

**FIFTH AMENDMENT TO THE AGREEMENT BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND
P&A ADMINISTRATIVE SERVICES, INC.**

July 31, 2020

[COBRA AND FLEXIBLE SPENDING ACCOUNT SERVICES]

**City and County of San Francisco
1145 Market Street, Suite 300
San Francisco, California 94103**

**FIFTH AMENDMENT TO THE AGREEMENT BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO AND
P&A ADMINISTRATIVE SERVICES, INC.**

THIS FIFTH AMENDMENT (“Amendment”) is made as of July 31, 2020, in San Francisco, California, by and between P&A Administrative Services, Inc., hereinafter referred to as “Contractor,” and the City and County of San Francisco, a municipal corporation, hereinafter referred to as “City” or “CCSF.”

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the term of the Agreement and to increase the Health Care Flexible Spending Account carryover amount;

WHEREAS, this Agreement was competitively procured through a Request for Proposal #HSS1402 (“RFP”) issued on March 14, 2014, in which City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, approval for this Amendment was obtained when the Civil Service Commission approved file No. 0135-16-8 on April 4, 2016, which granted the Health Service System continuing approval for benefit related contracts;

NOW, THEREFORE, Contractor and the City agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

- 1a. Agreement.** The term “Agreement” shall mean the Agreement dated March 1, 2015 between Contractor and City, the First Amendment dated July 5, 2015, the Second Amendment dated January 1, 2017, the Third Amendment Dated April 5, 2018, and the Fourth Amendment Dated October 3, 2018.
- 1b. Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

- 2a. Section 2.** Section 2 (Term of the Agreement) of the Agreement currently reads as follows:

2. Term of the Agreement. Subject to Section 1, the term of this Agreement shall be from March 1, 2015 to December 31, 2020 for COBRA/AB528 Services and September 1, 2015 to December 31, 2020 for Flexible Spending Account Services.

a. Option to Extend the Agreement

- 1) The City may extend the term of this Agreement for an additional one (1) year.
- 2) If the City exercises this option, the charges and services will remain consistent with what is specified the current Agreement.

Section 2 is hereby replaced in its entirety to read as follows:

2. Term of the Agreement. Subject to Section 1, the term of this Agreement shall be from March 1, 2015 to December 31, 2021 for COBRA/AB528 Services and September 1, 2015 to December 30, 2021 for Flexible Spending Account Services.

2b. Section 5. Section 5 (Compensation) of the Agreement currently reads as follows:

5. Compensation

Compensation shall be made in monthly payments on or before the last day of each month for work, as set forth in Section 4 of this Agreement, that the Health Service System Director, in his or her sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **\$1,998,737 (One Million Nine Hundred Ninety-Eight Thousand Seven Hundred Thirty-Seven dollars)**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," and Appendix D, "Performance Guarantees and Contingent Discounts", attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Health Service System as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of CMD Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the department, the Director of CMD and Contractor of the omission. If Contractor's failure to provide CMD Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until CMD Progress Payment Form is provided. Following City's payment of an invoice, Contractor has ten days to file an affidavit using CMD Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

Section 5 is hereby replaced in its entirety to read as follows:

5. Compensation

Compensation shall be made in monthly payments on or before the last day of each month for work, as set forth in Section 4 of this Agreement, that the Health Service System Director, in his or her sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement

exceed **\$2,401,679 (Two Million Four Hundred One Thousand Six Hundred Seventy-Nine dollars)**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," and Appendix D, "Performance Guarantees and Contingent Discounts", attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Health Service System as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of CMD Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the department, the Director of CMD and Contractor of the omission. If Contractor's failure to provide CMD Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until CMD Progress Payment Form is provided. Following City's payment of an invoice, Contractor has ten days to file an affidavit using CMD Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

2c. Appendix A2 (Flexible Spending Account Services to be Provided by Contractor), Section I (Definitions), Carryover. Appendix A2 (Flexible Spending Account Services to be Provided by Contractor), Section I (Definitions), Definition of Carryover, of the Agreement currently reads as follows:

Carryover: Carryover shall mean the modification to the rules for Internal Revenue Code (IRC) § 125 cafeteria plans, which permits IRC § 125 cafeteria plans to be amended to allow up to \$500 of unused amounts remaining at the end of a plan year in a health FSA to be paid or reimbursed to plan participants for qualified medical expenses incurred during the following plan year, provided that the plan does not also incorporate the grace period rule. The City has establish limits under the Plan which only allows health FSA balances greater than or equal to \$10 to be subject to Carryover. Health FSA balances which are less than \$10 are subject to forfeiture.

Appendix A2 (Flexible Spending Account Services to be Provided by Contractor), Section I (Definitions), Definition of Carryover 5 hereby replaced in its entirety to read as follows:

Carryover: From the effective date of the Agreement, until December 31, 2020, Carryover shall mean the modification to the rules for Internal Revenue Code (IRC) § 125 cafeteria plans, which permits IRC § 125 cafeteria plans to be amended to allow up to \$500 of unused amounts remaining at the end of a plan year in a health FSA to be paid or reimbursed to plan participants for qualified medical expenses incurred during the following plan year, provided that the plan does not also incorporate the Grace Period rule. The City has established limits under the Plan which only allows health FSA balances greater than or equal to \$10 to be subject to Carryover. Health FSA balances

which are less than \$10 are subject to forfeiture. Effective January 1, 2021, "Carryover" shall mean the modification to the rules for Internal Revenue Code (IRC) § 125 cafeteria plans, which permits IRC § 125 cafeteria plans to be amended to allow up to \$550 of unused amounts remaining at the end of a plan year in a health FSA to be paid or reimbursed to plan participants for qualified medical expenses incurred during the following plan year, provided that the plan does not also incorporate the grace period rule. The City has established limits under the Plan which only allows health FSA balances greater than or equal to \$10 to be subject to Carryover. Health FSA balances which are less than \$10 are subject to forfeiture.

