AGREEMENT BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND

P&A ADMINISTRATIVE SERVICES, INC.

March, 1 2015

[COBRA AND FLEXIBILE SPENDING ACCOUNT SERVICES]

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

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

This Agreement is made this first day of March 2015, in the City and County of San Francisco, State of 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," acting by and through its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing."

Recitals

WHEREAS, the Health Service System ("Department") wishes to wishes to secure recordkeeping and notification ("COBRA/AB528/HIPAA") services with respect to the City's group health plans; and,

WHEREAS, the Health Service System ("Department") wishes to obtain services for the administration of the Health Care and Dependent Care Flexible Spending Accounts; and

WHEREAS, a Request for Proposal ("RFP") was issued on March 14, 2014, and City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Contract; and,

Now, THEREFORE, the parties agree as follows:

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Term of the Agreement. Subject to Section 1, the term of this Agreement shall be from March 1, 2015 to December 31, 2018 for COBRA/AB528 Services and September 1, 2015 to December 31, 2018 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) or two (2) year(s).

2) If the City exercises this option, the charges and services will remain consistent with what is specified the current Agreement.

3) The total duration of this Agreement, including the exercise of any options, shall not exceed five (5) years or sixty (60) months.

3. Effective Date of Agreement. This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

4. Services Contractor Agrees to Perform. The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.

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 **$889,174 (eight hundred eighty nine thousand one hundred seventy four 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.

6. Guaranteed Maximum Costs. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and

employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

7. Payment; Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by City to Contractor shall be subject to audit by City. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

8. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9. Left Blank by agreement of the parties. (Disallowance)

10. Taxes

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

b. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

4) Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

11. Payment Does Not Imply Acceptance of Work. The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

12. Qualified Personnel. Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Responsibility for Equipment. City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

14. Independent Contractor; Payment of Taxes and Other Expenses

a. **Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. **Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than $1,000,000 each accident, injury, or illness; and

2) Commercial General Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

3) Commercial Automobile Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

4) Professional liability insurance, applicable to Contractor's profession, with limits not less than $1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

d. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

e. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

f. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

g. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

h. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

i. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

j. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

16. Indemnification. Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury,

liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter. Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

17. Incidental and Consequential Damages. Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

18. Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

19. Liquidated Damages. Left Blank By Agreement of the Parties

20. Default; Remedies

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

8.	Submitting False Claims; Monetary Penalties.	37.	Drug-free workplace policy
10.	Taxes	53.	Compliance with laws
15.	Insurance	55.	Supervision of minors
24.	Proprietary or confidential information of City	57.	Protection of private information
30.	Assignment		

2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Contractor.

3) Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

b. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

21. Termination for Convenience

a. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.

2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

3) Terminating all existing orders and subcontracts.

4) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

5) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.

7) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

8) Contractor will cooperate with any succeeding third party administrator in effecting the transition of work including, without limitation, producing and transferring any records reasonably necessary in order to enable the succeeding third party administrator to assume Contractor's responsibilities without unnecessary disruption or failure of services during the transition.

c. Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.

d. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. City's payment obligation under this Section shall survive termination of this Agreement.

22. Rights and Duties upon Termination or Expiration

This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

8.	Submitting false claims	24.	Proprietary or confidential information of City
9.	Disallowance	26.	Ownership of Results
10.	Taxes	27.	Works for Hire
11.	Payment does not imply acceptance of work	28.	Audit and Inspection of Records
13.	Responsibility for equipment	48.	Modification of Agreement.
14.	Independent Contractor; Payment of Taxes and Other Expenses	49.	Administrative Remedy for Agreement Interpretation.
15.	Insurance	50.	Agreement Made in California; Venue
16.	Indemnification	51.	Construction
17.	Incidental and Consequential Damages	52.	Entire Agreement
18.	Liability of City	56.	Severability
		57.	Protection of private information

Subject to the immediately preceding sentence, upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this

Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

23. Conflict of Interest. Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

24. Proprietary or Confidential Information of City.

a. Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

b. Any disclosure of confidential or personal information, including, not limited to personal health information ("PHI"), shall only occur after the proper execution of a Business Associates Agreement ("BAA"), attached here to as Appendix C, "HIPAA Requirements-Business Associate Agreement".

25. Notices to the Parties. Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To City:

Health Service System
Attn: Director
1145 Market Street -3rd floor
San Francisco, CA 94103
Fax: (415) 554-1752

To Contractor:

Michael Rizzo, President
P&A Administrative Services, Inc.
17 Court Street, Suite 500
Buffalo, NY 14202
Fax: (716) 855-7121
rizzom@padmin.com

Any notice of default must be sent by registered mail.

26. Ownership of Results. Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

27. Works for Hire. If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

29. Subcontracting. Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

30. Assignment. The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement.

31. Non-Waiver of Rights. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

32. Consideration of Criminal History in Hiring and Employment Decisions.

a. Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T "City Contractor/Subcontractor Consideration of Criminal

History in Hiring and Employment Decisions," of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at www.sfgov.org/olse/fco. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

b. The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco, and shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

c. Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

d. Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received, base an Adverse Action on an applicant's or potential applicant for employment's, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

e. Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 32(d), above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

f. Contractor or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Contractor or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

g. Contractor and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Contractor or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

h. Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of $50 for a second violation and $100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

33. Local Business Enterprise Utilization; Liquidated Damages

a. **The LBE Ordinance.** Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

1) **Enforcement.** If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or $1,000, whichever is greatest. The Director of the City's Contracts Monitoring Division or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of CMD") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of CMD will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17. By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the CMD shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City. Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a

period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of CMD or the Controller upon request.

34. Nondiscrimination; Penalties

a. **Contractor Shall Not Discriminate.** In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. **Subcontracts.** Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. **Nondiscrimination in Benefits.** Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. **Condition to Contract.** As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contracts Monitoring Division (formerly 'Human Rights Commission').

e. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of $50 for each person for each calendar day during which such person was discriminated against in violation of the

provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

35. MacBride Principles—Northern Ireland. Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

36. Tropical Hardwood and Virgin Redwood Ban. Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

37. Drug-Free Workplace Policy. Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

38. Resource Conservation. Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

39. Compliance with Americans with Disabilities Act. Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

40. Sunshine Ordinance. In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

41. Public Access to Meetings and Records. If the Contractor receives a cumulative total per year of at least $250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the

manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

42. Limitations on Contributions. Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

43. Requiring Minimum Compensation for Covered Employees

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall

require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than $25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed $25,000 in the fiscal year.

44. Requiring Health Benefits for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than $25,000 ($50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach $75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than $75,000 in the fiscal year.

45. First Source Hiring Program

a. **Incorporation of Administrative Code Provisions by Reference.**

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. **First Source Hiring Agreement.**

As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

6) Set the term of the requirements.

7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. **Hiring Decisions**

Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. **Exceptions**

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. **Liquidated Damages.**

Contractor agrees:

1) To be liable to the City for liquidated damages as provided in this section;

2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantity; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to $5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to $10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

(a) The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of $348 per month, totaling approximately $14,379; and

(b) In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of

employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

Therefore, liquidated damages that total $5,000 for first violations and $10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of $5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. **Subcontracts.**

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

46. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

47. Preservative-treated Wood Containing Arsenic. Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate

preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

48. Modification of Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of CMD any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

49. Administrative Remedy for Agreement Interpretation. Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

50. Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

51. Construction. All paragraph captions are for reference only and shall not be considered in construing this Agreement.

52. Entire Agreement. This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48, "Modification of Agreement."

53. Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

54. Services Provided by Attorneys. Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

55. Left Blank by Agreement of the Parties. (Supervision of Minors)

56. Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as

to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

57. Protection of Private Information. Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contactor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

58. Not Used.

59. Food Service Waste Reduction Requirements. Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars ($100) liquidated damages for the first breach, two hundred dollars ($200) liquidated damages for the second breach in the same year, and five hundred dollars ($500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

60. Left blank by agreement of the parties. (Slavery Era Disclosure)

61. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY

Recommended by:

CATHERINE J. DODD Ph.D. RN.
Director, Health Service System

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
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.

Michael Rizzo, President
P&A Administrative Services, Inc.
17 Court Street, Suite 500
Buffalo, NY 14202

City vendor number: **94982**

Appendix A1: COBRA/AB528 Services Provided by Contractor
Appendix A2: Flexible Spending Account Services Provided by Contractor
Appendix B: Calculation of Charges- COBRA and Flexible Spending Account Services
Appendix C: HIPAA Requirements-Business Associate Agreement
Appendix D: Performance Guarantees

Appendix A1
COBRA/AB528 Services to be Provided by Contractor

Section I-Definitions

AB 528: CA State law requires California schools and community college districts to allow certificated employees who lose their eligibility to continue health care coverage upon retirement to enroll in health and welfare benefit plans or dental care benefit plans currently provided for its current certificated employees. Any former certificated employee, who retired from the City's Community College District and San Francisco Unified School District under any public retirement system, and his or her spouse, or any surviving spouse of a former certificated employee, may continue his or her health care benefits by paying the full premiums. HSS is only administering AB528 for medical coverage. This law does not apply to either the new spouse upon the remarriage of a surviving spouse of a former certificated employee or the children of a certificated or former certificated employee. This law does not create a vested retirement right in health and dental care benefits; nor should it be construed as requiring or permitting the impairment of any contract, board rule, or regulation affecting retired certificated personnel. Further, it is not intended to reduce or conflict with any benefit provided in the federal Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA), nor mandate the provision of life insurance or vision care. 1. The program will be offered and administered in compliance with Education Code Section 7000-7008, which can be reviewed at the following website. http://www.leginfo.ca.gov/cgi-bin/displaycode?section=edc&group=06001-07000&file=7000-7008

City: City and County of San Francisco

Consolidated Omnibus Budget Reconciliation Act of 1986 ("COBRA"): Under the Federal COBRA, employees and their dependents who are enrolled in a health, dental, or vision insurance plan are entitled to an extension of health coverage, called "continuation coverage," in certain circumstances (for example, termination of employment, divorce, etc. This is called a "qualifying event").

Continuant: A Qualified Beneficiary who has elected COBRA/AB528 continuation coverage.

Contractor: P&A Administrative Service Inc.

