

AMENDMENT NO. 2

CONTRACT NO. 30000523

FOR

Flexible Spending Account (FSA)

This Contract was made and entered into on the 1st day of July, 2009 by and between BenefitHelp Solutions, hereinafter called Contractor, and the City of Portland, a municipal corporation of the State of Oregon, by and through its duly authorized representatives, hereinafter called City. The Contractor has been providing Flexible Spending Account (FSA) Plan Administration services under the present agreement which expires on June 30, 2014. The City desires to amend the considerations language of this contract as shown below. This amendment is required to correct the original expected not to exceed language..

1. Consideration:

- (a) The City is expected to pay Contractor a sum not to exceed \$32,000 in administrative fees in the current plan year 2009-2010-. Future administrative fees will be mutually agreed by both parties on an annual basis through the contract period and will not exceed \$200,000 during the contract period. In addition, the City will send employee pre-tax contributions based upon annual employee FSA elections the 1st and 2nd pay dates of each month during the plan year. Pre-tax employee contributions will be approximately \$3,600,000 for plan year 2009-2010 and will not exceed \$18,000,000 during the contract period. Total expected not to exceed contract amount is \$3,800,000 for 2009-10 and is estimated to be \$19,000,000 for the contract period.

The effective date of this amendment is April 28, 2010. All other terms and conditions of the agreement shall remain unchanged and in full force and effect.

BenefitHelp Solutions

By: J. Thomas 4-14-10
Date
JOHN THOMAS, President
(Name and Title)

Address: 10505 SE 17TH AVE, Multnomah, ORTelephone: 503-765-3455APPROVED AS TO FORM
Approved as to Form:

[Signature]
By City Attorney CITY ATTORNEY

CITY OF PORTLAND

By: _____
Mayor, City of Portland Date

AMENDMENT NO. 1

CONTRACT NO. 30000523

FOR

Flexible Spending Account (FSA)

This Contract was made and entered into on the 1st day of July, 2009 by and between BenefitHelp Solutions, hereinafter called Contractor, and the City of Portland, a municipal corporation of the State of Oregon, by and through its duly authorized representatives, hereinafter called City. The Contractor has been providing Flexible Spending Account (FSA) Plan Administration services under the present agreement which expires on June 30, 2014. The City desires to amend the not to exceed language of this contract by \$541,575. This amount is within 25% of the original contract amount, and is being added as an interim step to correct the total expected not to exceed contract amount. After the execution of this amendment, the contract will be further amended to reflect the total dollar amounts during the contract period.

1. Consideration:

- (a) The City is expected to pay Contractor Contractor a sum not to exceed \$32,000 in administrative fees in plan year 2009-1-. Future administrative fees will be mutually agreed by both parties on an annual basis through the contract period and will not exceed \$175,000 during the contract period. In addition, the City will send employee pre-tax contributions based upon annual employee FSA elections the 1st and 2nd pay dates of each month during the plan year. Pre-tax employee contributions will be approximately \$300,000 for plan year 2009-2010 and will not exceed \$2,000,000 during the contract period. Total expected not to exceed contract amount is \$332,000 for 2009-10 and is estimated to be \$2,716,575 for the contract period.

The effective date of this amendment is March 29, 2010. All other terms and conditions of the agreement shall remain unchanged and in full force and effect.

BenefitHelp SolutionsBy: *[Signature]*

3-31-10

Date

John Thomas President

(Name and Title)

Address: 10505 SE 17th Ave, Milw. ORTelephone: 503-765-3453APPROVED AS TO FORM *Kam*

Approved as to Form:

[Signature]

By City Attorney Date

3-31-10

CITY OF PORTLAND

By: *[Signature]*

Human Resource Director

3/31/10

Date

**CITY OF PORTLAND
AGREEMENT FOR PROFESSIONAL, TECHNICAL, OR EXPERT SERVICES
CONTRACT NO. 30000523**

**SHORT TITLE OF WORK PROJECT:
Flexible Spending Account (FSA) Plan Administration providing for IRC Section 129 and 152 plan
administration for benefit eligible City of Portland employees**

This contract is between the City of Portland, acting by and through its Elected Officials, hereafter called "City," and BenefitHelp Solutions, hereafter called Contractor. The City's Project Manager for this contract is the Benefits Supervisor.

Effective Date and Duration

This contract shall become effective on July 1, 2009. This contract shall expire, unless otherwise terminated or extended, on June 30, 2014.

Consideration

- (a) City is expected to pay Contractor a sum not to exceed \$32,000 in administrative fees in plan year 2009-10. Future administrative fees will be mutually agreed by both parties on an annual basis through the contract period and will not exceed \$175,000 during the contract period. In addition, The City will send employee pre-tax contributions based upon annual employee FSA elections the 1st and 2nd pay dates of each month during the plan year. Pre-tax employee contributions will be approximately \$300,000 for plan year 2009-2010 and will not exceed \$2,000,000 during the Contract period. Total expected not to exceed contract amount is \$332,000 for 2009-10 and is estimated to be \$2,175,000 for the contract period.
- (b) Interim payments shall be made to Contractor according to the schedule identified in the STATEMENT OF THE WORK AND PAYMENT SCHEDULE.

CONTRACTOR DATA AND CERTIFICATION

Name (please print): BenefitHelp Solutions

Address: PO Box 107240 Portland OR 97268

Employer Identification Number (EIN) 93-1135521
[INDEPENDENT CONTRACTORS: DO NOT PROVIDE SOCIAL SECURITY NUMBER (SSN) - LEAVE BLANK IF NO EIN]

City of Portland Business License # 401735

Citizenship: Nonresident alien ☐ Yes ☐ No

Business Designation (check one): ☐ Individual ☐ Sole Proprietorship ☐ Partnership ☒ Corporation
☐ Limited Liability Co (LLC) ☐ Estate/Trust ☐ Public Service Corp. ☐ Government/Nonprofit

Payment information will be reported to the IRS under the name and taxpayer I.D. number provided above. Information must be provided prior to contract approval. Information not matching IRS records could subject you to 20 percent backup withholding.

**STANDARD CONTRACT PROVISIONS FOR
PROFESSIONAL, TECHNICAL & EXPERT SERVICES (MANDATORY PROVISIONS)**

1. Access to Records

The Contractor shall maintain, and the City of Portland ("City") and its duly authorized representatives shall have access to the books, documents, papers, and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for cost of copies is reimbursable by the City.

2. Audits

(a) The City, either directly or through a designated representative, may conduct financial and performance audits of the billings and services specified in this agreement at any time in the course of the agreement and during the three (3) year period established by section 1, Access to Records. Audits will be conducted in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States General Accounting Office.

(b) If an audit discloses that payments to the Contractor were in excess of the amount to which the Contractor was entitled, then the Contractor shall repay the amount of the excess to the City.

