date of employment (or the Effective Date of the Plan, if later). However, any Eligible Employee who was a Participant in the Plan on the effective date of this amendment shall continue to be eligible to participate in the Plan.

### **2.2 EFFECTIVE DATE OF PARTICIPATION**

An Eligible Employee shall become a Participant effective as of the first day of the pay period coinciding with or next following the date on which he met the eligibility requirements of Section 2.1.

## **2.3 APPLICATION TO PARTICIPATE**

An Employee who is eligible to participate in this Plan shall, during the applicable Election Period, complete an application to participate and election of benefits form which the Administrator shall furnish to the Employee. The election made on such form shall be irrevocable until the end of the applicable Plan Year unless the Participant is entitled to change his Benefit elections pursuant to Section 5.4 hereof.

An Eligible Employee shall also be required to execute a Salary Redirection Agreement during the Election Period for the Plan Year during which he wishes to participate in this Plan. Any such Salary Redirection Agreement shall be effective for the first pay period beginning on or after the Employee's effective date of participation pursuant to Section 2.2.

Notwithstanding the foregoing, an Employee who is eligible to participate in this Plan and who is covered by the Employer's insured Benefits under this Plan shall automatically become a Participant to the extent of the Premiums for such insurance unless the Employee elects, during the Election Period, not to participate in the Plan.

## **2.4 TERMINATION OF PARTICIPATION**

A Participant shall no longer participate in this Plan upon the occurrence of any of the following events:

- (a) **Termination of employment.** His termination of employment, subject to the provisions of Section 2.6;
- (b) **Change in employment status.** The end of the Plan Year during which he became a limited Participant because of a change in employment status pursuant to Section 2.5;
- (c) **Death.** His death, subject to the provisions of Section 2.7; or
- (d) **Termination of the plan.** The termination of this Plan, subject to the provisions of Section 10.2.

## **2.5 CHANGE OF EMPLOYMENT STATUS**

If a Participant ceases to be eligible to participate because of a change in employment status or classification (other than through termination of employment), the Participant shall become a limited Participant in this Plan for the remainder of the Plan Year in which such change of employment status occurs. As a limited Participant, no further Salary Redirection may be made on behalf of the Participant, and, except as otherwise provided herein, all further Benefit elections shall cease, subject to the limited Participant's right to continue coverage under any Insurance Contracts. However, any balances in the limited Participant's Dependent Care Flexible Spending Account may be used during such Plan Year to reimburse the limited Participant for any allowable Employment-Related Dependent Care incurred during the Plan Year. Subject to the provisions of Section 2.6, if the limited Participant later becomes an Eligible Employee, then the limited Participant may again become a full Participant in this Plan,



provided he otherwise satisfies the participation requirements set forth in this Article II as if he were a new Employee and made an election in accordance with Section 5.1.

## **2.6 TERMINATION OF EMPLOYMENT**

If a Participant's employment with the Employer is terminated for any reason other than death, his participation in the Benefit Options provided under Section 4.1 shall be governed in accordance with the following:

(a) **Insurance Benefit.** With regard to Benefits which are insured, the Participant's participation in the Plan shall cease, subject to the Participant's right to continue coverage under any Insurance Contract for which premiums have already been paid.

(b) **Dependent Care FSA.** With regard to the Dependent Care Flexible Spending Account, the Participant's participation in the Plan shall cease and no further Salary Redirection contributions shall be made. However, such Participant may submit claims for employment related Dependent Care Expense reimbursements for claims incurred through the remainder of the Plan Year in which such termination occurs or through the end of the next following Grace Period and submitted within 60 days after the end of the Grace Period, based on the level of the Participant's Dependent Care Flexible Spending Account as of the date of termination.

(c) **COBRA applicability.** With regard to the Health Flexible Spending Account, the Participant may submit claims for expenses that were incurred during the portion of the Plan Year before the end of the period for which payments to the Health Flexible Spending Account have already been made. Thereafter, the health benefits under this Plan including the Health Flexible Spending Account shall be applied and administered consistent with such further rights a Participant and his Dependents may be entitled to pursuant to Code Section 4980B and Section 11.14 of the Plan.

## **2.7 DEATH**

If a Participant dies, his participation in the Plan shall cease. However, such Participant's beneficiaries, or the representative of his estate, may submit claims for expenses or benefits for the remainder of the Plan Year or until the Cafeteria Plan Benefit Dollars allocated to each specific benefit are exhausted. A Participant may designate a specific beneficiary for this purpose. If no such beneficiary is specified, the Administrator may designate the Participant's Spouse, one of his Dependents or a representative of his estate.

## **ARTICLE III CONTRIBUTIONS TO THE PLAN**

### **3.1 SALARY REDIRECTION**

Benefits under the Plan shall be financed by Salary Redirections sufficient to support Benefits that a Participant has elected hereunder and to pay the Participant's Premium Expenses. The salary administration program of the Employer shall be revised to allow each Participant to agree to reduce his pay during a Plan Year by an amount determined necessary to purchase the elected Benefit Options. The amount of such Salary Redirection shall be specified in the Salary Redirection Agreement and shall be applicable for a Plan Year. Notwithstanding the above, for new Participants, the Salary Redirection Agreement shall only be applicable from the first day of the pay period following the Employee's entry date up to and including the last day of the Plan Year. These contributions shall be converted to Cafeteria Plan Benefit Dollars and allocated to the funds or accounts established under the Plan pursuant to the Participants' elections made under Article V.

Any Salary Redirection shall be determined prior to the beginning of a Plan Year (subject to initial elections pursuant to Section 5.1) and prior to the end of the Election Period and shall be irrevocable for such Plan Year. However, a Participant may revoke a Benefit election or a Salary Redirection Agreement after the Plan Year has commenced and make a new election with respect to the remainder of the Plan Year, if both the revocation and the new election are on account of and consistent with a change in status and such other permitted events as determined under Article V of the Plan and consistent with the rules and regulations of the Department of the Treasury. Salary Redirection amounts shall be contributed on a pro rata basis for each pay period during the Plan Year. All individual Salary Redirection Agreements are deemed to be part of this Plan and incorporated by reference hereunder.

### **3.2 APPLICATION OF CONTRIBUTIONS**

As soon as reasonably practical after each payroll period, the Employer shall apply the Salary Redirection to provide the Benefits elected by the affected Participants. Any contribution made or withheld for the Health Flexible Spending Account or Dependent Care Flexible Spending Account shall be credited to such fund or account. Amounts designated for the Participant's Premium Expense Reimbursement Account shall likewise be credited to such account for the purpose of paying Premium Expenses.

### **3.3 PERIODIC CONTRIBUTIONS**

Notwithstanding the requirement provided above and in other Articles of this Plan that Salary Redirections be contributed to the Plan by the Employer on behalf of an Employee on a level and pro rata basis for each payroll period, the Employer and Administrator may implement a procedure in which Salary Redirections are contributed throughout the Plan Year on a periodic basis that is not pro rata for each payroll period. However, with regard to the Health Flexible Spending Account, the payment schedule for the required contributions may not be based on the rate or amount of reimbursements during the Plan Year.

## **ARTICLE IV BENEFITS**

### **4.1 BENEFIT OPTIONS**

Each Participant may elect any one or more of the following optional Benefits:

- (1) Health Flexible Spending Account
- (2) Dependent Care Flexible Spending Account

In addition, each Participant shall have a sufficient portion of his Salary Redirections applied to the following Benefits unless the Participant elects not to receive such Benefits:

- (3) Health Insurance Benefit

### **4.2 HEALTH FLEXIBLE SPENDING ACCOUNT BENEFIT**

Each Participant may elect to participate in the Health Flexible Spending Account option, in which case Article VI shall apply.