Conversion Policy ("conversion health plan"): When group health insurance ends, group health plans may have to offer an individual plan to members. This is called a conversion plan because members may convert from the group to an individual plan. Members must first use up Federal COBRA/Cal-COBRA prior to converting to a conversion plan. The payment of premiums for conversion health plans are the sole responsibility of the member.

Coverage Provider: A Coverage Provider is the selected dental and/or health insurance plan or the City for a Self-Funded program(s).

Election Notice: After Contractors receives a notice of a qualifying event, the Contractor must provide the Qualified Beneficiaries with an Election Notice, which describes their rights to continuation coverage and how to make an election. The Election Notice must be provided to the Qualified Beneficiaries within 14 days after the Contractor receives the notice of a Qualifying Event.

Fully-Insured: A funding arrangement where an employer pays an insurance company a fixed premium to provide certain employee benefit programs. In this case, the insurance company assume the risk for the cost of claims.

Interactive Voice Response (IVR): IVR is a technology that allows a computer to interact with people through the use of voice and/or tones input via keypad.

Medicare: Medicare is a U.S. government program of hospitalization insurance and voluntary medical insurance for persons aged 65 and over and for certain disabled persons under 65.

Plan: City and County of San Francisco Section 125 Cafeteria Plan.

Social Security Administration: Independent agency of the United States federal government that administers Social Security, a social insurance program consisting of retirement, disability, and survivors' benefits. http://www.ssa.gov/

Qualified Beneficiary: A qualified beneficiary generally is an individual covered by a group health plan on the day before a qualifying event who is either an employee, the employee's spouse, or an employee's dependent child. In certain cases, a retired employee, the retired employee's spouse, and the retired employee's dependent children may be qualified beneficiaries. In addition, any child born to or placed for adoption with a covered employee during the period of COBRA coverage is considered a qualified beneficiary.

Qualifying Event: Qualifying Events are certain events that would cause an individual to lose health coverage. The type of qualifying event will determine who the qualified beneficiaries are and the amount of time that a plan must offer the health coverage to them under COBRA.

Self-Funded: A funding arrangement where an employer has assumed the direct risk for payment of the claims, for certain employee benefit programs.

Section II- Services and Deliverables to be provided by Contractor

A. Scope of COBRA and AB528 Services

Beginning March 1, 2015, the City has contracted with the P&A Administrative Services Inc. ("Contractor"), to set-up and provide services to support the administration of both COBRA and AB528 for its employees effective July 1, 2015. The Contractor shall provide the following services, not limited to:

- Provide COBRA/AB528 Open Enrollment Services

- Provide COBRA/AB525 Initial/Qualifying Event/Election Notices and Premium Collection Provide Account Management Services And Customer Service Support
- Provide COBRA/AB528 Operational and Premium Reporting, Remitting, and Reconciliation
- Provide management and support for the transition of COBRA/AB525 service from the incumbent vendor to the Contractor.

The City reserves the ability to modify the scope of services, as a result change of City needs, or Federal, State or regulator law, code, or guidance, which may impact the current or future manner of administration of the these services.

Changes or modifications to scope of services, may result in a modification of the fees located in Appendix B (Calculation of Charges). Modifications to the scope of services and/or fees will require a contract amendment which will be negotiated in good faith between the City and the Contactor.

B. COBRA/AB528 Open Enrollment Services

The City Annual open enrollment occurs every year from October 1st to October 31st, followed by a one-week confirmation and correction period.

At the City's request, Contractor shall coordinate with the City regarding open enrollments occurring during the term of the COBRA/AB528 Continuant's COBRA coverage and shall forward to the appropriate Coverage Provider information describing any change in coverage elected by the COBRA/AB528 Continuant during open enrollment.

Contractor shall provide the COBRA/AB528 continuant all appropriate open enrollment communications, which include rates and any required elections forms. The open enrollment packet may also contain any additional forms City determines necessary to facilitate the open enrollment for the COBRA/AB528 continuants.

Contractor will process any changes from COBRA/AB528 continuants during the open enrollment period and communicate these changes to the appropriate carriers and/or City.

C. COBRA/AB525 – Initial/Qualifying Event/Election Notices and Premium Collection

Within ninety (90) days after an employee of the City first becomes covered by the Plan, Contractor shall send by first class mail a notice addressed to the employee and to any spouse of the employee who also is covered by the Plan informing them of their rights and responsibilities under the COBRA law (an "Initial COBRA Notice"). All COBRA notices shall be updated periodically and/or as required by the United States Department of Labor, the Internal Revenue Service, or other legal or regulatory body, to ensure that the notice remains in compliance with existing and newly furnished standards.

Contractor shall review all notices that state a Qualifying Event for COBRA purposes has occurred with respect to coverage under the Plan. For purposes of this Agreement, the term "Qualifying Event" shall have the meaning ascribed to it by Section 4980B(f)(3) of the Internal Revenue Code or any successor provision of law.

If such notice is determined, by the Contractor to have been timely provided and the occurrence of a Qualifying Event is confirmed, Contractor shall provide the following services to each Qualified Beneficiary:

(1) Contractor shall mail to the attention of the Qualified Beneficiary a COBRA election package consisting of a notice notifying him or her that he or she has the right to elect to continue his or her Plan coverage on the terms described in the notice (a "COBRA Election Notice"); a form that may be used to elect continuation coverage; and any enrollment forms that must be completed to satisfy the requirements of any insurance company, Health Maintenance Organization or other entity that will provide elected COBRA coverage (a "Coverage Provider"). A third party administrator for a Self-Funded plan or benefit option shall be deemed the Coverage Provider with respect thereto, and the City shall be deemed the Coverage Provider for a Self-Funded plan or benefit option that is self-administered by the City;

(2) If the Qualified Beneficiary elects COBRA/AB528 continuation coverage by completing and returning the aforementioned election form(s) and any applicable enrollment forms, and timely pays his or her initial COBRA premium, Contractor shall forward his or her enrollment form information to the Coverage Providers that will be providing the elected coverage;

(3) Contractor shall send the Continuant, an initial bill with respect to each month of the elected coverage, and shall send a second bill should the Continuant fail to timely pay the original bill by the 20th of the Month in which it is due. For COBRA, the billed amount shall be 102 percent of the "applicable premium" (110 percent with respect to coverage extended from 18 months to 29 months due to disability, unless a different percentage is mutually agreed upon by the parties) within the meaning of Section 4980B(f)(2)(C) of the Internal Revenue Code;

(4) Should the COBRA/AB528 Continuant fail to make any periodic premium payment by the end of the applicable grace period (30 days), Contractor shall notify the Coverage Provider that the COBRA/AB528 Continuant's coverage is to be canceled due to the non-payment of premiums;

(5) Contractor shall receive and review any request by a COBRA Continuant to extend the period of his or her COBRA continuation coverage on account of a determination of disability by the Social Security Administration or the occurrence of a second Qualifying Event;

(6) If Contractor determines that a COBRA Continuant's request to extend the period of his or her COBRA continuation coverage should be granted, Contractor shall so notify the Coverage Providers who have been providing COBRA coverage;

(7) Contractor shall notify the COBRA Continuant should a Coverage Provider modify his or her COBRA coverage in any material respect;

(8) Using information contained in its electronic file regarding the COBRA Continuant, Contractor shall determine the date as of which his or her COBRA continuation coverage is due to cease;

(9) Should Contractor determine that the COBRA/AB528 continuation coverage of the COBRA/AB528 Continuant is to be prematurely terminated due to the non-payment of premiums, the commencement of coverage under another group health plan or Medicare or other circumstances prescribed by the COBRA/AB528 law, Contractor shall notify him or her in writing to that effect;

(10) Prior to the termination of a COBRA/AB528 Continuant's continuation coverage, Contractor shall provide him or her with a notice describing any rights that he or she may have to obtain coverage under a "conversion health plan" within the meaning of Section 4980B(f)(2)(E) of the Internal Revenue Code;

With respect to any individual who is a COBRA/AB528 Continuant on the date this Agreement first becomes effective, Contractor shall provide all of the services described in paragraphs "3" through "10" of subsection above.

If, after Contractor reviews a notification that a Qualifying Event has occurred or that a disability determination has been received, Contractor determines that there is no right to COBRA continuation coverage or to an extension of COBRA continuation coverage based on that notification, Contractor shall provide written notice to the affected individuals that COBRA coverage is not available

Contractor shall customize the COBRA Election Notice provided to a COBRA Continuant to inform him or her of the right to the extended coverage period. Contractor shall customize the AB528 Election Notice provided to eligible continuants to inform him or her of the right to continue coverage.

If a Participant becomes entitled to Medicare prior to being covered on COBRA, they may be allowed to elect all COBRA plans (medical, dental, vision, etc.) for the maximum eligibility period of COBRA coverage. Enrollment in Medicare can be deferred by the participant until after the period of COBRA coverage without penalty.

If at any point in time while on COBRA continuation coverage, a COBRA participant becomes eligible and enrolled in Medicare, they must notify the City and Contractor of the entitlement to Medicare. Medical coverage on COBRA will then be terminated for

the person who is on Medicare; however, they may continue to receive all other COBRA benefits (dental, vision, etc.) up to the remainder of their maximum eligibility period. Any dependents of the Qualified Beneficiary not entitled to Medicare will continue to receive their medical coverage (and all other coverage) through COBRA up to the remainder of their maximum eligibility period. Contractor will provide a notification of Medicare Eligibility Notice as a Participant approaches age 65. This letter shall advise the Participant of how their Medicare enrollment would affect their COBRA coverage. The Contractor, or its subcontractors, shall not apply any surcharge, service fee, or any other fee associated with the Continuants method of payment (e.g. check, Automated Clearing House ("ACH"), or on-line payments via ACH) toward their COBRA premium. If such fees are required, they shall be fully borne and paid for by the Contractor, and not passed to either the participant, or the City for payment.

Contractor will archive all COBRA/AB528 documents electronically for a period of eight (8) years. Upon City request, Contractor shall provide all documents and their associated mailing dates of COBRA/AB528 notices.