(c) If any audit shows performance of services is not efficient in accordance with Government Auditing Standards, or that the program is not effective in accordance with Government Auditing Standards, the City may pursue remedies provided under section 5, Early Termination of Agreement and section 7, Remedies.

3. **Effective Date and Duration**

The passage of the contract expiration date (as recorded on reverse side) shall not extinguish, prejudice, or limit either party's right to enforce this contract with respect to any default or defect in performance that has not been cured.

4. **Order of Precedence**

This contract consists of the terms and conditions of this contract, the Request for Proposals (RFP) issued by the City, if any, and the Contractor's proposal in response to the RFP. In the event of any apparent or alleged conflict between these various documents, the following order of precedence shall apply to resolve the conflict: a) this contract's terms and conditions, b) the City's RFP, and c) the Contractor's proposal in response to the RFP.

5. **Early Termination of Agreement**

(a) The City and the Contractor, by mutual written agreement, may terminate this Agreement at any time.

(b) The City, on thirty (30) days written notice to the Contractor, may terminate this Agreement for any reason deemed appropriate in its sole discretion.

(c) Either the City or the Contractor may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within fifteen (15) days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.

6. **Payment on Early Termination**

(a) In the event of termination under subsection 5(a) or 5(b), **Early Termination of Agreement** hereof, the City shall pay the Contractor for work performed in accordance with the Agreement prior to the termination date.

(b) In the event of termination under subsection 5(c), **Early Termination of Agreement** hereof, by the Contractor due to a breach by the City, then the City shall pay the Contractor as provided in subsection (a) of this section.

(c) In the event of termination under subsection 5(c), **Early Termination of Agreement** hereof, by the City due to a breach by the Contractor, then the City shall pay the Contractor as provided in subsection (a) of this section, subject to set off of excess costs, as provided for in section 7(a), **Remedies**.

(d) In the event of early termination all of the Contractor's work product will become and remain property of the City.

7. **Remedies**

(a) In the event of termination under subsection 5(c), **Early Termination of Agreement**, hereof, by the City due to a breach by the Contractor, then the City may complete the work either itself, by agreement with another contractor or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this contract, then the Contractor shall pay to the City the amount of the reasonable excess.

(b) The remedies provided to the City under section 5, **Early Termination of Agreement** and section 7, **Remedies** for a breach by the Contractor shall not be exclusive. The City also shall be entitled to any other equitable and legal remedies that are available.

(c) In the event of breach of this Agreement by the City, then the Contractor's remedy shall be limited to termination of the Agreement and receipt of payment as provided in section 5(c), **Early Termination of Agreement** and section 6(b), **Payment on Early Termination** hereof.

8. **Subcontracts and Assignment**

Contractor shall not subcontract, assign or transfer any of the work scheduled under this agreement, without the prior written consent of the City. Notwithstanding City approval of a subcontractor, the Contractor shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Contractor hereunder. The Contractor agrees that if subcontractors are employed in the performance of this Agreement, the Contractor and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

9. **Compliance with Applicable Law**

In connection with its activities under this Agreement, Contractor shall comply with all applicable federal, state and local laws and regulations including the City's Equal Benefits Ordinance and its administrative rules, all of which are incorporated by this reference. Failure to comply with the Ordinance permits the City to impose sanctions or require remedial actions as stated in Section 13.1 of the administrative rules. Contractor shall complete the INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT, which is attached hereto and by this reference made a part hereof.

(a) **Indemnity - Claims for Other than Professional Liability**

Contractor shall defend, save, and hold harmless the City of Portland, its officers, agents, and employees, from all claims, suits, or actions of whatsoever nature, including intentional acts, resulting from or arising out of the activities of Contractor or its subcontractors, agents or employees under this agreement. Nothing in this section requires the Contractor or its insurer to indemnify the City for any claims or losses arising out of death, or bodily injury to persons, or property damage caused by the negligence of the City.

(b) Indemnity - Claims for Professional Liability

Contractor shall defend, save, and hold harmless the City of Portland, its officers, agents, and employees, from all claims, suits, or actions arising out of the professional negligent acts, errors or omissions of Contractor or its subcontractors and sub-consultants, agents or employees in performance of professional services under this agreement. Nothing in this section requires the Contractor or its insurer to indemnify the City for any claims or losses caused by the negligence of the City.

(c) Indemnity - Standard of Care

If Contractor's services involve engineering or consulting, the standard of care applicable to Contractor's service will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar services at the time such services are performed. Contractor will re-perform any services not meeting this standard without additional compensation.

10. Insurance

During the term of this contract Contractor shall maintain in force at its own expense, each insurance noted below:

- (a) Workers' Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (contractors with one or more employees, unless exempt under ORS 656.027).

- (b) ☒ Required and attached or Waived by City Attorney: _____

General Liability insurance with a combined single limit of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this contract, and shall provide that City of Portland, and its agents, officers, and employees are Additional Insured but only with respect to the Contractor's services to be provided under this Contract:

- (c) ☒ Required and attached or Waived by City Attorney: _____

Automobile Liability insurance with a combined single limit of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage, including coverage for owned, hired, or nonowned vehicles, as applicable:

- (d) ☒ Required and attached or Waived by City Attorney: _____

Professional Liability insurance with a combined single limit of not less than \$1,000,000 per claim, incident, or occurrence. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this contract. If insurance coverage is provided on a "claims made" basis, the successful Proposer shall acquire a "tail" coverage or continue the same coverage for three years after completion of the contract, provided coverage is available and economically feasible. If such coverage is not available or economically feasible, contractor shall notify City immediately.

- (e) On all types of insurance. There shall be no cancellation, material change, reduction of limits, or intent not to renew the insurance coverage(s) without 30-days written notice from the Contractor or its insurer(s) to the City.
- (f) Certificates of insurance. As evidence of the insurance coverages required by this contract, the Contractor shall furnish acceptable insurance certificates to the City at the time contractor returns signed contracts. The certificate will specify all of the parties who are Additional Insured and will include the 30-day cancellation clause and 10-day non-payment clause that provides that the insurance shall not terminate or be cancelled without 30 days or 10 days written notice first being given to the City Auditor. Insuring companies or entities are subject to City acceptance. If requested, complete policy copies shall be provided to the City. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

11. Ownership of Work Product

All work products produced by the Contractor under this contract is the exclusive property of the City. "Work product" shall include but not be limited to research, reports, computer programs, manuals, drawings, recordings, photographs, artwork and any data or information in any form; the Contractor and the City intend that such work product shall be deemed "work made for hire" of which the City shall be deemed the author. If for any reason a work product is deemed not to be a "work made for hire," the Contractor hereby irrevocably assigns and transfers to the City all right, title and interest in such work product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrines. Contractor shall obtain such interests and execute all documents necessary to fully vest such rights in the City. Contractor waives all rights relating to work product, including any rights arising under 17 USC 106A, or any other rights of authorship, identification or approval, restriction or limitation on use or subsequent modifications. If the Contractor is an architect, the work product is the property of the Contractor-Architect, and by execution of this contract, the Contractor-Architect grants the City an exclusive and irrevocable license to use that work product.