### **4.3 DEPENDENT CARE FLEXIBLE SPENDING ACCOUNT BENEFIT**

Each Participant may elect to participate in the Dependent Care Flexible Spending Account option, in which case Article VII shall apply.

### **4.4 HEALTH INSURANCE BENEFIT**

(a) **Coverage for Participant and Dependents.** Each Participant may elect to be covered under a health Insurance Contract for the Participant, his or her spouse, and his or her Dependents.

(b) **Employer selects contracts.** The Employer may select suitable health Insurance Contracts for use in providing this health insurance benefit, which policies will provide uniform benefits for all Participants electing this Benefit.

(c) **Contract incorporated by reference.** The rights and conditions with respect to the benefits payable from such health Insurance Contract shall be determined therefrom, and such Insurance Contract shall be incorporated herein by reference.

### **4.5 NONDISCRIMINATION REQUIREMENTS**

(a) **Intent to be nondiscriminatory.** It is the intent of this Plan to provide benefits to a classification of employees which the Secretary of the Treasury finds not to be discriminatory in favor of the group in whose favor discrimination may not occur under Code Section 125.

(b) **25% concentration test.** It is the intent of this Plan not to provide qualified benefits as defined under Code Section 125 to Key Employees in amounts that exceed 25% of the aggregate of such Benefits provided for all Eligible Employees under the Plan. For purposes of the preceding sentence, qualified benefits shall not include benefits which (without regard to this paragraph) are includible in gross income.

(c) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination or possible taxation to Key Employees or a group of employees in whose favor discrimination may not occur in violation of Code Section 125, it may, but shall not be required to, reduce contributions or non-taxable Benefits in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner. If the Administrator decides to reduce contributions or non-taxable Benefits, it shall be done in the following manner. First, the non-taxable Benefits of the affected Participant (either an employee who is highly compensated or a Key Employee, whichever is applicable) who has the highest amount of non-taxable Benefits for the Plan Year shall have his non-taxable Benefits reduced until the discrimination tests set forth in this Section are satisfied or until the amount of his non-taxable Benefits equals the non-taxable Benefits of the affected Participant who has the second highest amount of non-taxable Benefits. This process shall continue until the nondiscrimination tests set forth in this Section are satisfied. With respect to any affected Participant who has had Benefits reduced pursuant to this Section, the reduction shall be made proportionately among Health Flexible Spending Account Benefits and Dependent Care Flexible Spending Account Benefits, and once all these Benefits are expended, proportionately among insured Benefits. Contributions which are not utilized to provide Benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited and deposited into the benefit plan surplus.

## **ARTICLE V PARTICIPANT ELECTIONS**

### **5.1 INITIAL ELECTIONS**

An Employee who meets the eligibility requirements of Section 2.1 on the first day of, or during, a Plan Year may elect to participate in this Plan for all or the remainder of such Plan Year, provided he elects to do so before his effective date of participation pursuant to Section 2.2. However, if such Employee does not complete an application to participate and benefit election form and deliver it to the Administrator before such date, his Election Period shall extend 30 calendar days after such date, or for such further period as the Administrator shall determine and apply on a uniform and nondiscriminatory basis. However, any election during the extended 30-day election period pursuant to this Section 5.1 shall not be effective until the first pay period following the later of such Participant's effective date of participation pursuant to Section 2.2 or the date of the receipt of the election form by the Administrator, and shall be limited to the Benefit expenses incurred for the balance of the Plan Year for which the election is made.

Notwithstanding the foregoing, an Employee who is eligible to participate in this Plan and who is covered by the Employer's insured benefits under this Plan shall automatically become a Participant to the extent of the Premiums for such insurance unless the Employee elects, during the Election Period, not to participate in the Plan.

## **5.2 SUBSEQUENT ANNUAL ELECTIONS**

During the Election Period prior to each subsequent Plan Year, each Participant shall be given the opportunity to elect, on an election of benefits form to be provided by the Administrator, which spending account Benefit options he wishes to select. Any such election shall be effective for any Benefit expenses incurred during the Plan Year which follows the end of the Election Period. With regard to subsequent annual elections, the following options shall apply:

- (a) A Participant or Employee who failed to initially elect to participate may elect different or new Benefits under the Plan during the Election Period;
- (b) A Participant may terminate his participation in the Plan by notifying the Administrator in writing during the Election Period that he does not want to participate in the Plan for the next Plan Year;
- (c) An Employee who elects not to participate for the Plan Year following the Election Period will have to wait until the next Election Period before again electing to participate in the Plan, except as provided for in Section 5.4.

## **5.3 FAILURE TO ELECT**

Any Participant who fails to complete a new benefit election form pursuant to Section 5.2 by the end of the applicable Election Period shall be treated in the following manner:

- (a) With regard to Benefits available under the Plan for which no Premium Expenses apply, such Participant shall be deemed to have elected not to participate in the Plan for the upcoming Plan Year. No further Salary Redirections shall therefore be authorized or made for the subsequent Plan Year for such Benefits.

## **5.4 CHANGE IN STATUS**

- (a) **Change in status defined.** Any Participant may change a Benefit election after the Plan Year (to which such election relates) has commenced and make new elections with respect to the remainder of such Plan Year if, under the facts and circumstances, the changes are necessitated by and are consistent with a change in status which is acceptable under rules and regulations adopted by the Department of the Treasury, the provisions of which are incorporated by reference. Notwithstanding anything herein to the contrary, if the rules and regulations conflict, then such rules and regulations shall control.

In general, a change in election is not consistent if the change in status is the Participant's divorce, annulment or legal separation from a spouse, the death of a spouse or dependent, or a dependent ceasing to satisfy the eligibility requirements for coverage, and the Participant's election under the Plan is to cancel accident or health insurance coverage for any individual other than the one involved in such event. In addition, if the Participant, spouse or dependent gains or loses eligibility for coverage, then a Participant's election under the Plan to cease or decrease coverage for that individual under the Plan corresponds with that change in status only if coverage for that individual becomes applicable or is increased under the family member plan.

Regardless of the consistency requirement, if the individual, the individual's spouse, or dependent becomes eligible for continuation coverage under the Employer's group health plan as provided in Code Section 4980B or any similar state law, then the individual may elect to increase payments under this Plan in order to pay for the continuation coverage. However, this does not apply for COBRA eligibility due to divorce, annulment or legal separation.

Any new election shall be effective at such time as the Administrator shall prescribe, but not earlier than the first pay period beginning after the election form is completed and returned to the Administrator. For the purposes of this subsection, a change in status shall only include the following events or other events permitted by Treasury regulations:

- (1) Legal Marital Status: events that change a Participant's legal marital status, including marriage, divorce, death of a spouse, legal separation or annulment;
- (2) Number of Dependents: Events that change a Participant's number of dependents, including birth, adoption, placement for adoption, or death of a dependent;
- (3) Employment Status: Any of the following events that change the employment status of the Participant, spouse, or dependent: termination or commencement of employment, a strike or lockout, commencement or return from an unpaid leave of absence, or a change in worksite. In addition, if the eligibility conditions of this Plan or other employee benefit plan of the Employer of the Participant, spouse, or dependent depend on the employment status of that individual and there is a change in that individual's employment status with the consequence that the individual becomes (or ceases to be) eligible under the plan, then that change constitutes a change in employment under this subsection;
- (4) Dependent satisfies or ceases to satisfy the eligibility requirements: An event that causes the Participant's dependent to satisfy or cease to satisfy the requirements for coverage due to attainment of age, student status, or any similar circumstance; and

- (5) **Residency:** A change in the place of residence of the Participant, spouse or dependent, that would lead to a change in status (such as a loss of HMO coverage).