D. Account Management Services And Customer Service Support (Web/IVR/Call Center/Appeals)

Contractor will provide a dedicated account manager who will be available to City staff to answer questions, process files, run reports and perform any other duties necessary to successfully administer the COBRA and AB528 programs. The Contractor shall keep the City informed of any changes in Account Management which directly impacts the account.

Contractor shall make available to the City electronically or by another method that is mutually agreeable to the parties (i) a COBRA procedures manual, and (ii) forms for the City to use in providing information to Contractor.

Contractor will provide a toll-free customer service number for City participants. Contractor will make customer service representatives available, at a minimum, Monday to Friday 7:00 am to 7:00 pm PST.

Contractor shall provide to the City and to Qualified Beneficiaries access to Contractor employees who are familiar with the Plan through a toll-free telephone number and "Live Chat" instant messaging during the regular business hours of Contractor and voicemail for after-hours calls.

Contractor will maintain a website for COBRA/AB528 continuants to access account information.

Contractor's offices will be closed for the following Holidays; New Years Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Thanksgiving Day, Day after Thanksgiving, and Christmas Day.

E. COBRA/AB528 Operational Reporting

Contractor will maintain a website for designated City employees to run real-time reports and view COBRA/AB528 continuant information. These reports include qualifying event notice history, initial notice history, payment history, payments by benefit period, benefit plan listing, paid through, demographics and company month end reports.

Additional ad-hoc reports, requiring no more than 20 hours of programming, annually, shall be developed by the Contractor, upon the City's request at no additional cost to the City. Contractor shall provide the City unique user profiles as requested, at no addition cost to the City. Additional ad-hoc reports requests by the City that exceed the annual 20 hour limit shall be subject to additional costs and mutually agreed to by the City and the Contractor prior to work being initiated.

F. COBRA/AB528 Premium Reporting, Remitting, Reconciliation, and Invoicing

Contractor shall remit 100% of the applicable premium to the applicable Coverage Provider, accompanied by information that identifies the COBRA/AB528 Continuant, the amount of his or her premium and the coverage period to which the premium payment relates. For Fully-Insured plans that contain a City administrative fee, the contractor shall remit the applicable City administrative fee to the City. The amount by which a premium payment exceeds the applicable premium (typically, 2 percent of the applicable premium) shall be retained by Contractor as additional compensation for its services.

For Self-Funded plans, Contractor shall send a monthly premium payment report by member, plan, tier (EE, E+1, E+2), and coverage months which separates the City's administrative fee and applicable plan premium. For the Fully-Insured plans, which have a City administrative fee, Contractor shall send a monthly premium payment report by member, plan, tier (EE, E+1, E+2), and coverage months, on just the applicable City administrative fee. The total payment amount contained in the premium payment report should match the check amount sent to the City.

Self-Funded plans[1] include:

- City Health PPO (United Healthcare) Medical (City's administrative fee applicable)
- Delta Dental PPO
- Blue Shield HMO Access Plus (City's administrative fee applicable)

Fully-Insured plans[1] include:

- Kaiser Permanente (City's administrative fee applicable)
- Pacific Union DMO
- Deltacare DMO
- Blue Shield MAPD (65+) (City's administrative fee applicable)
- VSP

[1]Subject to change, at the City's option; changes will be done by Amendment. Contactor shall agree to the Amendment to account for the City's Coverage Providers.

Contractor shall reconcile premium/eligibility discrepancies with the applicable Coverage Provider.

The Contractor shall invoice the City for the fees (Appendix B-Calculation of Charges) associated with the services in this Appendix A1, once monthly for the prior month's services.

Invoices, financial reports and checks shall be directed by Contractor to City to the following address:

Health Service System
Attn: Wanda Wu and Yuriy Gologorskiy
1145 Market Street, Suite 300
San Francisco, CA 94103
Wanda.Wu@sfgov.org, Yuriy.Gologorskiy@sfgov.org

G. COBRA/AB528 Eligibility File Processing

Contractor will accept the City provided eligibility file layout with information necessary to administer the COBRA and AB528 programs on a weekly basis.

The Contractor also provides services to the City, serving as the administrator of the Flexible Spending Accounts ("FSA"). In relation to COBRA, Contractor shall be responsible for determining whether any person who has sustained a loss of coverage under that health FSA must be offered the opportunity to continue that coverage based on Income Tax Regulation Section 54.4980B-2, Q&A-8 (or any successor regulations or rules pertaining thereto) and, if so, for advising Contractor of the applicable premium for same.

H. March 1, 2015 Implementation Plan

Contractor shall supply appropriate staffing and/or other resources to facilitate and manage the transition from the incumbent COBRA/AB528 vendor to the new Contractor with work commencing the first week of March 2015, for the July 1, 2015 go-live date.

Upon mutual agreement between the City and the Contractor, during the second plan year, the Contractors Implementation Specialist will transition the services to the City's dedicated COBRA/AB528 Account Manager for ongoing administrative services.

The Contractor and the City have agreed to the following deliverables and dates:

Project Schedule	Timeline	Responsibility
Implementation Begins		
Obtain service parameters	March 2015	Contractor to obtain from City
Configure proprietary systems for parameters	March 2015	Contractor Implementation Specialist and IT personnel
Determine interface requirements	March 2015	Contractor Data Coordinators
Test interface	March-April 2015	Contractor Data Coordinators
Complete installation paperwork	April 2015	City (Contractor can assist as desired)
Submit installation paperwork	No later than May 1, 2015	City submits to Contractor
COBRA Process Begins		
Send Welcome Letters to current COBRA/AB528 members, those in the 60-day window to elect COBRA	May 15-30, 2015	Contractor Implementation Specialist
Mail initial premium invoices	June 15, 2015	Contractor Implementation Specialist
COBRA Process Begins- Continued		
Train City staff on *HR Connect*	May 2015	Contractor Senior Benefits Consultant
Go-Live July 1, 2015		
Collect premium payments from COBRA/AB528 members	July 2015	Contractor Implementation Specialist
Late Notices go out if premium not received by 20th	July 2015	Contractor Implementation Specialist
Mail premium invoices	July 15, 2015 (for August premium)	Contractor Implementation Specialist
Remit premiums to City with Remittance Report	Week of August 10, 2015	Contractor Implementation Specialist
Collect premium payments from COBRA/AB528 members	August 2015	Contractor Implementation Specialist
Late Notices go out if premium not received by 20th	August 2015	Contractor Implementation Specialist

Section III- City Responsibilities

A. Eligibility Processing

The City shall promptly and accurately furnish to Contractor such information as Contractor reasonably deems necessary or appropriate for the discharge of its responsibilities and services in this Appendix A1.

The City shall assist to inform the Contactor of each former employee and other individual receiving COBRA/AB528 continuation coverage under the Plan on the effective date of COBRA/AB528 eligibility. Contractor shall receive weekly, by electronic download from the City, the information that Contractor deems necessary to discharge its responsibilities under this Agreement, including but not limited to name, address, Social Security number, plan information, coverage information (including information for covered dependents) and costs, and enter that information into Contractor's administrative software system to create an electronic file with respect to the subject matter of this Agreement.

Should the City become a party to any collective bargaining agreement containing any provision that refers to or impacts, either directly or indirectly, the manner in which COBRA is to be provided to any employee who is a member of the collective bargaining unit that is a party to the agreement or his or her spouse or dependents, the City shall provide Contractor with a complete copy of the pertinent contract language when first reasonably possible before the effective date of that collective bargaining agreement.

The City will notify Contractor within thirty (30) days after an employee of the City first becomes covered by the Plan, Contractor shall send by first class mail a notice addressed to the employee and to any spouse of the employee who also is covered by the Plan informing them of their rights and responsibilities under the COBRA law (an "Initial COBRA Notice").

B. Qualifying Events

The City shall notify Contractor as soon as possible, but not later than thirty (30) days, following the occurrence of any of the following events:

(1) the commencement of coverage for any person under the Plan;
(2) the death of a covered employee;
(3) the termination (other than by reason of gross misconduct) or reduction of hours of a covered employee's employment;
(4) a covered employee becoming entitled to Medicare benefits under Title XVIII of the Social Security Act;
(5) a proceeding regarding the City's bankruptcy under title 11 of the United States Code that affects the benefits of a retired employee or his spouse or dependents of the City; or
(6) in accordance with any change in a law or regulation requiring group health plan continuation coverage after the date of this Agreement, any other event the occurrence of which requires notification by the City to a plan administrator, but only after Contractor advises the City of such change.

Such notification shall be made by electronic transmission via Contractor's web portal, fax or U.S. mail, using forms provided by Contractor for this purpose.

C. Eligibility Processing and Reconciliation

The City shall review each monthly report generated by Contractor and shall provide notification to the Contractor, within thirty (30) days after the report was sent or made available to the City, of any errors or omissions in the report. They Contractor will supply, upon request, a set of instructions that the City may use to verify the accuracy of Contractor's monthly reports.

D. Open Enrollment/New Plan Year Support

Upon mutual agreement between the City and Contractor, after this Agreement is signed, the City shall obtain from each Coverage Provider, or other entity that is providing coverage under the Plan, authorization for Contractor to communicate with Coverage Provider directly regarding the subject matter of this Agreement.

City will provide Contractor with electronic copies of all open enrollment communications that are to be distributed to the COBRA/AB528 Continuant(s). The Contractor shall print and mail these documents to the Continuants. All information must be provided thirty (30) days prior to the distribution of these documents.

E. Coverage Providers

The City warrants and represents to Contractor that the list of group health plans and of the coverage providers under each such plan is complete and accurate as of the date of this Agreement. Should the City, during the term of this Agreement, establish any new group health plan or add any coverage provider to any of its current group health plans, the City agrees to notify Contractor in writing of same within seven (7) days thereafter.

The City hereby acknowledges its understanding that Contractor cannot assure the City's compliance with COBRA without having, at all times, complete and accurate information as to the group health plans and coverage options of the City.

City and County of San Francisco ("City") is the Coverage Provider for the following Self-Funded plans[1]:

- City Health Plan PPO (United Healthcare) Medical
- Delta Dental PPO
- Blue Shield of California HMO Access Plus

Fully Insured Coverage Providers[1]:

- Kaiser Permanente
- Pacific Union Dental DMO
- Deltacare DMO
- Blue Shield of California MAPD (65+)
- VSP

[1]Subject to change, at the City's option; changes will be done by Amendment. Contactor shall agree to the Amendment to account for the City's Coverage Providers.