12. Nondiscrimination

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans With Disabilities Act of 1990 (Pub L. No. 101-336) including Title II of that Act, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

13. Successors in Interest

The provisions of this contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and approved assigns.

14. Severability

The parties agree that if any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

15. Waiver

The failure of the City to enforce any provision of this contract shall not constitute a waiver by the City of that or any other provision.

16. Errors

The Contractor shall perform such additional work as may be necessary to correct errors in the work required under this contract without undue delays and without additional cost.

17. Governing Law

The provisions of this contract shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this contract must be brought in the appropriate court in Multnomah County Oregon.

18. Amendments

All changes to this contract, including changes to the scope of work and contract amount, must be made by written amendment and approved by the Purchasing Agent to be valid. Any amendment that increases the original contract amount by more than 25% must be approved by the City Council to be valid.

19. Business License

The Contractor shall obtain a City of Portland business license as required by PCC 7.02 prior to beginning work under this Agreement. The Contractor shall provide a business license number in the space provided on page one of this Agreement. Additionally, the Contractor shall pay all fees or taxes due under the Business License Law and the Multnomah County Business Income Tax (MCC Chapter 12) during the full term of this contract. Failure to be in compliance may result in payments due under this contract to be withheld to satisfy amount due under the Business License Law and the Multnomah County Business Income Tax Law.

20. Prohibited Interest

- (a) No City officer or employee during his or her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- (b) No City officer or employee who participated in the award of this Agreement shall be employed by the Contractor during the period of the Agreement.

21. Payment to Vendors and Subcontractors

The Contractor shall timely pay all suppliers, lessors and contractors providing it services, materials or equipment for carrying out its obligations under this Agreement. The Contractor shall not take or fail to take any action in a manner that causes the City or any materials that the Contractor provides hereunder to be subject to any claim or lien of any person without the City's prior written consent.

Merger Clause

THIS CONTRACT AND ATTACHED EXHIBITS CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION, OR CHANGE IF MADE, SHALL BE EFFECTIVE ONLY IN SPECIFIC INSTANCES AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. CONTRACTOR, BY THE SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE OR SHE HAS READ THIS CONTRACT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

OPTIONAL PROVISIONS (selected by City Project Manager)**22. Arbitration: / ☐ / Not Applicable / ☒ / Applicable (consult with City Attorney's Office before finalizing as applicable)**

- (a) Any dispute arising out of or in connection with this Agreement, which is not settled by mutual agreement of the Contractor and the City within sixty (60) days of notification in writing by either party, shall be submitted to an arbitrator mutually agreed upon by the parties. In the event the parties cannot agree on the arbitrator, then the arbitrator shall be appointed by the Presiding Judge (Civil) of the Circuit Court of the State of Oregon for the County of Multnomah. The arbitrator shall be selected within thirty (30) days from the expiration of the sixty (60) day period following notification of the dispute. The arbitration, and any

litigation arising out of or in connection with this Agreement, shall be conducted in Portland, Oregon, shall be governed by the laws of the State of Oregon, and shall be as speedy as reasonably possible. The applicable arbitration rules for the Multnomah County courts shall apply unless the parties agree in writing to other rules. The arbitrator shall render a decision within forty-five (45) days of the first meeting with the Contractor and the City. Insofar as the Contractor and the City legally may do so, they agree to be bound by the decision of the arbitrator.

(b) Notwithstanding any dispute under this Agreement, whether before or during arbitration, the Contractor shall continue to perform its work pending resolution of a dispute, and the City shall make payments as required by the Agreement for undisputed portions of work.

23. Progress Reports: /___/ Applicable /_X_/ Not Applicable

The Contractor shall provide monthly progress reports to the Project Manager. If applicable, the STATEMENT OF THE WORK should list what information the Contractor must include in monthly progress reports.

24. Contractor's Personnel: /___/ Applicable /_X_/ Not Applicable

The Contractor shall assign the following personnel to do the work in the capacities designated: If applicable, list selected personnel in the STATEMENT OF THE WORK. The Contractor shall not change personnel assignments without the prior written consent of the City.

25. Subcontractors: /___/ Applicable /_X_/ Not Applicable

The City requires Contractors to use the Minority, Women and Emerging Small Business (M/W/ESB) subcontractors identified in their proposals, and as such the Contractor shall assign these subcontractors as listed in the STATEMENT OF THE WORK to perform work in the capacities designated. The Contractor shall not change subcontractor assignments without the prior written consent of the Purchasing Agent.

**STATEMENT OF THE WORK
AND PAYMENT SCHEDULE**

183726

SCOPE OF WORK

See Attached Exhibit B

The City will enforce all diversity in workforce and Minority, Women and Emerging Small Business (M/W/ESB) subcontracting commitments submitted by the Contractor in its Proposal. For contracts valued \$100,000 or more, the Contractor shall submit a Monthly Subconsultant Payment and Utilization Report (MUR), made part of this contract by reference, reporting ALL subcontractors employed in the performance of this agreement. An electronic copy of the MUR may be obtained at: <http://www.portlandonline.com/shared/cfm/image.cfm?id=119851>.

**COMPENSATION
PAYMENT TERMS:**

This section replaces Section 4: Payments of Exhibit B

July 1, 2009 – June 30, 2010

1. City of Portland shall pay to BenefitHelp Solutions:
 - a. An Annual Fee of \$300.00, payable on the renewal date of this agreement for services provided beginning July 1, 2009
 - b. An administrative fee of \$4.50 per participating employee per month, paid as part of and within the first wire transfer of each month.

INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT

SECTION A

CONTRACTOR CERTIFICATION I, undersigned, am authorized to act on behalf of entity designated below, hereby certify that entity has current Workers' Compensation Insurance.

Contractor Signature



Date

6-12-09

Entity

BENEFITHELP SERVICES

If entity does not have Workers' Compensation Insurance, City Project Manager and Contractor complete the remainder of this form.

SECTION B

ORS 670.600 Independent contractor standards. As used in various provisions of ORS Chapters 316, 656, 657, and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of this section are met. The contracted work meets the following standards:

1. The individual or business entity providing the labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;
2. The individual or business entity providing labor or services is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for the individual or business entity to conduct the business;
3. The individual or business entity providing labor or services furnishes the tools or equipment necessary for performance of the contracted labor or services;
4. The individual or business entity providing labor or services has the authority to hire and fire employees to perform the labor or services;
5. Payment for the labor or services is made upon completion of the performance of specific portions of the project or is made on the basis of an annual or periodic retainer.