For the Dependent Care Flexible Spending Account, a dependent becoming or ceasing to be a "Qualifying Dependent" as defined under Code Section 21(b) shall also qualify as a change in status.

(b) **Special enrollment rights.** Notwithstanding subsection (a), the Participants may change an election for accident or health coverage during a Plan Year and make a new election that corresponds with the special enrollment rights provided in Code Section 9801(f). Such change shall take place on a prospective basis, unless otherwise required by Code Section 9801(f) to be retroactive.

(c) **Qualified Medical Support Order.** Notwithstanding subsection (a), in the event of a judgment, decree, or order ("order") resulting from a divorce, legal separation, annulment, or change in legal custody (including a qualified medical child support order defined in ERISA Section 609) which requires accident or health coverage for a Participant's child (including a foster child who is a dependent of the Participant):

(1) The Plan may change an election to provide coverage for the child if the order requires coverage under the Participant's plan; or

(2) The Participant shall be permitted to change an election to cancel coverage for the child if the order requires the former spouse to provide coverage for such child, under that individual's plan and such coverage is actually provided.

(d) **Medicare or Medicaid.** Notwithstanding subsection (a), a Participant may change elections to cancel accident or health coverage for the Participant or the Participant's spouse or dependent if the Participant or the Participant's spouse or dependent is enrolled in the accident or health coverage of the Employer and becomes entitled to coverage (i.e., enrolled) under Part A or Part B of the Title XVIII of the Social Security Act (Medicare) or Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under Section 1928 of the Social Security Act (the program for distribution of pediatric vaccines). If the Participant or the Participant's spouse or dependent who has been entitled to Medicaid or Medicare coverage loses eligibility, that individual may prospectively elect coverage under the Plan if a benefit package option under the Plan provides similar coverage.

(e) **Cost increase or decrease.** If the cost of a Benefit provided under the Plan increases or decreases during a Plan Year, then the Plan shall automatically increase or decrease, as the case may be, the Salary Redirections of all affected Participants for such Benefit. Alternatively, if the cost of a benefit package option increases significantly, the Administrator shall permit the affected Participants to either make corresponding changes in their payments or revoke their elections and, in lieu thereof, receive on a prospective basis coverage under

another benefit package option with similar coverage, or drop coverage prospectively if there is no benefit package option with similar coverage.

A cost increase or decrease refers to an increase or decrease in the amount of elective contributions under the Plan, whether resulting from an action taken by the Participants or an action taken by the Employer.

(f) **Loss of coverage.** If the coverage under a Benefit is significantly curtailed or ceases during a Plan Year, affected Participants may revoke their elections of such Benefit and, in lieu thereof, elect to receive on a prospective basis coverage under another plan with similar coverage, or drop coverage prospectively if no similar coverage is offered.

(g) **Addition of a new benefit.** If, during the period of coverage, a new benefit package option or other coverage option is added, an existing benefit package option is significantly improved, or an existing benefit package option or other coverage option is eliminated, then the affected Participants may elect the newly-added option, or elect another option if an option has been eliminated prospectively and make corresponding election changes with respect to other benefit package options providing similar coverage. In addition, those Eligible Employees who are not participating in the Plan may opt to become Participants and elect the new or newly improved benefit package option.

(h) **Loss of coverage under certain other plans.** A Participant may make a prospective election change to add group health coverage for the Participant, the Participant's spouse or dependent if such individual loses group health coverage sponsored by a governmental or educational institution, including a state children's health insurance program under the Social Security Act, the Indian Health Service or a health program offered by an Indian tribal government, a state health benefits risk pool, or a foreign government group health plan.

(i) **Change of coverage due to change under certain other plans.** A Participant may make a prospective election change that is on account of and corresponds with a change made under the plan of a spouse's, former spouse's or dependent's employer if (1) the cafeteria plan or other benefits plan of the spouse's, former spouse's or dependent's employer permits its participants to make a change; or (2) the cafeteria plan permits participants to make an election for a period of coverage that is different from the period of coverage under the cafeteria plan of a spouse's, former spouse's or dependent's employer.

(j) **Change in dependent care provider.** A Participant may make a prospective election change that is on account of and corresponds with a change by the Participant in the dependent care provider. The availability of dependent care services from a new childcare provider is similar to a new benefit package option becoming available. A cost change is allowable in the Dependent Care Flexible Spending Account only if the cost change is imposed by a dependent care provider who is not related to the Participant, as defined in Code Section 152(a)(1) through (8).



(k) **Health FSA cannot change due to insurance change.** A Participant shall not be permitted to change an election to the Health Flexible Spending Account as a result of a cost or coverage change under any health insurance benefits.

## **ARTICLE VI HEALTH FLEXIBLE SPENDING ACCOUNT**

### **6.1 ESTABLISHMENT OF PLAN**

This Health Flexible Spending Account is intended to qualify as a medical reimbursement plan under Code Section 105 and shall be interpreted in a manner consistent with such Code Section and the Treasury regulations thereunder. Participants who elect to participate in this Health Flexible Spending Account may submit claims for the reimbursement of Medical Expenses. All amounts reimbursed shall be periodically paid from amounts allocated to the Health Flexible Spending Account. Periodic payments reimbursing Participants from the Health Flexible Spending Account shall in no event occur less frequently than monthly.

### **6.2 DEFINITIONS**

For the purposes of this Article and the Cafeteria Plan, the terms below have the following meaning:

(a) **"Health Flexible Spending Account"** means the account established for Participants pursuant to this Plan to which part of their Cafeteria Plan Benefit Dollars may be allocated and from which all allowable Medical Expenses incurred by a Participant, his or her spouse and his or her Dependents may be reimbursed.

(b) **"Highly Compensated Participant"** means, for the purposes of this Article and determining discrimination under Code Section 105(h), a participant who is:

- (1) one of the 5 highest paid officers;
- (2) a shareholder who owns (or is considered to own applying the rules of Code Section 318) more than 10 percent in value of the stock of the Employer; or
- (3) among the highest paid 25 percent of all Employees (other than exclusions permitted by Code Section 105(h)(3)(B) for those individuals who are not Participants).

(c) **"Medical Expenses"** means any expense for medical care within the meaning of the term "medical care" as defined in Code Section 213(d) and as allowed under Code Section 105 and the rulings and Treasury regulations thereunder, and not otherwise used by the Participant as a deduction in determining his tax liability under the Code. "Medical Expenses" can be incurred by the Participant, his or her spouse and his or her Dependents.

A Participant may not be reimbursed for the cost of other health coverage such as premiums paid under plans maintained by the employer of the Participant's spouse or individual policies maintained by the Participant or his spouse or Dependent.

A Participant may not be reimbursed for "qualified long-term care services" as defined in Code Section 7702B(c).

(d) The definitions of Article I are hereby incorporated by reference to the extent necessary to interpret and apply the provisions of this Health Flexible Spending Account.

### **6.3 FORFEITURES**

The amount in the Health Flexible Spending Account as of the end of any Plan Year (and after the processing of all claims for such Plan Year pursuant to Section 6.7 hereof) shall be forfeited and credited to the benefit plan surplus. In such event, the Participant shall have no further claim to such amount for any reason, subject to Section 8.2.