Appendix A2

Flexible Spending Account Services to be Provided by Contractor

Section I-Definitions

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.

Contractor: P&A Administrative Service Inc.

City: City and County of San Francisco.

Dependent care FSA: A dependent care FSA is an employer-sponsored plan that allows Participants to set aside a portion of their income on a pre-tax basis and then use that money to pay for eligible, employment-related dependent care expenses incurred for a qualifying individual. This program is also known as a dependent care assistance program or DCAP

Plan: City and County of San Francisco Section 125 Cafeteria Plan.

Plan Year: A Plan Year is a 12 month benefit period starting from January 1st through December 31st of the same calendar year.

Flexible Spending Account/Flexible Spending Arrangement (FSA): A FSA allows an employee to set aside a portion of earnings to pay for qualified expenses as established by the Plan, most commonly for medical expenses but often for dependent care or other expenses.

Grace Period: Grace Period shall mean the amount of time (but no more than 2-1/2 months) following the close of the plan year that a participant may incur eligible expenses for reimbursement and during which the eligible expenses may be applied against the Participant's FSA Account for the prior plan year, and to the extent the balance of the Participant's FSA Account is exhausted for the prior plan year will be applied to the balance of the Participant's FSA Account for the current plan year (i.e., the plan year in which the expense is incurred) if the Participant has enrolled for an FSA Account for that year.

Health FSA: A health FSA is an employer-sponsored plan that allows Participants to set aside a portion of their income on a pre-tax basis and then use that money to pay for qualified out-of-pocket medical expenses.

Interactive Voice Response (IVR): IVR is a technology that allows a computer to interact with humans through the use of voice and tones input via keypad.

Participant: A Participant is an individual (e.g., employee, former employee, COBRA beneficiary) who has an FSA Account as determined by City and reported to Contractor.

Run-out Period: Run-out Period shall mean the period after the close of the plan year in which claims may be submitted by a Participant or other beneficiary. This period is defined and established by the City, and may be changed for future plan years by the City if the change is made before the new plan year begins.

Section II- Services and Deliverables to be provided by Contractor

I. Scope of Flexible Spending Account Services

The City has established a health and/or dependent care flexible spending arrangement ("FSA") as set forth in the City and County of San Francisco Section 125 Cafeteria Plan. The City, as plan administrator of the FSA, is responsible for maintaining and operating the FSA, including paying all benefits owed or established under the FSA to its Participants.

The City has elected the Contractor to provide administrative services for both a dependent care FSA and a health FSA. The City health FSA currently has a Carryover provision set forth by the Plan, of a fixed dollar amount which has been specified by the City. As a result of the Carryover, there is no Grace Period which is applicable to these services. Both the dependent care FSA and a health FSA are offered a Run-out period, which the period of time for run-out claims is defined by the City.

Contractor shall provide certain administrative services with respect to the FSA as set forth below:

- Flexible Spending Account Services Open Enrollment Services
- Flexible Spending Account Eligibility/Enrollment File Processing
- Flexible Spending Account Debit Card
- Flexible Spending Account Claim/Payment/ Reimbursement Processing
- Account Management Services And Customer Service Support (Web/IVR/Call Center/Appeals)
- Flexible Spending Account Operational Reporting
- Flexible Spending Account Financial Reporting and Reconciliation
- Management and support for the transition of FSA services from the incumbent vendor to the Contractor.

J. Flexible Spending Account Services Open Enrollment Services

Contractor will make a representative available on-site to support City open enrollment. Open enrollment occurs once annually from October 1st through October 31st. The

Contractors' representative will be responsible for manning a station, while providing informational materials and education on the current FSA offerings, as well as answering questions related to FSA benefits from existing and prospective Participants. Contractor shall provide a mutually agreed upon amount of printed materials which will be distributed to prospective and current participants, during open enrollment.

Contractor will work with City to develop customized FSA enrollment materials for participants to help facilitate open enrollment. The City will collaborate with the Contractor on communication content, and scheduling. The Contractor shall produce and distribute the open enrollment communication material via US mail and/or e-mail as applicable. After participants have selected a new FSA for the upcoming Plan Year, Contractor will send open enrollment confirmation notices which may be distributed using US mail or e-mail as applicable.

Contractor, with the assistance of the City, enroll Participants in the Plan. Enrollments will be transmitted to Contractor via electronic file feed. After the Contractor receives and processes the new plan year enrollment file, Contractor will report file errors to the City within two business days of receipt of file.

K. Flexible Spending Account Eligibility/Enrollment File Processing

Contractor will process ongoing enrollment and eligibility files within two (2) business days of receiving. As requested by the City, implement City required changes to the enrollment and/or funding file format.

L. Flexible Spending Account Debit Card

Contractor shall provide to each Participant who elects benefits under the Plan's health FSA option or dependent care FSA option an electronic payment card that may be used to pay expenses that are eligible for reimbursement under that benefit option, and such additional cards for use by family members of the Participant as he or she reasonably shall request.

Should a participant pay for an expense with their debit card and submit the same claim for manual reimbursement, the claim will be denied as a duplicate submission. If the duplicate claim is reimbursed Contractor will make every effort to collect the funds from the participant. If Contractor is unsuccessful obtaining reimbursement from the participant, Contractor will reimburse City for the expense.

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.

N. Account Management Services And Customer Service Support (Web/IVR/Call Center/Appeals)

Contractor will provide a dedicated account manager who will be available to City staff to answer questions, process files, run reports and perform any other duties necessary to successfully administer the FSA program. The Contractor shall keep the City informed of any changes in Account Management which directly impacts the account.

Contractor will present new compliance information, as it becomes available, and explain its possible impact to the City. Contractor will assist the City by providing recommendation on future plan change action(s) as well as assist in their implementation, as request by the City.

Perform such benefits discrimination testing as Contractor shall deem necessary to assure the Plan's continuing compliance under Code Section 125; and prepare any annual return (Form 5500 Series or equivalent) required by applicable federal law with respect to the Plan for filing by the City with respect to each Plan Year ending prior to the termination of this Agreement.

Contractor shall prepare such Plan documents as shall be necessary to properly restate the Plan in a manner which is understandable to Participants, as of the effective date, including a Plan document, a summary of the Plan for distribution to Participants, and an enrollment form. At the time such documents are provided to the City, the documents shall conform in all respects with applicable laws and regulations.

Contractor will provide a toll-free customer service number for City participants. Contractor will make customer service representatives available Monday to Friday 7:00 am to 7:00 pm PST (at a minimum). Contractor shall also maintain an IVR system for participants to get automated account information during and after business hours.

Contractor's offices will be closed for the following holidays; New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Thanksgiving Day, day after Thanksgiving and Christmas Day.

Contractor shall maintain a website for FSA participants to access account information, including but not limited to Claim status, account balances, inclusive of any applicable Carryover amounts, claim forms, information on the types of FSA's elected, directions for use of the elected benefit(s), and lists of qualified expenses by the elected benefit.

Participant Appeals:

The City represents that the FSA plan documents and summary plan description shall provide for a 2-Level appeal process pursuant to the provisions of Section 503 of ERISA and the regulations promulgated thereto. If Contractor denies a claim for reimbursement of qualifying medical expenses, the claimant may appeal the denial by filing a written appeal to Contractor within one hundred eighty (180) days after receiving the denial. If the request is not timely, Contractors decision is final. Contractors must notify the claimant of its decision on appeal within sixty (60) days after the Contractor or its designee receives the appeal. Contractor shall process the first appeal using standards developed by Contractor for benefit claim determination, which are in compliance with Section 503 of ERISA and the regulations promulgated thereto with respect to appeals of denied claims for benefits. However, the second and the final appeal shall not be the responsibility of Contractor but shall be the responsibility of the City. Accordingly, because Contractor does not process the final appeal, Contractor shall not be the claims fiduciary with respect to the FSA.

If the Contractor denies a Participants' claim or any part of a Participants' claim, the Participant or an authorized representative may appeal to the Contractor to review the denial. Participant appeals must be made in writing within 180 days after they have received notification from the Contractor that the claim, or any part of the claim was denied. If a Participant does not file an appeal within 180 days, the Participant will lose

the right to appeal the denial with the Contractor. The Participants written appeal should state the reasons that the Participant feels his or her claim should not have been denied. The Participant should include any additional facts or documents that is believed to support the claim. The Participant will have the opportunity to ask additional questions and make written comments, and may review, upon request and for no charge, documents and other information relevant to the appeal.

Decisions on Appeal Review:

The Contractor will review and decide upon the first level appeal in a reasonable time not later than 60 days after the Contractor receives the Participants request for review. The Contractor may, in its discretion, hold a hearing of the denied claim. Any medical expert consulted in connection with the appeal will be different from and not subordinate to any expert consulted in connection with the initial claim denial. The participant will be informed of the identity of any medical expert consulted in connection with the appeal. If the decision on review affirms the initial denial of the claim, the Participant will be furnished with a notice of adverse benefit determination on review that will include:

1. The specific reasons for the decision on review;
2. The specific Plan provision or provisions on which the decision is based;
3. A statement of the Participants right to review, upon request and at no charge, relevant documents and other information;
4. If an "internal rule, guideline, protocol, or other similar criterion" is relied on in making the decision on review, then a description of the specific rule, guideline, protocol, or other similar criterion or a statement that such a rule, guideline, protocol, or other similar criterion was relied on and that a copy of such rule, guideline, protocol, or other similar criterion will be provided to the Participant free of charge upon request;
5. A statement of Participants right to bring suit under ERISA Section 502(a) (where applicable); and
6. Notification of the second level appeal rights through the City.

O. Flexible Spending Account Operational Reporting

Maintain a website for designated City employees to run real-time reports and view FSA participant information including; Account Balances, Reimbursements, Check Register, Active Employees, Billed Flex Fees, Annual Rollover Amount and Demographic. The Contractors website shall also provide stratified access levels for designated City employees to add or modify enrollments and funding.

Using the Contractors designated web portal, City employees can also enter new enrollments, changes and termination throughout the year; view account information for individual participants and upload files securely to Contractor.