City Project Manager Signature

Date

SECTION C

Independent contractor certifies he/she meets the following standards:

1. The individual or business entity providing labor or services is registered under ORS Chapter 701, if the individual or business entity provides labor or services for which such registration is required;
2. Federal and state income tax returns in the name of the business or a business Schedule C or form Schedule F as part of the personal income tax return were filed for the previous year if the individual or business entity performed labor or services as an independent contractor in the previous year; and
3. The individual or business entity represents to the public that the labor or services are to be provided by an independently established business. Except when an individual or business entity files a Schedule F as part of the personal income tax returns and the individual or business entity performs farm labor or services that are reportable on Schedule C, an individual or business entity is considered to be engaged in an independently established business when four or more of the following circumstances exist. Contractor check four or more of the following:
 - ☐ A. The labor or services are primarily carried out at a location that is separate from the residence of an individual who performs the labor or services, or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;
 - ☐ B. Commercial advertising or business cards as is customary in operating similar businesses are purchased for the business, or the individual or business entity has a trade association membership;
 - ☒ C. Telephone listing and service are used for the business that is separate from the personal residence listing and service used by an individual who performs the labor or services;
 - ☒ D. Labor or services are performed only pursuant to written contracts;
 - ☒ E. Labor or services are performed for two or more different persons within a period of one year; or
 - ☐ F. The individual or business entity assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Contractor Signature



Date

6-12-09

CONTRACTOR SIGNATURE:

This contract may be signed in two (2) or more counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same Agreement.

The parties agree the City and Contractor may conduct this transaction, including any contract amendments, by electronic means, including the use of electronic signatures.

I, the undersigned, agree to perform work outlined in this contract in accordance to the STANDARD CONTRACT PROVISIONS, the terms and conditions, made part of this contract by reference, and the STATEMENT OF THE WORK made part of this contract by reference; hereby certify under penalty of perjury that I/my business am not/is not in violation of any Oregon tax laws; hereby certify that my business is certified as an Equal Employment Opportunity Affirmative Action Employer and is in compliance with the Equal Benefits Program as prescribed by Chapter 3.100 of Code of the City of Portland; and hereby certify I am an independent contractor as defined in ORS 670.600.

Benefit HelpSolutions

BY: Steve Schmidt Date: 6-12-09Name: STEVE SCHMIDTTitle: MANAGING DIRECTOR

Contract No. 30000523

Contract Title: Flexible Spending Account (FSA) Plan Administration providing for IRC Section 129 and 152 plan administration for benefit eligible City of Portland employees

CITY OF PORTLAND SIGNATURES:

By: [Signature] Date: 7/2/09
Bureau DirectorBy: [Signature] Date: 7/8/09
Elected Official

Approved:

By: N/A Date: _____
Office of City AuditorApproved as to Form: **APPROVED AS TO FORM**By: [Signature] Date: 7-7-09
Office of City Attorney
CITY ATTORNEY

CITY OF PORTLAND
Exhibit A – Deviations
CONTRACT NO. 30000523

SHORT TITLE OF WORK PROJECT:

Flexible Spending Account (FSA) Plan Administration providing for IRC Section 129 and 152 plan administration for benefit eligible City of Portland employees

Except as noted below and notwithstanding contrary provisions in the Administration Agreement attached as Exhibit B hereto, The CITY OF PORTLAND AGREEMENT FOR PROFESSIONAL, TECHNICAL, OR EXPERT SERVICES Contract governs the relationship between the City and the Contractor.

18. Amendments

Any amendment that increases the original contract amount by more than 25% must be approved by the City Council to be valid. All other contract amendments and renewal authority is delegated to the Human Resource Director.

**FSA BENEFITS
ADMINISTRATION AGREEMENT**

CONTRACT NO. 8798

CITY OF PORTLAND

This Agreement is entered into between City of Portland and BenefitHelp Solutions.

WHEREAS: 1. City of Portland maintains a Flexible Spending Account (FSA) Plan (hereinafter referred to as the Plan) providing IRC Section 125 & 129 medical and dependent care reimbursement benefits to its employees; and 2. City of Portland wishes to retain a third party for purposes of administering benefits under the Plan; and 3. BenefitHelp Solutions desires to administer benefits under the Plan in accordance with IRS regulations and the terms set forth herein:

NOW, THEREFORE the parties agree to as follows:

SECTION 1: TERM AND TERMINATION

1. This Agreement shall be effective on July 1, 2006 and shall continue in effect until terminated as provided in this Section.
2. Either party may terminate this Agreement at any time, with or without cause, upon providing not less than sixty (60) days advance written notice to the other party; provided, however, that: (a) in the event of fraud, criminal activities or other similar, serious cause on the part of BenefitHelp Solutions City of Portland may terminate this Agreement upon ten (10) days written notice to BenefitHelp Solutions; (b) in the event City of Portland fails to pay BenefitHelp Solutions the administrative compensation provided herein, BenefitHelp Solutions may terminate this Agreement upon fifteen (15) days written notice to City of Portland; and (c) in the event City of Portland fails to pay BenefitHelp Solutions for the necessary deposits sufficient for reimbursement of healthcare or dependent care within seven (7) days after the receipt of written notification from BenefitHelp Solutions.
3. BenefitHelp Solutions may, at its option, amend the terms of this Agreement, including the fees to be paid by City of Portland to BenefitHelp Solutions, provided that BenefitHelp Solutions provides City of Portland with written notice ninety (90) days in advance of the effective date of the amendment(s). The new terms will go into effect unless City of Portland provides BenefitHelp

Solutions with sixty (60) days advance written notice of termination of this Agreement under Subsection 2 above.

4. Upon termination of this Agreement, City of Portland shall appoint a successor to whom BenefitHelp Solutions shall transfer all documents and records held by BenefitHelp Solutions along with funds in the custody of BenefitHelp Solutions; provided, however, the cost for preparation and transfer of such records shall be borne by City of Portland. BenefitHelp Solutions may retain copies of documents and records necessary to document its services and the compensation to which it is entitled. If City of Portland does not appoint a successor that is ready, willing and able to receive documents, records, and funds from BenefitHelp Solutions within ten (10) days after termination of this Agreement, BenefitHelp Solutions may return all documents, records and funds to City of Portland.

