

**MOORPARK CITY COUNCIL  
AGENDA REPORT**

**TO:** Honorable City Council

**FROM:** Deborah S. Traffenstedt, Administrative Service Director **DST**  
Teri Davis, Senior Management Analyst 

**DATE:** February 8, 2008 (CC Meeting of 2/20/08)

**SUBJECT:** Consider Resolution Establishing an Internal Revenue Service (IRS) 125 Flexible Spending Account Plan and Authorizing the City Manager to Execute Plan Documents

**BACKGROUND**

On November 7, 2007, the City Council of the City of Moorpark granted authorization to the City Manager to sign a Letter of Intent with Benesyst to initiate the process for adopting an IRS Section 125 Flexible Spending Account Benefit (FSA) for designated employees. A FSA allows employees to use pre-tax dollars for certain out-of-pocket medical expenses and dependent care costs. Dollars are deducted from participating employees' paychecks, on a pre-tax basis, and deposited directly into their FSA account to be used by the end of each year, thereby providing a possible tax savings to participating employees.

**DISCUSSION**

Benesyst is a FSA Administrator that handles nearly all of the administration (implementation included) procedures for its clients. Benesyst provides processing of all financial claims data, a call center to assist FSA participants, internet access to FSA information, internet statements to participants (and optional paper statements at additional cost), employer reporting, compliance, auditing, and the development of the City's FSA Master Plan (Master Plan). The Master Plan will be adopted by the City Manager and it will describe the FSAs in full detail pertaining to the benefits it provides to participating employees along with the responsibilities of the City and Benesyst.

There is a limited liability to the City if a participating employee terminates employment when that employee has used all of the FSA monies designated yet has not completed his or her annual payments into the medical FSA. The City has limited means to recapture such costs but will implement measures to require repayment, to the greatest extent allowable by law. On the other hand, there is potential gain to the City because an employee must either use or lose the FSA funds by the end of the plan year. Any unused FSA funds revert to the City after the end of the plan year.

Dependent daycare FSAs have an annual maximum of \$5,000 per household (set by the IRS) and do not pose a risk to the City because an employee can only submit receipts for reimbursements that are less than or equal to the amount accrued from previous payroll deductions. Medical FSA annual limits may be established by the city offering the benefit and initially is usually set somewhere between \$1,000 – 3,000 per year. Over time, if enrollment increases, the city offering the benefit usually increases the annual maximum. Staff is suggesting an initial Medical FSA limit of \$2,000 for the calendar year 2008 and that this amount would increase to \$2,500 beginning in 2009.

If approved, employee orientations would be provided in March 2008 with an effective plan 'year' of April 1, 2008 to December 31, 2008. Employees that enroll in the plan will have the amount they selected deducted over the pay periods during the plan year. Plan year will run on the calendar year, from January 1 until December 31 (and the first year would be April 1 – December 31).

Attached to this agenda report is an implementation resolution that adopts the FSA plan and authorizes the City Manager to sign the FSA Plan Administrative Services Agreement with Benesyst. Said Agreement is attached and will need minor editorial revisions incorporated into the document prior to signing. The minor changes will not significantly impact the Agreement. Staff is requesting authorization for the City Manager to make revisions to said Agreement which will be incorporated and attached to the final resolution. The resolution also sets the maximums for the FSAs and authorizes the City Manager to execute any related documents without further resolution.

### **FISCAL IMPACT**

The City would establish a Collateral Account with a minimum of \$2,500 funded by benefits savings to cover any claims against medical FSAs that exceed the deposits (this would normally only occur within the first several months of implementing the FSA Plan or the first several months of the calendar year). In addition, the City would pay to Benesyst a total of \$1,572.72 for set-up and communication for Fiscal Year 2007-08. Added to that are the administrative fees, estimated to be \$277.02, for a total of \$4,349.74 for the time period of April through December 2008. Cost savings from currently budgeted funds not used in the current fiscal year for special professional services (1000-3110-0000-9103) would be used to pay the estimated administrative

Honorable City Council  
February 20, 2008  
Page 3

costs for implementing the FSA benefit for Fiscal Year 2007-08. Thereafter, the estimated annual cost to the City is \$1,200, plus any necessary administrative fees (e.g. resulting from changes to legislation regulating FSAs).