### **6.4 LIMITATION ON ALLOCATIONS**

Notwithstanding any provision contained in this Health Flexible Spending Account to the contrary, no more than \$2,000 may be allocated to the Health Flexible Spending Account by a Participant in or on account of any Plan Year unless prior authorization from the County has been granted.

### **6.5 NONDISCRIMINATION REQUIREMENTS**

(a) **Intent to be nondiscriminatory.** It is the intent of this Health Flexible Spending Account not to discriminate in violation of the Code and the Treasury regulations thereunder.

(b) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination under this Health Flexible Spending Account, it may, but shall not be required to, reject any elections or reduce contributions or Benefits in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner. If the Administrator decides to reject any elections or reduce contributions or Benefits, it shall be done in the following manner. First, the Benefits designated for the Health Flexible Spending Account by the member of the group in whose favor discrimination may not occur pursuant to Code Section 105 that elected to contribute the highest amount to the fund for the Plan Year shall be reduced until the nondiscrimination tests set forth in this Section or the Code are satisfied, or until the amount designated for the fund equals the amount designated for the fund by the next member of the group in whose favor discrimination may not occur pursuant to Code Section 105 who has elected the second highest contribution to the Health Flexible Spending Account for the Plan Year. This process shall continue until the nondiscrimination tests set forth in this Section or the Code are satisfied. Contributions which are not utilized to provide

Benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited and credited to the benefit plan surplus.

## **6.6 COORDINATION WITH CAFETERIA PLAN**

All Participants under the Cafeteria Plan are eligible to receive Benefits under this Health Flexible Spending Account. The enrollment under the Cafeteria Plan shall constitute enrollment under this Health Flexible Spending Account. In addition, other matters concerning contributions, elections and the like shall be governed by the general provisions of the Cafeteria Plan.

## **6.7 HEALTH FLEXIBLE SPENDING ACCOUNT CLAIMS**

(a) **Expenses must be incurred during Plan Year.** All Medical Expenses incurred by a Participant, his or her spouse and his or her Dependents shall be reimbursed during the Plan Year subject to Section 2.6, even though the submission of such a claim occurs after his participation hereunder ceases; but provided that the Medical Expenses were incurred during the applicable Plan Year. Medical Expenses are treated as having been incurred when the Participant is provided with the medical care that gives rise to the medical expenses, not when the Participant is formally billed or charged for, or pays for the medical care.

(b) **Reimbursement available throughout Plan Year.** The Administrator shall direct the reimbursement to each eligible Participant for all allowable Medical Expenses, up to a maximum of the amount designated by the Participant for the Health Flexible Spending Account for the Plan Year. Reimbursements shall be made available to the Participant throughout the year without regard to the level of Cafeteria Plan Benefit Dollars which have been allocated to the fund at any given point in time. Furthermore, a Participant shall be entitled to reimbursements only for amounts in excess of any payments or other reimbursements under any health care plan covering the Participant and/or his Spouse or Dependents.

(c) **Payments.** Reimbursement payments under this Plan shall be made directly to the Participant. However, in the Administrator's discretion, payments may be made directly to the service provider. The application for payment or reimbursement shall be made to the Administrator on an acceptable form within a reasonable time of incurring the debt or paying for the service. The application shall include a written statement from an independent third party stating that the Medical Expense has been incurred and the amount of such expense. Furthermore, the Participant shall provide a written statement that the Medical Expense has not been reimbursed or is not reimbursable under any other health plan coverage and, if reimbursed from the Health Flexible Spending Account, such amount will not be claimed as a tax deduction. The Administrator shall retain a file of all such applications.

(d) **Grace Period.** Notwithstanding anything in this Section to the contrary, Medical Expenses incurred during the Grace Period, up to the remaining

account balance, shall also be deemed to have been incurred during the Plan Year to which the Grace Period relates.

(e) **Claims for reimbursement.** Claims for the reimbursement of Medical Expenses incurred in any Plan Year shall be paid as soon after a claim has been filed as is administratively practicable; provided however, that if a Participant fails to submit a claim within 60 days after the end of the Grace Period, those Medical Expense claims shall not be considered for reimbursement by the Administrator.

## **6.8 DEBIT AND CREDIT CARDS**

Participants may, subject to a procedure established by the Administrator and applied in a uniform nondiscriminatory manner, use debit and/or credit (stored value) cards ("cards") provided by the Administrator and the Plan for payment of Medical Expenses, subject to the following terms:

(a) **Card only for medical expenses.** Each Participant issued a card shall certify that such card shall only be used for Medical Expenses. The Participant shall also certify that any Medical Expense paid with the card has not already been reimbursed by any other plan covering health benefits and that the Participant will not seek reimbursement from any other plan covering health benefits.

(b) **Card issuance.** Such card shall be issued upon the Participant's Effective Date of Participation and reissued for each Plan Year the Participant remains a Participant in the Health Flexible Spending Account. Such card shall be automatically cancelled upon the Participant's death or termination of employment, or if such Participant has a change in status that results in the Participant's withdrawal from the Health Flexible Spending Account.

(c) **Maximum dollar amount available.** The dollar amount of coverage available on the card shall be the amount elected by the Participant for the Plan Year. The maximum dollar amount of coverage available shall be the maximum amount for the Plan Year as set forth in Section 6.4.

(d) **Only available for use with certain service providers.** The cards shall only be accepted by such merchants and service providers as have been approved by the Administrator.

(e) **Card use.** The cards shall only be used for Medical Expense purchases at these providers, including, but not limited to, the following:

- (1) Co-payments for doctor and other medical care;
- (2) Purchase of drugs;
- (3) Purchase of medical items such as eyeglasses, syringes, crutches, etc.

(f) **Substantiation.** Such purchases by the cards shall be subject to substantiation by the Administrator, usually by submission of a receipt from a service provider describing the service, the date and the amount. The Administrator shall also follow the requirements set forth in Revenue Ruling 2003-43 and Notice 2006-69. All charges shall be conditional pending confirmation and substantiation.

(g) **Correction methods.** If such purchase is later determined by the Administrator to not qualify as a Medical Expense, the Administrator, in its discretion, shall use one of the following correction methods to make the Plan whole. Until the amount is repaid, the Administrator shall take further action to ensure that further violations of the terms of the card do not occur, up to and including denial of access to the card.

- (1) Repayment of the improper amount by the Participant;
- (2) Withholding the improper payment from the Participant's wages or other compensation to the extent consistent with applicable federal or state law;
- (3) Claims substitution or offset of future claims until the amount is repaid; and
- (4) if subsections (1) through (3) fail to recover the amount, consistent with the Employer's business practices, the Employer may treat the amount as any other business indebtedness.

## **ARTICLE VII DEPENDENT CARE FLEXIBLE SPENDING ACCOUNT**

### **7.1 ESTABLISHMENT OF ACCOUNT**

This Dependent Care Flexible Spending Account is intended to qualify as a program under Code Section 129 and shall be interpreted in a manner consistent with such Code Section. Participants who elect to participate in this program may submit claims for the reimbursement of Employment-Related Dependent Care Expenses. All amounts reimbursed shall be paid from amounts allocated to the Participant's Dependent Care Flexible Spending Account.

### **7.2 DEFINITIONS**

For the purposes of this Article and the Cafeteria Plan the terms below shall have the following meaning:

(a) **"Dependent Care Flexible Spending Account"** means the account established for a Participant pursuant to this Article to which part of his Cafeteria Plan Benefit Dollars may be allocated and from which Employment-Related Dependent Care Expenses of the Participant may be reimbursed for the care of the Qualifying Dependents of Participants.