P. Flexible Spending Account Financial Reporting, Reconciliation, Benefit Claims Funding Methodology and Requirements, and Invoicing

Each business day, Contractor will securely e-mail designated City staff a summary of reimbursements made that day to participants using both their debit card and manual claims submitted. A detailed check register shall be provided monthly or weekly if preferred.
Contractor will maintain a website for designated City employees to run real-time reports and view FSA participant information including; Account Balances, Reimbursements, Check Register, Active Employees, Billed Flex Fees, Annual Rollover Amount and Demographic. Contractor shall reconcile Participant accounts on an annual basis, which will calculate health FSA Carryover amount, and any forfeitures for health and dependent care FSA's where applicable. The annual reconciliation report(s) will be available to the City, electronically, sixty (60) days after the end of the Run-out period.

Contractor will reimburse participant claims and obtain reimbursement from City via weekly invoices and check register report. Contractor shall receive payment from City within five (5) business days after receipt of invoice and supporting documentation by City. Contractor will not require a security deposit in advance of the plan year.
Invoices for weekly FSA claim reimbursements shall be directed by Contractor to City to the following address:

Health Service System
Attn: Allen Zhang and Yuriy Gologorskiy
1145 Market Street, Suite 300
San Francisco, CA 94103
Allen.Zhang @sfgov.org, Yuriy.Gologorskiy@sfgov.org

The Contractor shall invoice the City for the fees (Appendix B-Calculation of Charges) associated with the services in this Appendix A1, once monthly for the prior month's services.
Invoices for administrative fees, and supporting documents to substantiate fees, shall be directed by Contractor to City to the following address:

Health Service System
Attn: Wanda Wu and Yuriy Gologorskiy
1145 Market Street, Suite 300
San Francisco, CA 94103

Wanda.Wu@sfgov.org, Yuriy.Gologorskiy@sfgov.org

Q. July 2015 Implementation Plan

Project Tasks	Timeline	Responsibility
Implementation Phase: Begins July 2015		
Obtain plan parameters	August 2015	Contractor to obtain from the City
Configure proprietary systems for plan parameters	August 2015	Contractor Implementation Specialist and IT personnel
Determine interface requirements	August 2015	Contractor Data Coordinators
Test interface	August 2015	Contractor Data Coordinators
Complete installation paperwork	August 2015	The County (Contractor can assist as desired)
Submit all installation paperwork	August 2015	City submits to Contractor
Implementation Phase: Begins July 2015		
Process installation paperwork	August 2015	Contractor Implementation Specialist
Generate applicable legal documents (Plan Document/Summary)	October 2015	Contractor ERISA Attorney
Employee Communication Plan: August 2015		
Contractor provides pre-open enrollment materials to entice and inform employees about the FSA program. All materials subject to approval by City	Early September	Contractor coordinates with the City
Open enrollment meetings at City locations.	October 2014 (all month)	Contractor coordinates with the City
FSA Eligibility and Funding Files: December 2015		
FSA Enrollment submitted to Contractor	December 1, 2015	City submits to Contractor

FSA participant accounts are set up in our proprietary system	December 2015	Contractor Implementation Specialist
Debit cards are processed and issued for participants	Mid-December 2015	Contractor Implementation Specialist
FSA Eligibility and Funding Files: December 2015		
Project Tasks	**Timeline**	**Responsibility**
Participants receive debit cards prior to the effective date of services	Prior to January 1, 2016	
Takeover Effective/Services Begin	January 1, 2016	Contractor Implementation Specialist
FSA Eligibility and Funding Files: December 2015		
FSA accounts ready for use & debit cards active	January 1, 2016	
Administration of services begins	January 1, 2016	Contractor Implementation Specialist
FSA Eligibility and Funding Files: December 2015		
Payroll reporting begins (process is dependent upon what City sets up with Contractor during the Implementation Phase)	January 1, 2016	City reports payroll data to Contractor (on a frequency determined during implementation)
IRS Non-discrimination Testing: February 2016		
Contractor conducts IRS Non-discrimination Testing	February-March 2016	Contractor Implementation Specialist
Contractor reports testing results to City	February-March 2016	February-March 2016

Section III- City Responsibilities

F. Eligibility/Deduction File Processing

The City shall notify Contractor in writing of any event or occurrence that affects the group of employees who are eligible for reimbursement of expenses under the Plan (e.g., hiring of a new employee, termination of an employee, change in hours worked) as soon as is reasonably practicable. Contractor will accept an electronic file, manual entry through Contractor's Connect web portal, or a paper form.

The City shall provide Contractor on a timely basis with such other information as Contractor reasonably shall request in furtherance of its responsibilities hereunder as soon as is reasonably practicable including but not limited to FSA payroll deduction information for all participants.

Late notification of FSA eligibility or incorrect FSA eligibility information provided by the Client to Contractor may result in erroneous benefit claim payments. In this event, Client shall be solely responsible for any such erroneous payment and the Client shall also be solely responsible for collecting any such erroneous payments from the individual; provided however, Contractor will work collaboratively with Client to reconcile any account error.

G. Eligibility Reconciliation

The City shall be responsible for assuring that withholding from its payroll is consistent in all respects with salary reduction elections made under the Plan and for preparing Forms W-2 that reflect benefits that were received by Participants during the reporting year to the extent required by law. On occasion the City may be asked to reconcile eligibility and payroll information as a result of standard business operations, or data anomalies.

H. Benefit Claims Funding Methodology and Requirements

City submit payment to Contractor for the reimbursement of approved health and dependent care participant claims within five (5) business days after receipt of invoice and supporting documentation.

I. Open Enrollment-City Responsibilities

The City shall provide Contractor, in writing, any plan changes that have been finalized for the upcoming plan year, at least thirty (30) days prior to the first day of open enrollment.

The City will collaborate with the Contractor on communication content, and scheduling. The City shall review and provide final approval on all Contractor open enrollment communications content.

The City shall create and send a new plan year full enrollment file before the start of the first pay period for the new plan year.

Appendix B
Calculation of Charges

Cobra/AB528 Calculation of Charges

Cobra/AB528 charges and rates will be invoiced based on the actual volumes. Contractor shall submit invoices as outlined in Appendix A1 (Cobra/AB528 Services), Section F (COBRA/AB528 Premium Reporting, Remitting, Reconciliation, and Invoicing).

Applicable charges/rates are guaranteed to not increase for the maximum 5 year life of this Agreement.

COBRA/AB528 Services (Services contained in Appendix A1)	Applicable Charges/Rate
First year implementation fee	WAIVED
Takeover fee for current continuants	Included
Carrier Feed Set-Up	Included
Eligibility Feed Set-Up	Included
Annual Fees	
Annual Renewal Fee	None
Open Enrollment Packets	Included
Monthly Fees	
Qualifying Event Notices	**$20.00 per notice**
Per COBRA Participant Fee	**$0.00**
AB528 Administration	**$6.00 per AB528 participant per month**
Carrier Data Feeds (fee per feed)	included
Eligibility File Feed	included
Administration monthly minimum	None
Open enrollment Packets	Included
2% Administrative Fee (retain or return)	Retained
Administration monthly minimum	None
Additional Services	
DOL Initial general Notice	**$10.00 per notice**
Medicare Part D notice	Included
Underpayment Letters	Included
Premium and collection	Included
Bundling Discount	Not Applicable
Assumptions	Assumes 3,600 qualifying event notices and 3,600 new hire initial notices + $6.00 x 12 AB528 members/mos
Rate Guarantee	**5 year rate guarantee**

Flexible Spending Account Service Calculation of Charges

Contractor shall submit invoices as outlined in Appendix A2 (Flexible Spending Account Services), Section P (Flexible Spending Account Financial Reporting, Reconciliation, Benefit Claims Funding Methodology and Requirements, and Invoicing).

Contractor's administration charge for Flexible Spending Account Services are as follows:

- Flexible Spending Account Administration Charge: $3.10 per participating employee per month
- Applicable charges/rates are guaranteed to not increase for the maximum 5 year life of this Agreement.

Flexible Spending Account Service (Services contained in Appendix A2)	Applicable Charges/Rates
First year implementation fee	**WAIVED**
Annual Fees	
Annual enrollment support, setup and communication services fee (PEPY)	Included
System set-up for FSA enrollees	Included
Welcome / Confirmation Letter	Included
Rollover services	Included
Takeover and implementation of current FSA enrollees	Included
Annual renewal fee	None
Monthly Fees	
Monthly administration (PPPM)	**$3.10 (*includes debit card*) Per Participant Per Month**
Monthly administration minimums	None
Direct deposit	Included
Additional Services	
Plan Document and SPDs	Included
Enrollment materials	Included
Reporting - Employers	Included
Employee Statements	Included
Payment cycle	Included
Participant Support	Included
Nonstandard file formats / custom reports and programming charges	Included
Form 5500 Filing	Included
Banking/Funding	Included
Non-Discrimination Testing	Included
Bundling Discount	Not Applicable
Assumptions	Assumes 3,800 participants/per mos.
Rate Guarantee	**5 year rate guarantee**

Appendix C
HIPAA Requirements-Business Associate Agreement

THIS BUSINESS ASSOCIATE AGREEMENT ("BAA") is entered into on this first day of March, 2015 by and between Health Service System for the City and County of San Francisco as Plan Administrator of the Health Plan(s) ("Covered Entity") and P&A Administrative Services, Inc. ("Business Associate").

RECITALS

Covered Entity has engaged Business Associate to provide certain functions, activities, and services (collectively "Services") to Covered Entity, as described in the Agreement between the City and County of San Francisco and P&A Administrative Services, Inc. dated March 1, 2015 ("Service Agreement"). In order for Business Associate to perform the Services required by the Service Agreement, Covered Entity will make available and/or transfer to Business Associate certain Protected Health Information and Electronic Health Information (collectively, "PHI") that is confidential and must be afforded special treatment and protection pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and its implementing regulations, the Privacy Rule, Security Rule, Breach Notification Rule, and Enforcement Rule (collectively "HIPAA Rules"), found in Part 160 and Part 164 of title 45 of the Code of Federal Regulations ("CFR").