SECTION 2: BENEFITHELP SOLUTIONS' OBLIGATIONS

1. BenefitHelp Solutions shall maintain an accounting of each participating employee's contribution to his or her individual Plan and of the benefits provided to each employee from his or her individual Plan. The accounting of benefits shall delineate between medical reimbursement and dependent care reimbursement benefits. The contribution and benefit accountings shall reflect cumulative totals for the year to date and shall also reflect monthly activity.
2. At the request of City of Portland, BenefitHelp Solutions shall, within thirty (30) days after the end of each Plan quarter, provide a quarterly information report to City of Portland showing deposits, payments and current balances of each participant. Reports will be delivered via US Mail, facsimile, hand delivered, or via secure electronic file. Upon request by City of Portland, a claim history detail report will be provided.
3. Upon receipt of a completed claim form or ODS claims payment data and appropriate supporting documentation for an IRC allowed expense, BenefitHelp Solutions shall issue benefit payment checks to employees within five working days. Claims will be paid using payroll contributions provided by City of Portland. In the event that there are not adequate funds to pay for expected claims, BenefitHelp Solutions may request additional funds to pay for these claims. Claim payments may be suspended until invoiced funds are received.
4. City of Portland has contracted directly with BenefitHelp Solutions, a business associate, in order to provide services as specified in the Agreement. City of Portland has also contracted with ODS Health Plans, a parent of

BenefitHelp Solutions. In order to provide services as requested by City of Portland for the FSA AutoPay Program, City of Portland has requested ODS Health Plans to provide BenefitHelp Solutions with specific eligibility, medical, and dental claims information. BenefitHelp Solutions will work with ODS Health Plans to obtain ODS claims payment data, consisting of: Social Security Number, member name, patient name, date of service, type of service, procedure code, diagnosis code, billed dollar amount, patient balance dollar amount, provider name/number, ODS denial or benefit reduction code, and the claim memo line (free text), if any. BenefitHelp Solutions shall use this information for purposes of reimbursing eligible Section 125 medical expenses for City of Portland's eligible FSA participants who enroll in the AutoPay program.

5. BenefitHelp Solutions shall provide an accounting to each Plan participant during the processing and payment of benefits. The accounting will show the contributions made, claims submitted, claims paid and claims disallowed for that particular claim. In addition, the accounting will also show the ending balance in the participant's account, by benefit category. BenefitHelp Solutions shall furnish each participant periodic written statements showing contributions, benefits paid, and current ending balance(s) for the Plan Year to date. Statements will be delivered via US Mail.
6. Non-Discrimination Testing of the IRC Section 125 Plan

XX is
 _____ is not

included in the services provided by BenefitHelp Solutions. Non-Discrimination Testing is required by the IRS to determine if a Plan discriminates between i.) Highly Compensated and/or Key Employees and ii.) Non-Highly Compensated employees and/or regular employees. Failure of the Plan to comply with IRC Non-Discrimination Rules could result in significant penalties imposed by the IRS and potential tax implications for Highly Compensated and/or Key Employees

7. BenefitHelp Solutions shall provide City of Portland with contribution and participation information from which City of Portland will be able to complete and file the applicable Form 5500 and a Year-end Forfeiture Report. BenefitHelp Solutions will not complete or file the Form 5500 for City of Portland.
8. BenefitHelp Solutions shall provide City of Portland a model Plan Document and a model Summary Plan Description.

9. BenefitHelp Solutions shall be responsible for providing enrollment forms, claim forms, and information describing the benefits of the program to City of Portland.
10. BenefitHelp Solutions shall maintain related funds in a designated account at a federally insured institution of BenefitHelp Solutions' election and otherwise as required by State law. The designated account earns a service charge credit, called an earned credit that is calculated based on the average balance on the account. The earned credit is used to offset total bank service charges and fees. If the earned credit exceeds the bank service charges and fees, no amount is due. The earned credit in excess of the bank service charges and fees will not be refunded.
11. BenefitHelp Solutions shall provide notice in writing via US Mail, facsimile, or secure email to any participant or beneficiary whose claim for benefits under the Plan has been denied, setting forth the specific reasons for such denial, and coordinate with City of Portland to facilitate for the participant or beneficiary an opportunity for a full and fair review of the decision denying the claim, in accordance with the Plan. A letter of recommendation will be sent to City of Portland, via US Mail and the final decision will be sent to the participant via US Mail.
12. BenefitHelp Solutions shall reply to mail and phone inquiries from Plan participants.
13. BenefitHelp Solutions shall provide a staff of member specialists to assist participants with questions regarding their account. Both a local and toll-free number will be available.

SECTION 3: CITY OF PORTLAND'S OBLIGATIONS

1. City of Portland shall provide BenefitHelp Solutions with accurate contribution amounts for the current month within two working days of the end of City of Portland's payroll cycle. The contribution amount for the current month shall specify whether the employee has designated his or her contribution to be used for medical reimbursement benefits, dependent care benefits or both benefits. Contributions will be delivered via US Mail, facsimile, or via secure electronic file. At the same time, City of Portland shall remit to BenefitHelp Solutions the amount of contributions made by the participating employees to their Plan for the current month, plus the administration fee specified in Section 4. BenefitHelp Solutions will pay claims to participants only when contributions for the current payroll cycle have been received from City of Portland.

2. City of Portland shall provide BenefitHelp Solutions written notification of any new or terminated employees by providing BenefitHelp Solutions with enrollment forms or status change forms for any IRC qualified family status change. Enrollment forms or status change forms will provide the information necessary to enroll or terminate employees from the FSA AutoPay program. Enrollment forms or status change forms will be sent via US Mail or facsimile.
3. City of Portland shall be responsible for distributing enrollment forms, claim forms, and information describing the benefits of the program to employees.
4. City of Portland shall provide BenefitHelp Solutions with census data, in the required format, to perform Non-Discrimination Testing. Accurate data shall be received from City of Portland prior to the plan year, or no later than seven working days after the plan year begins. Non-discrimination data shall be sent to BenefitHelp Solutions, via US Mail, hand delivery, or via secure electronic file.
5. City of Portland has the right to request and perform benefit and claim audits, at City of Portland's expense, of BenefitHelp Solutions to ensure claim payment accuracy.
6. Health Insurance Portability and Accountability Act of 1996 ("HIPAA") Responsibilities

City of Portland shall comply with all applicable provisions of HIPAA and its implementing regulations. To the extent that City of Portland as the Plan Sponsor receives any Protected Health Information (PHI) from its Group Health Plan, City of Portland shall, to the extent required by HIPAA, incorporate the following provisions and agree to abide by them:

- a. Disclose PHI only as permitted by the Plan Documents or as required by law;
- b. Not use or disclose PHI for employment-related actions or decisions, or in connection with any other benefit or employee benefit plan of City of Portland;
- c. Ensure that PHI and the employment records of City of Portland are separately maintained. City of Portland shall ensure that unauthorized employees do not have access to PHI and that authorized employees maintain the confidentiality of the PHI.
- d. Ensure that agents and sub-contractors of City of Portland agree to abide by the same restrictions and conditions as City of Portland in regard to the

use of PHI received from the Group Health Plan prior to sharing PHI with the agent or sub-contractor. City of Portland shall provide to agents and subcontractors only that information required to fulfill the business purpose for which it is provided.