(b) **"Earned Income"** means earned income as defined under Code Section 32(c)(2), but excluding such amounts paid or incurred by the Employer for dependent care assistance to the Participant.

(c) **"Employment-Related Dependent Care Expenses"** means the amounts paid for expenses of a Participant for those services which if paid by the Participant would be considered employment related expenses under Code Section 21(b)(2). Generally, they shall include expenses for household services and for the care of a Qualifying Dependent, to the extent that such expenses are incurred to enable the Participant to be gainfully employed for any period for which there are one or more Qualifying Dependents with respect to such Participant. Employment-Related Dependent Care Expenses are treated as having been incurred when the Participant's Qualifying Dependents are provided with the dependent care that gives rise to the Employment-Related Dependent Care Expenses, not when the Participant is formally billed or charged for, or pays for the dependent care. The determination of whether an amount qualifies as an Employment-Related Dependent Care Expense shall be made subject to the following rules:

(1) If such amounts are paid for expenses incurred outside the Participant's household, they shall constitute Employment-Related Dependent Care Expenses only if incurred for a Qualifying Dependent as defined in Section 7.2(d)(1) (or deemed to be, as described in Section 7.2(d)(1) pursuant to Section 7.2(d)(3)), or for a Qualifying Dependent as defined in Section 7.2(d)(2) (or deemed to be, as described in Section 7.2(d)(2) pursuant to Section 7.2(d)(3)) who regularly spends at least 8 hours per day in the Participant's household;

(2) If the expense is incurred outside the Participant's home at a facility that provides care for a fee, payment, or grant for more than 6 individuals who do not regularly reside at the facility, the facility must comply with all applicable state and local laws and regulations, including licensing requirements, if any; and

(3) Employment-Related Dependent Care Expenses of a Participant shall not include amounts paid or incurred to a child of such Participant who is under the age of 19 or to an individual who is a dependent of such Participant or such Participant's Spouse.

(d) **"Qualifying Dependent"** means, for Dependent Care Flexible Spending Account purposes,

(1) a Participant's Dependent (as defined in Code Section 152(a)(1)) who has not attained age 13;

(2) a Dependent or the Spouse of a Participant who is physically or mentally incapable of caring for himself or herself and has the same principal place of abode as the Participant for more than one-half of such taxable year; or

(3) a child that is deemed to be a Qualifying Dependent described in paragraph (1) or (2) above, whichever is appropriate, pursuant to Code Section 21(e)(5).

(e) The definitions of Article I are hereby incorporated by reference to the extent necessary to interpret and apply the provisions of this Dependent Care Flexible Spending Account.

### **7.3 DEPENDENT CARE FLEXIBLE SPENDING ACCOUNTS**

The Administrator shall establish a Dependent Care Flexible Spending Account for each Participant who elects to apply Cafeteria Plan Benefit Dollars to Dependent Care Flexible Spending Account benefits.

### **7.4 INCREASES IN DEPENDENT CARE FLEXIBLE SPENDING ACCOUNTS**

A Participant's Dependent Care Flexible Spending Account shall be increased each pay period by the portion of Cafeteria Plan Benefit Dollars that he has elected to apply toward his Dependent Care Flexible Spending Account pursuant to elections made under Article V hereof.

### **7.5 DECREASES IN DEPENDENT CARE FLEXIBLE SPENDING ACCOUNTS**

A Participant's Dependent Care Flexible Spending Account shall be reduced by the amount of any Employment-Related Dependent Care Expense reimbursements paid or incurred on behalf of a Participant pursuant to Section 7.12 hereof.

### **7.6 ALLOWABLE DEPENDENT CARE REIMBURSEMENT**

Subject to limitations contained in Section 7.9 of this Program, and to the extent of the amount contained in the Participant's Dependent Care Flexible Spending Account, a Participant who incurs Employment-Related Dependent Care Expenses shall be entitled to receive from the Employer full reimbursement for the entire amount of such expenses incurred during the Plan Year or portion thereof during which he is a Participant.

### **7.7 ANNUAL STATEMENT OF BENEFITS**

On or before January 31st of each calendar year, the Employer shall furnish to each Employee who was a Participant and received benefits under Section 7.6 during the prior calendar year, a statement of all such benefits paid to or on behalf of such Participant during the prior calendar year.

### **7.8 FORFEITURES**

The amount in a Participant's Dependent Care Flexible Spending Account as of the end of any Plan Year (and after the processing of all claims for such Plan Year pursuant to Section 7.12 hereof) shall be forfeited and credited to the benefit plan surplus. In such event, the Participant shall have no further claim to such amount for any reason.

## **7.9 LIMITATION ON PAYMENTS**

Notwithstanding any provision contained in this Article to the contrary, amounts paid from a Participant's Dependent Care Flexible Spending Account in or on account of any taxable year of the Participant shall not exceed the lesser of the Earned Income limitation described in Code Section 129(b) or \$5,000 (\$2,500 if a separate tax return is filed by a Participant who is married as determined under the rules of paragraphs (3) and (4) of Code Section 21(e)).

## **7.10 NONDISCRIMINATION REQUIREMENTS**

(a) **Intent to be nondiscriminatory.** It is the intent of this Dependent Care Flexible Spending Account that contributions or benefits not discriminate in favor of the group of employees in whose favor discrimination may not occur under Code Section 129(d).

(b) **25% test for shareholders.** It is the intent of this Dependent Care Flexible Spending Account that not more than 25 percent of the amounts paid by the Employer for dependent care assistance during the Plan Year will be provided for the class of individuals who are shareholders or owners (or their Spouses or Dependents), each of whom (on any day of the Plan Year) owns more than 5 percent of the stock or of the capital or profits interest in the Employer.

(c) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination or possible taxation to a group of employees in whose favor discrimination may not occur in violation of Code Section 129 it may, but shall not be required to, reject any elections or reduce contributions or non-taxable benefits in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner. If the Administrator decides to reject any elections or reduce contributions or Benefits, it shall be done in the following manner. First, the Benefits designated for the Dependent Care Flexible Spending Account by the affected Participant that elected to contribute the highest amount to such account for the Plan Year shall be reduced until the nondiscrimination tests set forth in this Section are satisfied, or until the amount designated for the account equals the amount designated for the account of the affected Participant who has elected the second highest contribution to the Dependent Care Flexible Spending Account for the Plan Year. This process shall continue until the nondiscrimination tests set forth in this Section are satisfied. Contributions which are not utilized to provide Benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited.



## **7.11 COORDINATION WITH CAFETERIA PLAN**

All Participants under the Cafeteria Plan are eligible to receive Benefits under this Dependent Care Flexible Spending Account. The enrollment and termination of participation under the Cafeteria Plan shall constitute enrollment and termination of participation under this Dependent Care Flexible Spending Account. In addition, other matters concerning contributions, elections and the like shall be governed by the general provisions of the Cafeteria Plan.