Business Associate will have access to and/or receive from Covered Entity certain PHI created or received by Covered Entity that can be used or disclosed only in accordance with this BAA and the HIPAA Rules.

Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to this BAA in compliance with HIPAA, the HIPAA Rules, and other applicable laws.

As part of the Privacy Rule, Covered Entity must enter into a contract with Business Associate containing specific requirements as set forth in, but not limited to, 45 CFR §§ 164.308(b), 164.314(a), 164.502(e) and 164.504(e) and contained in this BAA, prior to the disclosure of PHI.

NOW, THEREFORE, Covered Entity and Business Associate agree as follows:

ARTICLE I.
Definitions

1.1 Meaning of Terms. The following terms shall have the meaning ascribed to them in this Section:

A. **Administrator** shall mean Health Service System of the City and County of San Francisco.

B. **Breach** shall have the same meaning as the term "breach" at 45 CFR § 164.402, and generally means the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information.

C. **Business Associate** shall have the same meaning as the term "business associate" at 45 CFR § 160.103, and in reference to the party to this BAA, shall mean P&A Administrative Services, Inc.

D. **Covered Entity** shall have the same meaning as the term "covered entity" at 45 CFR § 160.103, and in reference to the party to this BAA, shall mean the Health Plan.

E. **Designated Record Set** shall mean a group of records maintained by or for Covered Entity that is: (a) the medical records and billing records about Individuals maintained by or for a covered health care provider; (b) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (c) used in whole or in part, by or for Covered Entity to make decisions about Individuals. For these purposes, the term record means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for Covered Entity.

F. **Electronic Health Information** means Protected Health Information that is transmitted or maintained by or in electronic media, as defined by 45 CFR § 160.103.

G. **Health Plans** shall mean the health plans that may be administered, from time to time, by Administrator to which Business Associate provides Services or to which Business Associate will provide Services during the term of this BAA, and which are covered entities as defined by 45 CFR § 160.103.

H. **HHS** shall mean the United States Department of Health and Human Services.

I. **HIPAA** shall mean the Health Insurance Portability and Accountability Act of 1996, as amended or modified applicable laws or regulations.

J. **HIPAA Rules** shall mean the Privacy Rule, Security Rule, Breach Notification Rule, and Enforcement Rule at 45 CFR Part 160 and Part 164.

K. **Individual** shall mean the person who is the subject of the PHI, and shall have the same meaning as the term "individual" at 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

L. **Limited Data Set** shall have the same meaning as the term "limited data set" at 45 CFR § 164.514(e)(2).

M. **Parties** shall mean Business Associate and Covered Entity.

N. **Protected Health Information ("PHI")** shall have the same meaning as the term "protected health information" at 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

O. **Required By Law** shall have the same meaning as the term "required by law" at 45 CFR § 164.103.

P. **Secretary** shall mean the Secretary of HHS or his or her designee.

Q. **Security Incident** shall have the same meaning as the term "security incident" at 45 CFR § 164.304, which generally means the attempted or successful unauthorized

access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

R. **Subcontractor** shall have the same meaning at the term "subcontractor" at 45 CFR § 160.103, which generally means a person to whom a Business Associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such Business Associate.

S. **Transaction Standards** shall mean the standards adopted by the Secretary under 45 CFR Part 162.

T. **Unsecured Protected Health Information ("Unsecured PHI")** shall have the meaning set forth at 45 CFR § 164.402, as amended, and generally means PHI that is not secured through the use of technologies and methodologies that render such PHI unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary in guidance.

1.2 Other Terms. Other capitalized terms shall have the meaning ascribed to them in the context in which they first appear. Terms used, but not otherwise defined, in this BAA shall have the same meaning as those terms in 45 CFR Parts 160, 162, and 164. Any reference to a regulation or section in the Code of Federal Regulations ("CFR") shall include any corresponding regulation subsequently issued regardless of the date of issue.

ARTICLE II.
General Terms

2.1 Interpretation of Provisions. In the event of an inconsistency between the provisions of this BAA and the mandatory terms of the HIPAA Rules (as they may be expressly amended from time to time by HHS or as a result of final interpretations by HHS, an applicable court, or another applicable regulatory agency with authority over the Parties), the HIPAA Rules shall prevail.

2.2 Provisions Permitted by HIPAA Rules. Where provisions of this BAA are different from those mandated by the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of the BAA shall control.

ARTICLE III.
Obligations and Activities of Business Associate

3.1 Limits on Use and Disclosure. Business Associate agrees to not use or further disclose PHI other than as permitted or required by this BAA or as Required By Law. Further, Business Associate shall use and disclose PHI in accordance with Covered Entity's Notice of Privacy Practices as provided by Covered Entity to Business Associate pursuant to Section 6.1.

3.2 Safeguards. Business Associate agrees to use reasonable and appropriate administrative, physical and technological safeguards to: (i) prevent use or disclosure of the PHI other than as provided for by this BAA; and (ii) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, maintains or transmits on behalf of Covered Entity as required by the Security Rule. Business Associate represents and warrants that it has implemented, and during the term of this BAA shall maintain, comprehensive written privacy and security policies and procedures and the necessary administrative, technical and physical safeguards appropriate to

the size and complexity of Business Associate's operations and the nature and scope of its activities. Business Associate will comply with the Security Rule requirements set forth in Subpart C of 45 CFR Part 164, all of which are hereby incorporated into the BAA.

3.3 Application of Privacy Provisions. Business Associate may use and disclose PHI that Business Associate obtains or creates only if such use or disclosure is in compliance with each applicable requirement of 45 CFR § 164.504(e), relating to business associate agreements. The HIPAA Rules that relate to privacy and that are made applicable with respect to Covered Entity and Business Associate are hereby incorporated into this BAA.

3.4 Mitigation of Harm. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate, or any agent or Subcontractor of Business Associate, in violation of the requirements of this BAA or the HIPAA Rules.

3.5 Report of Improper Use or Disclosure or of Security Incidents. Business Associate agrees promptly to report to Covered Entity any breach of security, intrusion, or unauthorized use or disclosure of the PHI not provided for by this BAA, or any Security Incident of which Business Associate (or any of its agents or Subcontractors) becomes aware. Such report shall be in writing and shall be reported to Covered Entity as soon as practicable after Business Associate becomes aware of such use or disclosure or Security Incident, but in no event more than ten (10) days following such date. Business Associate shall take prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

3.6 Report of Breach of Unsecured PHI. In addition to the general obligations of Business Associate under Section 3.5 regarding reporting the improper use or disclosure of PHI and Security Incidents, Business Associate shall also promptly notify Covered Entity of a Breach of Unsecured PHI within forty-eight (48) hours of when Business Associate discovers such Breach. A Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or other agent of Business Associate. Business Associate's notification shall be in writing and shall include identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been subject to the Breach. Thereafter, Business Associate, on Covered Entity's behalf, shall carry out Covered Entity's obligations under 45 CFR §§ 164.404, 164.406, and 164.408 to notify Individuals, the media, and/or the Secretary, as applicable. Such notice shall provide all of the information required by 45 CFR § 164.404(c), which includes:

(a) A description of the Breach, including the date of the Breach and the date of the discovery of the Breach, if known;

(b) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, credit card numbers, diagnosis, disability code or other types of PHI were involved);

(c) Any steps that Individuals should take to protect themselves from potential harm resulting from the Breach;

(d) A description of what Business Associate is doing to investigate the Breach, to mitigate the harm to Individuals and to protect against further Breaches; and

(e) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll free telephone number, an e-mail address, Web site or postal address.

Business Associate shall be solely responsible for ensuring that Covered Entity's obligations under the Breach Notification Rule are satisfied with respect to notifications it makes on Covered Entity's behalf. Notwithstanding, Business Associate shall provide Covered Entity a reasonable opportunity to review any notice, notification, or posting it prepares prior to its distribution, publication or broadcasting, and Covered Entity reserves the right with respect to any specific Breach to carry out its obligations under 45 CFR §§ 164.404, 164.406, and 164.408 to the exclusion of Business Associate, in which case the following paragraph shall apply.

In the event that Covered Entity determines it will notify Individuals, the media, and/or the Secretary of a Breach of Unsecured PHI that is discovered by Business Associate or its agents or Subcontractors, Business Associate shall provide the information listed above exclusively to Covered Entity as soon as it becomes available to Business Associate, but in no event later than thirty (30) days after Business Associate discovers such Breach. Business Associate shall also provide such assistance and further information with regard to the Breach to Covered Entity as reasonably requested by Covered Entity in order for Covered Entity to timely meet its notice obligations to Individuals, the media, and/or the Secretary, as applicable, under 45 CFR §§ 164.404, 164.406, and 164.408. If a notification, notice, or posting required by the Breach Notification Rule would impede a criminal investigation or cause damage to national security, such notification shall be delayed as required by law enforcement pursuant to 45 CFR § 164.412.

3.7 Agents and Subcontractors. In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), Business Associate agrees to ensure that any agent, including a Subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of, Covered Entity, agrees in writing to the same restrictions and conditions that apply through this BAA to Business Associate with respect to PHI. Such written BAA shall also require the agent or Subcontractor to implement reasonable and appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate, and not Covered Entity, is solely responsible for its agents' and Subcontractors' compliance under the HIPAA Rules.

3.8 Availability of Internal Practices, Books and Records. Business Associate shall make internal practices, books, and records relating to the use and disclosure of PHI received from, or received by Business Associate on behalf of, Covered Entity available to the Secretary or Covered Entity, in a time and manner designated by Covered Entity or the Secretary, for purposes of determining Covered Entity's compliance with the HIPAA Rules. Business Associate shall notify Covered Entity, in writing, of any request by the Secretary under this Section, and shall provide Covered Entity with a copy of any practices, books, and records that Business Associate provides to the Secretary concurrently with providing such materials to the Secretary.

3.9 Access to Records.

U. Business Associate shall provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to PHI in a Designated Record Set to

Covered Entity or, as directed by Covered Entity, to an Individual, in order to meet the requirements under 45 CFR § 164.524 with regard to providing an Individual with a right to access the Individual's PHI.