- e. Report any use or disclosure of PHI that is in violation of this Agreement or HIPAA to the Group Health Plan as soon as reasonably possible;
- f. Allow individuals to inspect and obtain copies of PHI about themselves, to the extent required by HIPAA;
- g. Allow individuals to amend PHI about themselves, to the extent required by HIPAA;
- h. Provide individuals with an accounting of disclosures of PHI to the extent required by HIPAA; and
- i. Make its internal practices, books and records relating to the use and disclosure of PHI available to the U.S. Department of Health and Human Services upon request for purposes of auditing the Group Health Plan's compliance with HIPAA.

SECTION 4: FEES

1. City of Portland shall pay to BenefitHelp Solutions:
 - a. An Annual Fee of \$150.00, payable on the renewal date of this Agreement;
 - b. An administrative fee of \$4.25 per participating employee per month, paid monthly.
 - c. Payment shall be made within 30 days of receiving invoice from BenefitHelp Solutions.
2. BenefitHelp Solutions is obligated to provide only the services described in this Agreement. If City of Portland requests and BenefitHelp Solutions provides any service in addition to those specified in Section 2 of this Agreement, BenefitHelp Solutions may charge and City of Portland shall pay an additional fee, provided the fee is fully disclosed to City of Portland prior to the commencement of such services.

SECTION 5: RELATIONSHIP

1. BenefitHelp Solutions is acting only as an agent of City of Portland in administering benefits under the Plan. BenefitHelp Solutions shall not have any express or implied responsibilities whatsoever with respect to the Plan other than those set forth in Section 2 of this Agreement.
2. Notwithstanding the obligations set forth in Section 2 of this Agreement, it is expressly agreed to and understood by the parties hereto that BenefitHelp Solutions shall not be responsible for determining employee eligibility under the Plan, making reports or disclosures to employees or governmental bodies or agencies, devising Plan documents of any nature and interpreting and ensuring compliance with government rules, regulations or requirements of any type. City of Portland shall be responsible for the management and control of the operation and administration of the Plan, including any or all decisions pertaining to the granting or denial of benefit claims and any and all decisions pertaining to the review of denials of benefit claims. In order to meet its obligations, BenefitHelp Solutions may disclose PHI to the Plan Administrator, as needed. BenefitHelp Solutions shall not be deemed a fiduciary, and nothing in this Agreement shall be construed to appoint BenefitHelp Solutions as an administrator of the Plan.
3. It is understood that City of Portland may have access to information concerning employee use of the Plan and benefits claimed thereunder, including confidential medical information, for purposes of Plan administration. City of Portland agrees to abide by applicable federal and state laws, rules and regulations relating to the use of such information.

SECTION 6: INDEMNIFICATION/LIMITATION OF LIABILITY

1. BenefitHelp Solutions will carry out its duties under this Agreement with ordinary care and reasonable diligence. So long as this standard is met, BenefitHelp Solutions will not be liable for any mistake in judgment or other action taken in good faith. In no event shall BenefitHelp Solutions be responsible for special, indirect, incidental, or consequential damages which City of Portland or any third party may incur or experience by reason of entering into or relying on this Agreement, or the services of BenefitHelp Solutions under this Agreement.
2. Except as provided in subparagraph 1 of this Section, BenefitHelp Solutions agrees to indemnify City of Portland and hold City of Portland harmless against any and all loss, damage, expense and other liability to third parties resulting from or arising out of or in connection with the dishonesty, fraud,

criminal acts or malfeasance of BenefitHelp Solutions in providing the services which BenefitHelp Solutions has agreed to perform, as described in Section 2 of this Agreement, whether acting alone or in collusion with others; provided, however, that BenefitHelp Solutions shall not be responsible to pay from its own funds any payment or benefit which should have been paid from the Plan according to the Plan's terms, conditions and provisions. Subject to such provisions, BenefitHelp Solutions shall defend, settle or otherwise dispose of any third party suit or other proceeding arising from any such acts or conduct described herein at its sole expense and City of Portland agrees to cooperate promptly and fully with such defense. In any such event, City of Portland shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing and at its own expense.

3. City of Portland agrees to indemnify and hold BenefitHelp Solutions harmless from any and all loss, liability, damage, expense, or other cost or obligation, resulting from or arising out of claims, demands or lawsuits brought against BenefitHelp Solutions in administering the Plan to recover benefits under the Plan, except for acts solely attributable to BenefitHelp Solutions as set forth in subparagraph 2 of this Section.

SECTION 7: DEFINITIONS, CONFIDENTIALITY AND SECURITY OBLIGATIONS

1. Definitions

- a. Business Associate: means a person or entity providing certain functions, activities or services on behalf of City of Portland involving the use and/or disclosure of Protected Health Information (PHI).
- b. Group Health Plan: an employee welfare benefit plan (as defined in section 3(1) of the Employee Retirement Income and Security Act of 1974 (ERISA)) including insured and self-insured plans to the extent that the plan provides medical care, including items and services paid for as medical care, to employees or their dependents directly or through insurance, reimbursement or otherwise, that
 - i. Has 50 or more participants as defined in section 3(7) of ERISA; or
 - ii. Is administered by an entity other than the employer that established and maintains the plan.
- c. Health Insurance Portability and Accountability Act (HIPAA): means federal legislation enacted in 1996 that addresses the requirements for the privacy of Individually Identifiable Health Information (IIHI) and Protected Health Information (PHI).

- d. Individual: as defined means the same as the term 'individual' in 45 CFR 164.501, including and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g)
 - e. Individually Identifiable Health Information (IIHI) means: information that is a subset of health information including demographic information collected from an individual, and:
 - i. Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
 - ii. Relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and
 - iii. Identifies the individual; or
 - iv. With respect to which, there is a reasonable basis to believe that the information can be used to identify the individual.
 - f. Privacy Rule: means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, Subparts A and E.
 - g. Protected Health Information (PHI): means Individually Identifiable Health Information that is or has been maintained in or transmitted by electronic media.
 - h. Required by Law: as defined means the same as the term 'required by law' in 45 CFR 164.501.
 - i. Secretary: means the Secretary of the United States Department of Health and Human Services or his designee.
 - j. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR 160.103 and 164.501.
2. Confidentiality and Security Obligations and Activities of BenefitHelp Solutions Related to Protected Health Information
- a. Uses and Disclosures of Protected Health Information