## **7.12 DEPENDENT CARE FLEXIBLE SPENDING ACCOUNT CLAIMS**

The Administrator shall direct the payment of all such Dependent Care claims to the Participant upon the presentation to the Administrator of documentation of such expenses in a form satisfactory to the Administrator. However, in the Administrator's discretion, payments may be made directly to the service provider. In its discretion in administering the Plan, the Administrator may utilize forms and require documentation of costs as may be necessary to verify the claims submitted. At a minimum, the form shall include a statement from an independent third party as proof that the expense has been incurred and the amount of such expense. In addition, the Administrator may require that each Participant who desires to receive reimbursement under this Program for Employment-Related Dependent Care Expenses submit a statement which may contain some or all of the following information:

- (a) The Dependent or Dependents for whom the services were performed;
- (b) The nature of the services performed for the Participant, the cost of which he wishes reimbursement;
- (c) The relationship, if any, of the person performing the services to the Participant;
- (d) If the services are being performed by a child of the Participant, the age of the child;
- (e) A statement as to where the services were performed;
- (f) If any of the services were performed outside the home, a statement as to whether the Dependent for whom such services were performed spends at least 8 hours a day in the Participant's household;
- (g) If the services were being performed in a day care center, a statement:
  - (1) that the day care center complies with all applicable laws and regulations of the state of residence,
  - (2) that the day care center provides care for more than 6 individuals (other than individuals residing at the center), and
  - (3) of the amount of fee paid to the provider.

- (h) If the Participant is married, a statement containing the following:
  - (1) the Spouse's salary or wages if he or she is employed, or
  - (2) if the Participant's Spouse is not employed, that
    - (i) he or she is incapacitated, or
    - (ii) he or she is a full-time student attending an educational institution and the months during the year which he or she attended such institution.
- (i) **Grace Period.** Notwithstanding anything in this Section to the contrary, Employment-Related Dependent Care Expenses incurred during the Grace Period, up to the remaining account balance, shall also be deemed to have been incurred during the Plan Year to which the Grace Period relates.
- (j) **Claims for reimbursement.** If a Participant fails to submit a claim within 60 days after the end of the Grace Period, those claims shall not be considered for reimbursement by the Administrator.

### 7.13 DEBIT AND CREDIT CARDS

Participants may, subject to a procedure established by the Administrator and applied in a uniform nondiscriminatory manner, use debit and/or credit (stored value) cards ("cards") provided by the Administrator and the Plan for payment of Employment-Related Dependent Care Expenses, subject to the following terms:

- (a) **Card only for dependent care expenses.** Each Participant issued a card shall certify that such card shall only be used for Employment-Related Dependent Care Expenses. The Participant shall also certify that any Employment-Related Dependent Care Expense paid with the card has not already been reimbursed by any other plan covering dependent care benefits and that the Participant will not seek reimbursement from any other plan covering dependent care benefits.
- (b) **Card issuance.** Such card shall be issued upon the Participant's Effective Date of Participation and reissued for each Plan Year the Participant remains a Participant in the Dependent Care Assistance Program or Dependent Care Flexible Spending Account. Such card shall be automatically cancelled upon the Participant's death or termination of employment, or if such Participant has a change in status that results in the Participant's withdrawal from the Dependent Care Flexible Spending Account.
- (c) **Only available for use with certain service providers.** The cards shall only be accepted by such service providers as have been approved by the Administrator. The cards shall only be used for Employment-Related Dependent Care Expenses from these providers.

(d) **Substantiation.** Such purchases by the cards shall be subject to substantiation by the Administrator, usually by submission of a receipt from a service provider describing the service, the date and the amount. The Administrator shall also follow the requirements set forth in Revenue Ruling 2003-43 and Notice 2006-69. All charges shall be conditional pending confirmation and substantiation.

(e) **Correction methods.** If such purchase is later determined by the Administrator to not qualify as an Employment-Related Dependent Care Expense, the Administrator, in its discretion, shall use one of the following correction methods to make the Plan whole. Until the amount is repaid, the Administrator shall take further action to ensure that further violations of the terms of the card do not occur, up to and including denial of access to the card.

- (1) Repayment of the improper amount by the Participant;
- (2) Withholding the improper payment from the Participant's wages or other compensation to the extent consistent with applicable federal or state law;
- (3) Claims substitution or offset of future claims until the amount is repaid; and
- (4) if subsections (1) through (3) fail to recover the amount, consistent with the Employer's business practices, the Employer may treat the amount as any other business indebtedness.

## **ARTICLE VIII BENEFITS AND RIGHTS**

### **8.1 CLAIM FOR BENEFITS**

(a) **Insurance claims.** Any claim for Benefits underwritten by Insurance Contract(s) shall be made to the Insurer. If the Insurer denies any claim, the Participant or beneficiary shall follow the Insurer's claims review procedure.

(b) **Dependent Care Flexible Spending Account or Health Flexible Spending Account claims.** Any claim for Dependent Care Flexible Spending Account or Health Flexible Spending Account Benefits shall be made to the Administrator. For the Health Flexible Spending Account, if a Participant fails to submit a claim within 60 days after the end of the Grace Period, those claims shall not be considered for reimbursement by the Administrator. For the Dependent Care Flexible Spending Account, if a Participant fails to submit a claim within 60 days after the end of the Grace Period, those claims shall not be considered for reimbursement by the Administrator. If the Administrator denies a claim, the Administrator may provide notice to the Participant or beneficiary, in writing, within 90 days after the claim is filed unless special circumstances require an extension of time for processing the claim. The notice of a denial of a claim shall be written in a manner calculated to be understood by the claimant and shall set forth:

- (1) specific references to the pertinent Plan provisions on which the denial is based;
- (2) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation as to why such information is necessary; and
- (3) an explanation of the Plan's claim procedure.

(c) **Appeal.** Within 60 days after receipt of the above material, the claimant shall have a reasonable opportunity to appeal the claim denial to the Administrator for a full and fair review. The claimant or his duly authorized representative may:

- (1) request a review upon written notice to the Administrator;
- (2) review pertinent documents; and
- (3) submit issues and comments in writing.

(d) **Review of appeal.** A decision on the review by the Administrator will be made not later than 60 days after receipt of a request for review, unless special circumstances require an extension of time for processing (such as the need to hold a hearing), in which event a decision should be rendered as soon as possible, but in no event later than 120 days after such receipt. The decision of the Administrator shall be written and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, with specific references to the pertinent Plan provisions on which the decision is based.

(e) **Forfeitures.** Any balance remaining in the Participant's Dependent Care Flexible Spending Account or Health Flexible Spending Account as of the end of the time for claims reimbursement for each Plan Year and Grace Period (if applicable) shall be forfeited and deposited in the benefit plan surplus of the Employer pursuant to Section 6.3 or Section 7.8, whichever is applicable, unless the Participant had made a claim for such Plan Year, in writing, which has been denied or is pending; in which event the amount of the claim shall be held in his account until the claim appeal procedures set forth above have been satisfied or the claim is paid. If any such claim is denied on appeal, the amount held beyond the end of the Plan Year shall be forfeited and credited to the benefit plan surplus.

## **8.2 APPLICATION OF BENEFIT PLAN SURPLUS**

Any forfeited amounts credited to the benefit plan surplus by virtue of the failure of a Participant to incur a qualified expense or seek reimbursement in a timely manner may, but need not be, separately accounted for after the close of the Plan Year (or after such further time specified herein for the filing of claims) in which such forfeitures arose. In no event shall such amounts be carried over to reimburse a Participant for expenses incurred during a subsequent Plan Year for the same or any other Benefit available under the Plan; nor shall amounts forfeited by a particular Participant be made available to such Participant in any other form or manner, except as permitted by Treasury regulations. Amounts in the benefit plan surplus shall first be used to defray any administrative costs and experience losses and thereafter be retained by the Employer.