V. Business Associate shall, at the request of Covered Entity and in the time and manner designated by Covered Entity, make PHI maintained by Business Associate available to Covered Entity, or as directed by Covered Entity, to a person or entity other than an Individual, for use and disclosure pursuant to a valid written authorization and maintain appropriate documentation for the period, including, but not limited to, copies of any written authorization by an Individual or his or her legal representative, to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.508.

W. If any Individual requests access to, or the release pursuant to an authorization or otherwise of, PHI directly from Business Associate or its agents or Subcontractors, Business Associate shall notify Covered Entity in writing within ten (10) days of the request. Covered Entity shall have sole authority and responsibility to approve or deny such a request, and shall notify Business Associate, in writing, of its decision to approve or deny any such request.

3.10 Amendments to PHI. Business Associate agrees, in the time and manner designated by Covered Entity, to make PHI contained in a Designated Record Set available for any amendments that Covered Entity agrees to make pursuant to 45 CFR § 164.526 or to otherwise allow Covered Entity to comply with its obligations under 45 CFR § 164.526. If any Individual requests an amendment of PHI contained in a Designated Record Set directly from Business Associate or its agents or Subcontractors, Business Associate shall notify Covered Entity in writing within ten (10) days of the request. Covered Entity shall have sole authority and responsibility to approve or deny such a request, and shall notify Business Associate, in writing, of its decision to approve or deny any such request.

3.11 Documentation of Disclosures.

(a) Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Such documentation shall be kept with regard to all disclosures of PHI except the disclosures described in 45 CFR § 164.528(a)(1). For each such disclosure, Business Associate shall document the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the PHI and, if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of the disclosure that reasonably states the basis for the disclosure.

(b) Business Associate shall provide to Covered Entity or an Individual, in the time and manner designated by Covered Entity, information collected in accordance with subsection (a) of this Section of this BAA, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. In the event that a request for an accounting is delivered directly to Business Associate or its agent or Subcontractor by an Individual or a party other than Covered Entity, Business Associate shall within ten (10) days of such request forward it to Covered Entity in writing. Business Associate shall, unless otherwise directed by Covered Entity or as Required By Law, supply an accounting of disclosures of PHI only to Covered Entity.

3.12 Training. Business Associate shall provide appropriate training to its workforce in security, privacy, and confidentiality issues and regulations relating to PHI.

3.13 Response to Subpoena. Business Associate shall promptly notify Covered Entity if it receives a subpoena or other legal process seeking the disclosure of PHI. Such notification shall be provided in a timeframe that allows Covered Entity a reasonable amount of time to respond to the subpoena, object to the subpoena, or to otherwise intervene in the action to which the subpoena pertains.

3.14 Notification of Claims. Business Associate shall promptly notify Covered Entity upon notification or receipt of any civil or criminal claims, demands, causes of action, lawsuits, or governmental enforcement actions arising out of or related to this BAA or the PHI, regardless of whether Covered Entity and/or Business Associate are named as parties in such claims, demands, causes of action, lawsuits, or enforcement actions.

3.15 Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any Subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this BAA, available to Covered Entity to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers, or employees based upon a claimed violation of HIPAA, the HIPAA Rules, or other laws relating to security and privacy, except where Business Associate or its Subcontractor, employee, or agent is named as an adverse party.

3.16 Recordkeeping and Document Retention. Business Associate shall retain any documentation it creates or receives relating to its duties under this BAA for the duration of this BAA. Covered Entity shall have the right to reasonably access and copy and such documentation during the term of the BAA. At the termination of this BAA, Business Associate shall, at Covered Entity's election, return or destroy all such documentation.

3.17 Transaction Standards. If Business Associate performs any transactions for Covered Entity for which a standard has been adopted by the Secretary under 45 CFR Part 162, the following shall apply:

(a) Business Associate, its agents and Subcontractors, shall conduct all transmissions of data required under the BAA that are subject to the Transaction Standards in compliance with the Transaction Standards, as they may be amended from time to time. With respect to any such Transactions, neither Party shall: (i) change the definition, data condition, or use of a data element or segment in a Transaction Standard; (ii) add any data elements or segments to the maximum defined data set; (iii) use any code or data elements that are either marked "not used" in the Transaction Standard's implementation specification or are not in the Transaction Standard's implementation specification(s); or (iv) change the meaning or intent of the Transaction Standard's implementation specification(s).

(b) Each Party, at its own expense, shall provide and maintain the hardware, software, services and testing necessary to effectively and reliably conduct the applicable Transaction Standards.

3.18 Restrictions on Remuneration, Marketing, and Fundraising. To the extent the BAA would otherwise allow Business Associate to receive remuneration for PHI, Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI as prohibited by 42 USC § 17935(d). To the extent that Business Associate is otherwise authorized

under this BAA to communicate about a product or service, it shall not make or cause to be made any communication about a product or service that is prohibited by 42 USC § 17936(a). To the extent that Business Associate is otherwise authorized under this Business Associate Agreement to make a fundraising communication, it shall not make or cause to be made any written fundraising communication that is prohibited by 42 USC § 17936(b) and 45 CFR § 164.514(f).

ARTICLE IV.
Permitted Uses and Disclosures by Business Associate

4.1 Use or Disclosure to Perform Functions, Activities, or Services. Except as otherwise limited in this BAA, Business Associate may use or disclose PHI to perform the Services described in the Service Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity, except for the specific uses and disclosures set forth below in Sections 4.4 and 4.5. Any such use or disclosure shall be limited to those reasons and those individuals as necessary to meet Business Associate's obligations.

4.2 Minimum Necessary. Business Associate agrees to make uses and disclosures and requests for PHI consistent with Covered Entity's minimum necessary policies and procedures, as provided by Covered Entity to Business Associate.

4.3 Disclosures to Workforce. Business Associate shall not disclose PHI to any member of its workforce unless necessary to fulfill a purpose described in Section 4.1 and unless Business Associate has advised such person of Business Associate's obligations under this BAA and of the consequences for such person and for Business Associate of violating this BAA. Business Associate shall take appropriate disciplinary action against any member of its workforce who uses or discloses PHI in contravention of this BAA or the Privacy Rule.

4.4 Appropriate Uses of PHI. Except as otherwise limited in this BAA, Business Associate may use PHI for the following purposes: (a) the proper management and administration of Business Associate; (b) to carry out the legal responsibilities of Business Associate; (c) to report violations of law to appropriate Federal and State authorities, consistent with 42 CFR § 164.502(j)(1); or (d) as Required By Law.

4.5 Appropriate Disclosures of PHI; Confidentiality Assurances and Notification. Except as otherwise limited in this BAA, Business Associate may disclose PHI to a third party to carry out the functions described in Section 4.1 or for the proper management and administration of Business Associate, or to carry out the legal responsibilities of Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

ARTICLE V.
Indemnification and Insurance

5.1 Indemnification. In addition to Business Associate's obligations under Section 16 of the 2014 "Agreement Between the City and County of San Francisco and P&A

Administrative Services, Inc.", Business Associate shall indemnify and hold harmless Covered Entity against, and reimburse Covered Entity for, any expense, loss, damages, legal fees, or costs arising out of or related to any civil or criminal claims, demands, causes of action, lawsuits, or governmental enforcement actions, whether brought by a third party or asserted by Business Associate, arising out of or related to Business Associate's actual or alleged acts and omissions (or those of its agents or Subcontractors) associated with Business Associate's or its agents' or Subcontractors' obligations under this BAA or their use or disclosure of PHI. Such indemnification shall include, but not be limited to, the payment of all reasonable attorney fees associated with any claim, demand, action, cause of action, or lawsuit arising out of or related to such acts or omissions. In addition to the foregoing, in the event of a Breach of Unsecured PHI or similar breach or wrongful disclosure as defined by an applicable law or regulation requiring notification or other remedial action due to the breach or wrongful disclosure of PHI or other personal or financial information ("Other Breach Law") that arose out of or related to Business Associate's actual or alleged acts and omissions (or those of its agents or Subcontractors), Business Associate shall indemnify Covered Entity against all costs and expenses incurred by Covered Entity that are associated with complying with the notification requirements under the Breach Notification Rule or Other Breach Law. Such indemnification shall include all costs related to notifying Covered Entity, Individuals, HHS, or any other entity required to be notified by an Other Breach Law, any remediation necessitated by the Breach, any fines or penalties arising out of the Breach, and any other actions required to be taken pursuant to the Breach Notification Rule or Other Breach Law.

ARTICLE VI.
Obligations of Covered Entity

6.1 Notice of Privacy Practices. Covered Entity shall provide Business Associate with the Notice of Privacy Practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice.

6.2 Change or Revocation of Permission. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures. Business Associate shall comply with any such changes or revocations.

6.3 Restrictions on Use or Disclosure. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522. Business Associate shall comply with any such restriction.

6.4 No Request to Use or Disclose in Impermissible Manner. Except as necessary for the management and administrative activities of Business Associate as allowed in Sections 4.4 and 4.5, Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

ARTICLE VII.
Term and Termination

7.1 Term. The Term of this BAA shall be effective as of the date set forth above, and shall terminate when all PHI provided by Covered Entity to Business Associate, or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity.

7.2 Termination with Cause. Upon either Party's knowledge of a material breach by the other Party, the non-breaching Party, in its discretion, may take either or both of the following actions:

(a) Provide an opportunity (in a time frame to be determined by the non-breaching Party) for the breaching Party to cure the breach or end the violation, and if the breaching Party does not cure the breach or end the violation, terminate this BAA; or

(b) Immediately terminate this BAA if the breaching Party, in the non-breaching Party's discretion, has breached a material term of this BAA and cure is not possible.

If termination of this BAA is not feasible, the non-breaching Party shall report the breach to the Secretary.

7.3 Judicial or Administrative Proceedings. Covered Entity may terminate this BAA and any other agreement or relationship between the Parties related to the Services by written notice to the Business Associate, effective immediately, if: (a) the Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HIPAA Rules, or other security or privacy laws; or (b) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HIPAA Rules, or any other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate has been joined.