- i. BenefitHelp Solutions, its directors, officers, employees, contractors and agents agree not to use or further disclose PHI other than as permitted or required by this Agreement, or as required by law.
- ii. Except as otherwise limited in this Agreement, BenefitHelp Solutions may use or disclose PHI to perform functions, activities, or services for or on behalf City of Portland, provided such use or disclosure would not violate the Privacy Rule if performed by City of Portland.
- iii. BenefitHelp Solutions may use and disclose PHI:
 - a.) For the proper management and administration of BenefitHelp Solutions; and
 - b.) To carry out BenefitHelp Solutions' legal responsibilities.
- iv. BenefitHelp Solutions acknowledges that, as between BenefitHelp Solutions and City of Portland, all Protected Health Information (PHI) shall be and remain the sole property City of Portland, including any and all forms thereof developed by BenefitHelp Solutions in the course of its fulfillment of its obligations pursuant to this Agreement.
- v. BenefitHelp Solutions agrees that, to the extent if City of Portland requests that BenefitHelp Solutions disclose Protected Health Information (PHI) to City of Portland, such request is only for the minimum necessary Protected Health Information (PHI) for the accomplishment of City of Portland's purpose.

b. Appropriate Safeguards

BenefitHelp Solutions agrees that it will implement and use all appropriate safeguards to prevent any use or disclosure of PHI other than as provided for in this Agreement.

c. Reporting Disclosures of PHI

- i. BenefitHelp Solutions shall, as soon as possible, after becoming aware of an actual or suspected disclosure or unauthorized use of PHI in violation of this Agreement by BenefitHelp Solutions, its officers, directors, employees, contractors or agents or by a third party to which BenefitHelp Solutions disclosed PHI pursuant to this Agreement, report any such disclosure to City of Portland.
- ii. BenefitHelp Solutions agrees to mitigate, to the extent reasonable and practical, any harmful effect that is known to BenefitHelp Solutions of a

use or disclosure of PHI by BenefitHelp Solutions in violation of the requirements of this Agreement.

- iii. BenefitHelp Solutions agrees to take prompt corrective action to cure any deficiencies that caused the unauthorized use or disclosure and to implement any reasonable action relating to the unauthorized disclosure as requested by City of Portland or by a federal or state agency.

d. Agents or Contractors

BenefitHelp Solutions shall ensure that any agent, including a subcontractor to whom BenefitHelp Solutions provides PHI received from, or created or received by BenefitHelp Solutions on behalf of City of Portland agrees to be bound by the same restrictions, terms and conditions that apply through this Agreement to BenefitHelp Solutions with respect to such information.

e. Retention of PHI

BenefitHelp Solutions shall maintain and retain PHI for the term of the Agreement and make such PHI available to City of Portland as set forth in this Agreement.

f. Access to Information

Within ten (10) business days of a request by City of Portland, BenefitHelp Solutions shall make available to City of Portland the requested PHI to permit City of Portland to respond to an individual's request for access to PHI. If BenefitHelp Solutions receives a request directly from an individual, BenefitHelp Solutions shall notify City of Portland within two (2) business days. City of Portland shall be responsible for responding to all individual requests from individuals for access to the PHI.

g. Availability of Protected Health Information for Amendment

Within ten (10) business days of receipt of a request from City of Portland for the amendment of an individual's Protected Health Information City of Portland shall provide such information to BenefitHelp Solutions for amendment and BenefitHelp Solutions shall incorporate any such amendments in the Protected Health Information as required by 45 C.F.R. §164.526.

h. Accounting of Disclosures

Within ten (10) business days of notice by City of Portland to BenefitHelp Solutions that it has received a request for an accounting of disclosures of

Protected Health Information, when such disclosures were made less than six (6) years prior to the date on which the accounting was requested, BenefitHelp Solutions shall make available to City of Portland such information as is in BenefitHelp Solutions' possession and is required for City of Portland to make the accounting required by 45 C.F.R. §164.528. At a minimum, BenefitHelp Solutions shall provide City of Portland with the following information: (i) the date of the disclosure, (ii) the name of the entity or person who received the Protected Health Information, and if known, the address of such entity or person, (iii) a brief description of the Protected Health Information disclosed, and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to BenefitHelp Solutions, BenefitHelp Solutions shall within two (2) business days forward such request to City of Portland. City of Portland shall be responsible for responding to all requests from individuals for accounting of disclosures of PHI. BenefitHelp Solutions hereby agrees to implement an appropriate record-keeping process to enable it to comply with the requirements of this Section.

i. Availability of BenefitHelp Solutions' Internal Practices, Books and Records

BenefitHelp Solutions agrees to make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by BenefitHelp Solutions on behalf of City of Portland, available to City of Portland, or at the request of City of Portland to the Secretary of Health and Human Services for purposes of determining City of Portland compliance with this Agreement and the Privacy Rule.

j. Compliance with Security Regulations. Beginning no later than April 21, 2005 and continuing thereafter, with respect to any electronic PHI that BenefitHelp Solutions creates, receives, maintains, or transmits, BenefitHelp Solutions shall:

- i. Implement administrative safeguards, physical safeguards and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic PHI, as required by the Security Standards;
- ii. Ensure that any agent, including a subcontractor, to whom it provides such electronic PHI agrees to implement reasonable and appropriate safeguards to protect it; and
- iii. Report to Group any attempted or successful unauthorized access, use, disclosure, modification, or destruction of electronic PHI, or interference with system operations in an information system, of which it becomes aware.

k. Miscellaneous

- i. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- ii. Amendment. City of Portland and BenefitHelp Solutions agree to amend this Agreement to the extent necessary to allow either party to comply with the Privacy Standards, the Standards for Electronic Transactions (45 C.F.R. Parts 160 and 162) and the Security Standards (45 C.F.R. Part 142) (collectively, the "Standards") promulgated or to be promulgated by the Secretary or other regulations or statutes.
- iii. Survival. The respective rights and obligations of BenefitHelp Solutions under Section 9 of this Agreement shall survive the termination of this Agreement.
- iv. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits City of Portland to comply with the Privacy Rule.

SECTION 8: DISPUTE RESOLUTION

Any controversy or claim arising out of or relating to this Agreement, including, without limitation, the making, performance or interpretation of the Agreement, shall be settled by arbitration. Unless otherwise agreed, the arbitration shall be conducted in Portland, Oregon, in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be held before a single arbitrator (unless otherwise agreed by the parties). The arbitrator shall be chosen from a panel of attorneys knowledgeable in the field of benefits law in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. If the arbitration is commenced, the parties agree to permit discovery proceedings of the type provided by the Oregon Rules of Civil Procedures both in advance of, and during recesses of, the arbitration hearings. The parties agree that the arbitrator shall have no jurisdiction to consider evidence with respect to or render an award or judgment for punitive damages (or any other amount awarded for the purpose of imposing a penalty) or consequential damages. The parties agree that all facts and other information relating to any arbitration arising under this Agreement shall be kept confidential to the fullest extent permitted by law. The cost of the arbitration will be divided equally by the number of parties participating in the arbitration, and each party shall be responsible for the payment of its own costs and attorneys fees relating to the arbitration.