## **ARTICLE IX ADMINISTRATION**

### **9.1 PLAN ADMINISTRATION**

The operation of the Plan shall be under the supervision of the Administrator. It shall be a principal duty of the Administrator to see that the Plan is carried out in accordance with its terms, and for the exclusive benefit of Employees entitled to participate in the Plan. The Administrator shall have full power to administer the Plan in all of its details, subject, however, to the pertinent provisions of the Code. The Administrator's powers shall include, but shall not be limited to the following authority, in addition to all other powers provided by this Plan:

- (a) To make and enforce such rules and regulations as the Administrator deems necessary or proper for the efficient administration of the Plan;
- (b) To interpret the Plan, the Administrator's interpretations thereof in good faith to be final and conclusive on all persons claiming benefits by operation of the Plan;
- (c) To decide all questions concerning the Plan and the eligibility of any person to participate in the Plan and to receive benefits provided by operation of the Plan;
- (d) To reject elections or to limit contributions or Benefits for certain highly compensated participants if it deems such to be desirable in order to avoid discrimination under the Plan in violation of applicable provisions of the Code;
- (e) To provide Employees with a reasonable notification of their benefits available by operation of the Plan;
- (f) To approve reimbursement requests and to authorize the payment of benefits;
- (g) To appoint such agents, counsel, accountants, consultants, and actuaries as may be required to assist in administering the Plan.

Any procedure, discretionary act, interpretation or construction taken by the Administrator shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan shall continue to comply with the terms of Code Section 125 and the Treasury regulations thereunder.

## **9.2 EXAMINATION OF RECORDS**

The Administrator shall make available to each Participant, Eligible Employee and any other Employee of the Employer such records as pertain to their interest under the Plan for examination at reasonable times during normal business hours.

## **9.3 PAYMENT OF EXPENSES**

Any reasonable administrative expenses shall be paid by the Employer unless the Employer determines that administrative costs shall be borne by the Participants under the Plan or by any Trust Fund which may be established hereunder. The Administrator may impose reasonable conditions for payments, provided that such conditions shall not discriminate in favor of highly compensated employees.

## **9.4 INSURANCE CONTROL CLAUSE**

In the event of a conflict between the terms of this Plan and the terms of an Insurance Contract of an independent third party Insurer whose product is then being used in conjunction with this Plan, the terms of the Insurance Contract shall control as to those Participants receiving coverage under such Insurance Contract. For this purpose, the Insurance Contract shall control in defining the persons eligible for insurance, the dates of their eligibility, the conditions which must be satisfied to become insured, if any, the benefits Participants are entitled to and the circumstances under which insurance terminates.

## **9.5 INDEMNIFICATION OF ADMINISTRATOR**

The Employer agrees to indemnify and to defend to the fullest extent permitted by law any Employee serving as the Administrator or as a member of a committee designated as Administrator (including any Employee or former Employee who previously served as Administrator or as a member of such committee) against all liabilities, damages, costs and expenses (including attorney's fees and amounts paid in settlement of any claims approved by the Employer) occasioned by any act or omission to act in connection with the Plan, if such act or omission is in good faith.

# **ARTICLE X AMENDMENT OR TERMINATION OF PLAN**

## **10.1 AMENDMENT**

The Employer, at any time or from time to time, may amend any or all of the provisions of the Plan without the consent of any Employee or Participant. No amendment shall have the effect of modifying any benefit election of any Participant in effect at the time of such amendment, unless such amendment is made to comply with Federal, state or local laws, statutes or regulations.

## **10.2 TERMINATION**

The Employer is establishing this Plan with the intent that it will be maintained for an indefinite period of time. Notwithstanding the foregoing, the Employer reserves the right to terminate this Plan, in whole or in part, at any time. In the event the Plan is terminated, no further contributions shall be made. Benefits under any Insurance Contract shall be paid in accordance with the terms of the Insurance Contract.

No further additions shall be made to the Health Flexible Spending Account or Dependent Care Flexible Spending Account, but all payments from such fund shall continue to be made according to the elections in effect until 90 days after the termination date of the Plan. Any amounts remaining in any such fund or account as of the end of such period shall be forfeited and deposited in the benefit plan surplus after the expiration of the filing period.

## **ARTICLE XI MISCELLANEOUS**

### **11.1 PLAN INTERPRETATION**

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner. This Plan shall be read in its entirety and not severed except as provided in Section 11.12.

### **11.2 GENDER AND NUMBER**

Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

### **11.3 WRITTEN DOCUMENT**

This Plan, in conjunction with any separate written document which may be required by law, is intended to satisfy the written Plan requirement of Code Section 125 and any Treasury regulations thereunder relating to cafeteria plans.

### **11.4 EXCLUSIVE BENEFIT**

This Plan shall be maintained for the exclusive benefit of the Employees who participate in the Plan.

### **11.5 PARTICIPANT'S RIGHTS**

This Plan shall not be deemed to constitute an employment contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon him as a Participant of this Plan.

## **11.6 ACTION BY THE EMPLOYER**

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

## **11.7 EMPLOYER'S PROTECTIVE CLAUSES**

(a) **Insurance purchase.** Upon the failure of either the Participant or the Employer to obtain the insurance contemplated by this Plan (whether as a result of negligence, gross neglect or otherwise), the Participant's Benefits shall be limited to the insurance premium(s), if any, that remained unpaid for the period in question and the actual insurance proceeds, if any, received by the Employer or the Participant as a result of the Participant's claim.

(b) **Validity of insurance contract.** The Employer shall not be responsible for the validity of any Insurance Contract issued hereunder or for the failure on the part of the Insurer to make payments provided for under any Insurance Contract. Once insurance is applied for or obtained, the Employer shall not be liable for any loss which may result from the failure to pay Premiums to the extent Premium notices are not received by the Employer.

## **11.8 NO GUARANTEE OF TAX CONSEQUENCES**

Neither the Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant under the Plan will be excludable from the Participant's gross income for federal or state income tax purposes, or that any other federal or state tax treatment will apply to or be available to any Participant. It shall be the obligation of each Participant to determine whether each payment under the Plan is excludable from the Participant's gross income for federal and state income tax purposes, and to notify the Employer if the Participant has reason to believe that any such payment is not so excludable. Notwithstanding the foregoing, the rights of Participants under this Plan shall be legally enforceable.

## **11.9 INDEMNIFICATION OF EMPLOYER BY PARTICIPANTS**

If any Participant receives one or more payments or reimbursements under the Plan that are not for a permitted Benefit, such Participant shall indemnify and reimburse the Employer for any liability it may incur for failure to withhold federal or state income tax or Social Security tax from such payments or reimbursements. However, such indemnification and reimbursement shall not exceed the amount of additional federal and state income tax (plus any penalties) that the Participant would have owed if the payments or reimbursements had been made to the Participant as regular cash compensation, plus the Participant's share of any Social Security tax that would have been paid on such compensation, less any such additional income and Social Security tax actually paid by the Participant.



## **11.10 FUNDING**

Unless otherwise required by law, contributions to the Plan need not be placed in trust or dedicated to a specific Benefit, but may instead be considered general assets of the Employer. Furthermore, and unless otherwise required by law, nothing herein shall be construed to require the Employer or the Administrator to maintain any fund or segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or security or other interest in, any fund, account or asset of the Employer from which any payment under the Plan may be made.

## **11.11 GOVERNING LAW**

This Plan is governed by the Code and the Treasury regulations issued thereunder (as they might be amended from time to time). In no event shall the Employer guarantee the favorable tax treatment sought by this Plan. To the extent not preempted by Federal law, the provisions of this Plan shall be construed, enforced and administered according to the laws of the State of California.

## **11.12 SEVERABILITY**

If any provision of the Plan is held invalid or unenforceable, its invalidity or unenforceability shall not affect any other provisions of the Plan, and the Plan shall be construed and enforced as if such provision had not been included herein.