2d. Appendix A2 (Flexible Spending Account Services to be Provided by Contractor), Section II (Services and Deliverables to be provided by Contractor), Subsection M (Flexible Spending Account Claim/Payment/ Reimbursement Processing). Appendix A2 (Flexible Spending Account Services to be Provided by Contractor), Section II (Services and Deliverables to be provided by Contractor), Subsection M (Flexible Spending Account Claim/Payment/ Reimbursement Processing), currently reads as follows:

M. Flexible Spending Account Claim/Payment/ Reimbursement Processing

Contractor shall substantiate the eligibility of expenses paid by use of an electronic payment card, and other forms of allowable claim submission, to the extent required by applicable law.

Contractor shall provide Participants, who have elected flexible spending account benefits under the Plan, with a form to use in submitting flexible spending account claims.

Contractor shall receive, review and, when authorized by the Plan and by applicable law, approve flexible spending account claims within five (5) business days.

Contractor shall notify the City, once weekly, of the aggregate amount of funds needed from the City to pay Contractor approved claims and receive said funds as transmitted by the City.

Contractor shall pay approved flexible spending account claims from funds made available by the City for that purpose. Claims shall be paid by check or, where authorized by a claimant, by direct electronic deposit to a bank account of the claimant within five (5) business days of claim being processed.

Contractor will provide, with each flexible spending account claim paid by check, a statement of the Participant's remaining account balance under the flexible spending account from which the payment has been made.

Contractor shall provide notices mid-plan year, on or around July 1st, and the end of each Plan Year, on or around November 15th, of the Plan as described in the Plan document, provide to each Participant who elected any flexible spending account benefits for that Plan Year a statement setting forth each of his or her flexible spending account balances and advise of the potential forfeiture of any balances not used to reimburse the Participant for eligible expenses incurred prior to the end of that Plan Year.

Contractor shall Carryover account balances of health FSA's from prior plan year to new plan year that are equal to, or less than five hundred dollars (\$500) and greater than, or equal to ten dollars (\$10), only for Participants who are actively employed by the City, or are prior employees who have actively enrolled in COBRA.

Appendix A2 (Flexible Spending Account Services to be Provided by Contractor), Section II (Services and Deliverables to be provided by Contractor), Subsection M (Flexible Spending Account Claim/Payment/ Reimbursement Processing), is hereby replaced to read as follows:

M. Flexible Spending Account Claim/Payment/ Reimbursement Processing

Contractor shall substantiate the eligibility of expenses paid by use of an electronic payment card, and other forms of allowable claim submission, to the extent required by applicable law.

Contractor shall provide Participants, who have elected flexible spending account benefits under the Plan, with a form to use in submitting flexible spending account claims.

Contractor shall receive, review and, when authorized by the Plan and by applicable law, approve flexible spending account claims within five (5) business days.

Contractor shall notify the City, once weekly, of the aggregate amount of funds needed from the City to pay Contractor approved claims and receive said funds as transmitted by the City.

Contractor shall pay approved flexible spending account claims from funds made available by the City for that purpose. Claims shall be paid by check or, where authorized by a claimant, by direct electronic deposit to a bank account of the claimant within five (5) business days of claim being processed.

Contractor will provide, with each flexible spending account claim paid by check, a statement of the Participant's remaining account balance under the flexible spending account from which the payment has been made.

Contractor shall provide notices mid-plan year, on or around July 1st, and the end of each Plan Year, on or around November 15th, of the Plan as described in the Plan document, provide to each Participant who elected any flexible spending account benefits for that Plan Year a statement setting forth each of his or her flexible spending account balances and advise of the potential forfeiture of any balances not used to reimburse the Participant for eligible expenses incurred prior to the end of that Plan Year.

From the effective date of this Agreement, until December 31, 2020, Contractor shall Carryover account balances of health FSA's from prior plan year to new plan year that are equal to, or less than five hundred dollars (\$500) and greater than, or equal to ten dollars (\$10), only for Participants who are actively employed by the City, or are prior employees who have actively enrolled in COBRA. Effective January 1, 2021, Contractor shall Carryover account balances of health FSA's from prior plan year to new plan year

that are equal to, or less than Five Hundred-Fifty dollars (\$550), and greater than, or equal to Ten dollars (\$10), only for Participants who are actively employed by the City, or are prior employees who have actively elected COBRA to continue coverage of their health FSA.

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after July 31, 2020.

4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

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IN WITNESS WHEREOF, the parties hereto have executed this Amendment effective July 31, 2020.

HEALTH SERVICE SYSTEM

DocuSigned by:
Abbie Yant RN, MA
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ABBIE YANT RN, MA
Executive Director,
Health Service System

APPROVED AS TO FORM:

Dennis J. Herrera
City Attorney

DocuSigned by:
Gustin Guibert
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GUSTIN R. GUIBERT
Deputy City Attorney

CONTRACTOR

P&A Administrative Services, Inc.

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

DocuSigned by:
Mike Rizzo
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MICHAEL RIZZO, PRESIDENT
P&A Administrative Services, Inc.
17 Court Street, Suite 500
Buffalo, NY 14202

City Supplier Number: **0000013710**