SECTION 9: RECORDS

For audit purposes, City of Portland will, upon reasonable prior written notice and during reasonable business hours, have reasonable access to and may reasonably inspect all of BenefitHelp Solutions' records (including bank records and other deposit records) which relate to BenefitHelp Solutions' performance of this Agreement; provided, however, that under no circumstances will City of Portland be permitted to have access to or the right to inspect any object code or source code with respect to BenefitHelp Solutions' computer software, any information that is proprietary or confidential to BenefitHelp Solutions or any information that relates to other clients of BenefitHelp Solutions. Any access to records is subject to applicable state and federal laws and regulations dealing with the confidentiality of medical information.

SECTION 10: RIGHT TO RELY

In performing the administrative services provided under this Agreement, BenefitHelp Solutions may rely without qualification on the information provided by City of Portland.

SECTION 11: CALL MONITORING

BenefitHelp Solutions may monitor telephone conversations and e-mail communications between its employees and FSA participants for legitimate business purposes as determined by BenefitHelp Solutions. The monitoring is to ensure the quality and accuracy of the services provided by employees of BenefitHelp Solutions to the FSA participants.

SECTION 12: WAIVER

No waiver of any provision in this Agreement, or any performance under this Agreement, is valid unless it is in writing and signed by the party entitled to the benefit of such provision. Waiver of any breach of any provision shall not be construed, or operate as, a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

SECTION 13: COMPLETE AGREEMENT

This Agreement constitutes the entire understanding and agreement of the parties and may be modified only as described in Section 1 of this Agreement or by a subsequent modification signed by both parties. City of Portland acknowledges that

there have been no other representations or warranties made by BenefitHelp Solutions or City of Portland which are not set forth in this document.

SECTION 14: ASSIGNABILITY

This Agreement may not be assigned by City of Portland without the prior written consent of BenefitHelp Solutions.

This Agreement is executed this 1st day of July, 2006.

BENEFITHELP SOLUTIONS

By _____
Steve Schmidt

Managing Director

1/1/06
Date

CITY OF PORTLAND

By _____
(Authorized Signature)

(Title)

Date

ORDINANCE No. 182449

*Authorize and amend contracts to extend the health and welfare contracts administered by the Bureau of Human Resources, Benefits and Wellness Office (Ordinance; amend Contracts)

The City of Portland ordains:

Section 1. The Council finds:

1. The Office of Management and Finance, Bureau of Human Resources requires the continuing provision of employee health and welfare administration.
2. In order to maintain employee health and welfare administrative service agreements during the transition from IBIS to SAP, it is deemed appropriate and necessary to amend the following contract termination dates as an interim step to ensure proper payments can be made to health and welfare vendors.
 - a. Healthways Contract 51203, Termination Date, February 28, 2009.
 - b. Kaiser Permanente Northwest (HMO medical, dental and vision services), Contract 27686, Termination Date June 30, 2009.
 - c. Vision Service Plan, Contract 18003, Termination Date June 30, 2009.
 - d. ODS Companies (Third Party Administrative Services and Insured Medical Plans for PPA and FSA Administration), Contract 51231, Termination Date June 30, 2009.
 - e. ODS Companies (Insured Dental Plan Services) Contract 18220, Termination Date June 30, 2009.
 - f. United Behavioral Health (UBH) (formerly LifeEra), Contract 52683, Termination Date June 30, 2010.
 - g. Aliquant Corporation, Contract 35136, Termination Date June 30, 2010.
 - h. Managed HealthCare Northwest, former Contract 51197, new Contract requested effective July 1, 2008 and terminating June 30, 2013.
 - i. Standard Insurance, former Contract number 34929, new Contract requested effective July 1, 2008 and terminating June 30, 2013.
3. The extensions will be advantageous to the City providing appropriate time to update and renegotiate vendor agreements as provided under PCC Section 5.33.220.
4. The Health Fund Budgets for FY 2008-09 include appropriations in support of the benefit related contracts listed above.

NOW, THEREFORE, the Council directs:

- a. The Mayor or the Director of Human Resources is hereby authorized to execute the contract amendments, attached substantially similar hereto as Exhibit A.
- b. The Mayor and the Auditor are hereby authorized to draw and deliver warrants not to exceed over the full term of the contract.

Section 2. The Council declares that an emergency exists in order to avoid undue and costly delay in providing benefits to plan participants; therefore, this ordinance shall be in full force and effect from and after its passage by Council.

Passed by the Council:

Mayor Tom Potter

Prepared by: Yvonne L. Deckard

Date Prepared: December 3, 2008

GARY BLACKMER

Auditor of the City of Portland

By

Deputy

Exhibit D



June 25, 2008

Barbara Sandoval
Service Representative
BenefitHelp Solutions, Inc.
PO Box 67230
Portland, OR 97268

**RE: City of Portland
July 1, 2008 Renewal Confirmation**

Dear Barbara:

This letter is to confirm the renewal of the City of Portland's FSA Administrative Agreement with BenefitHelp Solutions. The renewal rates for the third year of the three-year rate agreement, July 1, 2008 to June 30, 2009, are as follows:

| FSA | 7/1/08 – 6/30/09 |
|----------------------------------|------------------|
| Annual Fee (billed in July) | \$150.00 |
| Per Participant Per Month (PPPM) | \$ 4.25 |
| AutoPay | N/C |

Please let me know if you have any questions or need any additional information concerning this renewal.

Sincerely,

A handwritten signature in black ink, appearing to read "Paige R. Sipes-Metzler".

Paige R. Sipes-Metzler, DPA, MS, RN
Assistant Vice President

cc: Peggy Anet, City of Portland
Cathy Bless, City of Portland
Damon Rutherford, Aon Consulting



May 18, 2009

Barbara Sandoval
Service Representative
BenefitHelp Solutions, Inc.
PO Box 67230
Portland, OR 97268

**RE: CITY OF PORTLAND
JULY 1, 2009 RENEWAL CONFIRMATION**

Dear Barbara:

This letter is to confirm the renewal of the City of Portland's FSA Administrative Agreement with BenefitHelp Solutions. The renewal rates for the third year of the three-year rate agreement, July 1, 2009 to June 30, 2010, are as follows:

| FSA | RATES |
|----------------------------------|----------|
| Annual Fee (billed in July) | \$300.00 |
| Per Participant Per Month (PPPM) | \$ 4.50 |
| AutoPay | N/C |

Please let me know if you have any questions or need any additional information concerning this renewal.

Sincerely,

A handwritten signature in black ink, appearing to read "Paige R. Sipes-Metzler".

Paige R. Sipes-Metzler, DPA, MS, RN
Assistant Vice President

cc: Scott Strauss, City of Portland
Cathy Bless, City of Portland
Damon Rutherford, Aon Consulting