## **11.13 CAPTIONS**

The captions contained herein are inserted only as a matter of convenience and for reference, and in no way define, limit, enlarge or describe the scope or intent of the Plan, nor in any way shall affect the Plan or the construction of any provision thereof.

## **11.14 CONTINUATION OF COVERAGE**

Notwithstanding anything in the Plan to the contrary, in the event any benefit under this Plan subject to the continuation coverage requirement of Code Section 4980B becomes unavailable, each Participant will be entitled to continuation coverage as prescribed in Code Section 4980B, and related regulations. If during the Plan Year, the Employer employs fewer than twenty (20) employees on a typical business day, this Section shall not apply.

## **11.15 FAMILY AND MEDICAL LEAVE ACT**

Notwithstanding anything in the Plan to the contrary, in the event any benefit under this Plan becomes subject to the requirements of the Family and Medical Leave Act and regulations thereunder, this Plan shall be operated in accordance with Regulation 1.125-3.

## **11.16 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**

Notwithstanding anything in this Plan to the contrary, this Plan shall be operated in accordance with HIPAA and regulations thereunder.

## 11.17 USERRA

Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with the Uniform Services Employment And Reemployment Rights Act (USERRA) and the regulations thereunder.

## 11.18 COMPLIANCE WITH HIPAA PRIVACY STANDARDS

(a) **Application.** If the Health Flexible Spending Account under this Cafeteria Plan is subject to the Standards for Privacy of Individually Identifiable Health Information (45 CFR Part 164, the "Privacy Standards"), then this Section shall apply.

(b) **Disclosure of PHI.** The Plan shall not disclose Protected Health Information to any member of the Employer's workforce unless each of the conditions set out in this Section are met. "Protected Health Information" shall have the same definition as set forth in the Privacy Standards but generally shall mean individually identifiable information about the past, present or future physical or mental health or condition of an individual, including information about treatment or payment for treatment.

(c) **PHI disclosed for administrative purposes.** Protected Health Information disclosed to members of the Employer's workforce shall be used or disclosed by them only for purposes of Plan administrative functions. The Plan's administrative functions shall include all Plan payment functions and health care operations. The terms "payment" and "health care operations" shall have the same definitions as set out in the Privacy Standards, but the term "payment" generally shall mean activities taken to determine or fulfill Plan responsibilities with respect to eligibility, coverage, provision of benefits, or reimbursement for health care.

(d) **PHI disclosed to certain workforce members.** The Plan shall disclose Protected Health Information only to members of the Employer's workforce who are authorized to receive such Protected Health Information, and only to the extent and in the minimum amount necessary for that person to perform his or her duties with respect to the Plan. "Members of the Employer's workforce" shall refer to all employees and other persons under the control of the Employer. The Employer shall keep an updated list of those authorized to receive Protected Health Information.

(1) An authorized member of the Employer's workforce who receives Protected Health Information shall use or disclose the Protected Health Information only to the extent necessary to perform his or her duties with respect to the Plan.

(2) In the event that any member of the Employer's workforce uses or discloses Protected Health Information other than as permitted by this Section and the Privacy Standards, the incident shall be reported to the Plan's privacy officer. The privacy officer shall take appropriate action, including:

(i) investigation of the incident to determine whether the breach occurred inadvertently, through negligence or deliberately; whether there is a pattern of breaches; and the degree of harm caused by the breach;

(ii) appropriate sanctions against the persons causing the breach which, depending upon the nature of the breach, may include oral or written reprimand, additional training, or termination of employment;

(iii) mitigation of any harm caused by the breach, to the extent practicable; and

(iv) documentation of the incident and all actions taken to resolve the issue and mitigate any damages.

(e) **Certification.** The Employer must provide certification to the Plan that it agrees to:

(1) Not use or further disclose the information other than as permitted or required by the Plan documents or as required by law;

(2) Ensure that any agent or subcontractor, to whom it provides Protected Health Information received from the Plan, agrees to the same restrictions and conditions that apply to the Employer with respect to such information;

(3) Not use or disclose Protected Health Information for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the Employer;

(4) Report to the Plan any use or disclosure of the Protected Health Information of which it becomes aware that is inconsistent with the uses or disclosures permitted by this Section, or required by law;

(5) Make available Protected Health Information to individual Plan members in accordance with Section 164.524 of the Privacy Standards;

(6) Make available Protected Health Information for amendment by individual Plan members and incorporate any amendments to Protected Health Information in accordance with Section 164.526 of the Privacy Standards;

(7) Make available the Protected Health Information required to provide an accounting of disclosures to individual Plan members in accordance with Section 164.528 of the Privacy Standards;

(8) Make its internal practices, books and records relating to the use and disclosure of Protected Health Information received from the Plan

available to the Department of Health and Human Services for purposes of determining compliance by the Plan with the Privacy Standards;

(9) If feasible, return or destroy all Protected Health Information received from the Plan that the Employer still maintains in any form, and retain no copies of such information when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible; and

(10) Ensure the adequate separation between the Plan and members of the Employer's workforce, as required by Section 164.504(f)(2)(iii) of the Privacy Standards and set out in (d) above.

## **11.19 COMPLIANCE WITH HIPAA ELECTRONIC SECURITY STANDARDS**

Under the Security Standards for the Protection of Electronic Protected Health Information (45 CFR Part 164.300 et. seq., the "Security Standards"):

(a) **Implementation.** The Employer agrees to implement reasonable and appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of Electronic Protected Health Information that the Employer creates, maintains or transmits on behalf of the Plan. "Electronic Protected Health Information" shall have the same definition as set out in the Security Standards, but generally shall mean Protected Health Information that is transmitted by or maintained in electronic media.

(b) **Agents or subcontractors shall meet security standards.** The Employer shall ensure that any agent or subcontractor to whom it provides Electronic Protected Health Information shall agree, in writing, to implement reasonable and appropriate security measures to protect the Electronic Protected Health Information.

(c) **Employer shall ensure security standards.** The Employer shall ensure that reasonable and appropriate security measures are implemented to comply with the conditions and requirements set forth in Section 11.18.

IN WITNESS WHEREOF, this Plan document is hereby executed this  
\_\_\_\_\_ day of \_\_\_\_\_.

County of Fresno

By \_\_\_\_\_  
EMPLOYER

## ADOPTING RESOLUTION

The undersigned Principal of County of Fresno (the Employer) hereby certifies that the following resolutions were duly adopted by the Employer on \_\_\_\_\_, and that such resolutions have not been modified or rescinded as of the date hereof:

RESOLVED, that the form of amended Cafeteria Plan including a Dependent Care Flexible Spending Account and Health Flexible Spending Account effective January 1, 2006, presented to this meeting is hereby approved and adopted and that the duly authorized agents of the Employer are hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Plan.

RESOLVED, that the Administrator shall be instructed to take such actions that are deemed necessary and proper in order to implement the Plan, and to set up adequate accounting and administrative procedures to provide benefits under the Plan.

RESOLVED, that the duly authorized agents of the Employer shall act as soon as possible to notify the employees of the Employer of the adoption of the Cafeteria Plan by delivering to each employee a copy of the summary description of the Plan in the form of the Summary Plan Description presented to this meeting, which form is hereby approved.

The undersigned further certifies that attached hereto as Exhibits A and B, respectively, are true copies of County of Fresno Flexible Benefit Plan as amended and restated and the Summary Plan Description approved and adopted in the foregoing resolutions.

\_\_\_\_\_  
Principal

Date: \_\_\_\_\_