7.4 Changes in Law. In the event of passage of a law or promulgation of a regulation or an action or investigation by any regulatory body which would prohibit the relationship between the Parties, or the operations of either Party with regard to the subject of this BAA, the Parties shall attempt in good faith to renegotiate the BAA to delete the unlawful provision(s) so that the BAA can continue. If the Parties are unable to renegotiate the BAA within thirty (30) days, the BAA and any other agreement or relationship between the Parties related to the Services shall terminate immediately, upon written notice of either Party.

7.5 Effect of Termination.

(a) Except as provided in paragraph (b) of this Section 7.5, upon termination of this BAA for any reason, Business Associate shall return or destroy (at Covered Entity's election and in a time frame to be determined by Covered Entity) all PHI received from Covered Entity, or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of Subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI. If Business Associate is directed to destroy the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.

(b) In the event that Business Associate determines that it is necessary to retain some or all of the PHI to continue its proper management and administration or to carry out its legal responsibilities, Business Associate shall provide to Covered Entity written notification of such need. Upon Covered Entity's approval, which shall not be unreasonably withheld, Business Associate may retain only the PHI that is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities, but Business Associate shall return or destroy (at Covered Entity's election and in a time frame to be determined by Covered Entity) all other PHI pursuant to Section 7.5(a). With regard to any

retained PHI, Business Associate shall not use or disclose such PHI other than for the purposes for which the PHI was retained and subject to the same conditions set forth in this BAA that applied prior to this BAA's termination. Business Associate shall return or destroy (at Covered Entity's election and in a time frame to be determined by Covered Entity) the retained PHI pursuant to Section 7.5(a) when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

ARTICLE VIII.
Miscellaneous

8.1 Assignment. This BAA shall be binding upon and inure to the benefit of the respective legal successors of the Parties. Neither this BAA nor any rights or obligations hereunder may be assigned, in whole or in part, without the prior written consent of the other Party.

8.2 Disclaimer. Covered Entity makes no warranty or representation that compliance by Business Associate with this BAA, HIPAA, or the HIPAA Rules will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

8.3 Property Rights. All PHI shall be and remain the exclusive property of Covered Entity. Business Associate agrees that it acquires no title or rights to the PHI, including any de-identified information, as a result of this BAA.

8.4 Preemption of Other Agreements and Liability Limitations/Exclusions. Any limitations on liabilities or exclusions from liability previously agreed upon by the Parties, whether written or oral, shall not be applicable to breaches of this BAA, HIPAA, the HIPAA Rules, and other confidentiality and privacy requirements regarding PHI under this BAA. To the extent that any provision of this BAA conflicts with the Service Agreement or any other agreement between the Parties, whether written or oral, the provisions of this BAA shall govern. Furthermore, and by way of example and not limitation, the termination provisions of this BAA shall supersede the termination provisions of any other agreement, including, but not limited to, any limitations on terminating the Service Agreement or any other agreement (such as notice periods) or any provisions requiring a period to cure.

8.5 Right to Cure. Business Associate agrees that Covered Entity has the right, but not the obligation, to cure any and all breaches of Business Associate's privacy, security and confidentiality obligations under this BAA. Any expenses or costs associated with Covered Entity's cure of Business Associate's breach(es) shall be borne solely by Business Associate. The exercise by Covered Entity of its rights under this Section shall not act as a waiver of any remedies, whether at law or in equity, that Covered Entity may seek against Business Associate for any breach by Business Associate of its privacy, security, and confidentiality obligations under this BAA.

8.6 Injunctive Relief. Business Associate agrees that breach of the terms and conditions of this BAA shall cause irreparable harm and there exists no adequate remedy of law. Covered Entity retains all rights to seek injunctive relief to prevent or stop any breach of the terms of this BAA, including, but not limited to the unauthorized use or disclosure of PHI by Business Associate or any agent, contractor or third party that received PHI from Business Associate. The exercise by Covered Entity of its rights under this Section shall not act as a

waiver of any remedies, whether at law or in equity, that Covered Entity may seek against Business Associate for any breach by Business Associate of its privacy, security, and confidentiality obligations under this BAA.

8.7 Survival. The respective rights and obligations of Business Associate under Sections 5.1, 5.2, and 7.5 of this BAA shall survive the termination of this BAA.

8.8 Amendment. The Parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA and the HIPAA Rules.

8.9 Regulatory References. A reference in this BAA to a section in the HIPAA Rules means the section as in effect or as amended, and for which compliance is required.

8.10 Severability. The Parties agree that if a court determines, contrary to the intent of the Parties, that any of the provisions or terms of this BAA are unreasonable or contrary to public policy, or invalid or unenforceable for any reason in fact, law, or equity, such unenforceability or validity shall not affect the enforceability or validity of the remaining provisions and terms of this BAA. Should any particular provision of this BAA be held unreasonable or unenforceable for any reason, then such provision shall be given effect and enforced to the fullest extent that would be reasonable and enforceable.

8.11 Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California to the extent that the provisions of HIPAA and the HIPAA Rules do not preempt the laws of the State of California. Venue shall be in Superior Court of California, County of San Francisco.

8.12 Waiver of Breach. No failure or delay by either Party in exercising its rights under this BAA shall operate as a waiver of such rights, and no waiver of any breach shall constitute a waiver of any prior, concurrent, or subsequent breach.

8.13 Titles. Titles or headings are used in this BAA for reference only and shall not have any effect on the construction or legal effect of this BAA.

8.14 Independent Contractors. For purposes of this BAA, Covered Entity and Business Associate are and will act at all times as independent contractors. None of the provisions of this BAA are intended to create, nor shall be deemed or construed to create, any relationship other than that of independent entities contracting with each other for the purpose of effecting this BAA. None of the provisions of this BAA shall establish or be deemed or construed to establish any partnership, agency, employment agreement or joint venture between the Parties.

8.15 No Third Party Beneficiaries. It is the intent of the Parties that this BAA is to be effective only in regards to their rights and obligations with respect to each other. It is expressly not the intent of the Parties to create any independent rights in any third party or to make any third-party beneficiary of this BAA and no privity of contract shall exist between third parties and each Party.

Each Party to this BAA warrants that it has full power and authority to enter into this BAA, and the person signing this BAA on behalf of either Party warrants that he/she has been duly authorized and empowered to enter into this BAA.

COVERED ENTITY	BUSINESS ASSOCIATE
By: Catherine Dodd	By: Michael Rigg - Pres.
Title: Director HSS	Title: President
Date: 4/21/2015	Date: 3/26/15

Appendix D
Performance Guarantees and Contingent Discounts

For each scope of services, Contractor agrees that in the event of services not being fully performed, discounts will be applied. The following tables state the event that would cause a discount to occur, the amount of the discount, and the cap of discount to apply. The discounts will be taken from the total invoiced amounts for each quarter for the set of services, figures that are set in Appendix B. Failure to meet the any of the performance guarantees for any quarter will be paid to the City at year end, in the form of a check.

	COBRA/AB528 Administration Performance Guarantees		
	Performance Standard	**Established Target**	**% of Annual Charges at Risk**
I	Implementation	P&A will guarantee that the COBRA/AB528 plans will be implemented in a timely manner, providing all required implementation paperwork is received 45 days in advance of the effective date, so that P&A can assume administration on the effective date of July 1, 2015. This performance guarantee is client specific.	.5% per quarter not to exceed 2% annually
II	Delivery of Contract/ Document Processing	A contract (Services Agreement) will be available within 3-4 weeks providing all required implementation paperwork is received 45 days in advance of the effective date. COBRA/AB528 administration does not require a legal Plan Document or SPD. This performance guarantee is client specific.	.5% per quarter not to exceed 2% annually
III	Account Management	P&A will provide a dedicated COBRA/AB528 account manager. In the event that this individual is unavailable, their assistant, team leader or department supervisor will be available. P&A will return business phone calls in one business day. This performance guarantee is client specific.	.5% per quarter not to exceed 2% annually
IV	Customer Service[1]	P&A guarantees that phone call abandonment rates will be less than 5%. In addition, P&A guarantees that 98% customer service phone calls will be answered on an annual average rate of 30 seconds.	.5% per quarter not to exceed 2% annually
V	Reporting	Reports will be accurate and timely 98% of the time. This performance guarantee is client specific.	.5% per quarter not to exceed 2% annually
	[1]Above performance guarantees will be measured quarterly and evaluated on our entire book of business. Performance guarantees indicated in this section, with the exception of "Implementation" performance guarantees, shall be applicable for the entire term of the Agreement.	**TOTAL COBRA/AB528 CONTINGENT DISCOUNTS**	**10.0%**

Flexible Spending Accounts Administrative Performance Guarantees			
	Performance Standard	**Established Target**	**% of Annual Charges at Risk**
I	Claims Performance[1]	P&A guarantees a minimum of 98% claims accuracy. 100% of claims will be adjudicated within 5 business days.	.5% per quarter not to exceed 2% annually
II	Customer Service[1]	P&A guarantees that call abandonment rates will be less than 5%. In addition, P&A guarantees that 98% of customer service calls will be answered on an annual average rate of 30 seconds.	.5% per quarter not to exceed 2% annually
III	Implementation and Accurate/Timely Reporting (2016 Only)	Assuming all necessary paperwork is received at a minimum of 30 days in advance of the effective date, FSA plan will be fully implemented on its effective date. Reporting will be accurate and timely 98% of the time. This performance guarantee is client specific.	.5% per quarter not to exceed 2% annually
	Accurate/Timely Reporting (Beginning 01/01/2017)	Reporting will be accurate and timely 98% of the time. This performance guarantee is client specific.	.5% per quarter not to exceed 2% annually
IV	Website Accessibility[1]	P&A guarantees that unscheduled website downtime will be less than 1%. P&A guarantees administration systems will be functional 99.99% of the time.	.5% per quarter not to exceed 2% annually
	Overall satisfaction	Overall satisfaction as mutually agreed upon between each client and P&A. This performance guarantee is client specific.	.5% per quarter not to exceed 2% annually
	[1]Above performance guarantees will be measured quarterly and evaluated on our entire book of business. Performance guarantees indicated in this section, with the exception of "Implementation" performance guarantees, shall be applicable for the entire term of the Agreement.	**TOTAL FLEXIBLE SPENDIING ACCOUNT CONTINGENT DISCOUNTS**	**10.0%**