**STAFF RECOMMENDATION**

Adopt Resolution 2008-\_\_\_\_\_ and authorize the City Manager to make revisions to the FSA Plan Administrative Services Agreement with Benesyst prior to finalizing the resolution.

Attachment: Resolution to Adopt FSA

RESOLUTION NO. 2008-\_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, ESTABLISHING AN INTERNAL REVENUE SERVICE CODE SECTION 125 FLEXIBLE SPENDING ACCOUNT PLAN FOR CITY EMPLOYEES AND MEMBERS OF THE CITY COUNCIL ELIGIBLE TO RECEIVE MEDICAL INSURANCE BENEFITS; AND CONSOLIDATED OMNIBUS RECONCILIATION ACT PARTICIPANTS; AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND AMEND DOCUMENTS RELATING TO THE PLAN

WHEREAS, Section 125 of the Internal Revenue Service (IRS) Code allows for the deduction of benefit premiums on a pre-tax basis, and

WHEREAS, a City of Moorpark Section 125 Flexible Spending Account (FSA) is an optional benefit for Dependent Daycare and Medical expenses available to those regular employees and members of the City Council who are eligible to receive medical benefits, and Consolidated Omnibus Reconciliation Act (COBRA) participants only to the extent as required by law; and

WHEREAS, on November 7, 2007, the City Council authorized the City Manager to sign a Letter of Intent with Benesyst to initiate the process for adopting a FSA employee benefit; and

WHEREAS, Exhibit "A" attached hereto and made a part hereof, describes said FSA Plan Administrative Services Agreement with Benesyst to implement a FSA employee benefit.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The City Council hereby adopts the FSA for the City of Moorpark effective April 1, 2008.

SECTION 2. The City Council sets the Daycare FSA maximum at \$5,000 and the Medical maximum at \$2,000, for the calendar year 2008 and at \$2,500 beginning in calendar year 2009.

SECTION 3. The City Manager may, without further resolution, execute the Administrative Agreement and any related documents, including but not limited to banking documents and the Master Plan, or amendments which may be necessary or appropriate to adopt the plan or maintain its compliance with applicable federal, state, and local law.

SECTION 4. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

Resolution No. 2008-\_\_\_\_\_

PASSED AND ADOPTED this 20th day of February, 2008.

\_\_\_\_\_  
Patrick Hunter, Mayor

ATTEST:

\_\_\_\_\_  
Deborah S. Traffenstedt, City Clerk

Exhibit A: Bensyst FSA Plan Administrative Services Agreement



## **Benesyst FSA Plan Administrative Services Agreement**

This Services Agreement (the "Agreement") is entered into effective March 1, 2008 by and between the City of Moorpark with an address of 799 Moorpark Avenue, Moorpark, CA 93021 ("City of Moorpark") and Benesyst, Inc. with an address of 800 Washington Avenue North, 8<sup>th</sup> Floor, Minneapolis, Minnesota 55401 ("Benesyst").

### **Recitals**

WHEREAS, the City of Moorpark intends to maintain a Flexible Benefit Plan ("Plan") which permits eligible employees and COBRA participants to elect, in part, reimbursement of health care and dependent care expenses through separate accounts known as general purpose and limited flexible spending accounts ("FSAs"); and

WHEREAS, Benesyst makes comprehensive administrative services with respect to such Plans available to employers with FSAs; and

WHEREAS, City of Moorpark desires to retain Benesyst to provide such administrative and other services for its FSAs.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises contained herein, and subject to the terms and conditions set forth below, Benesyst and City of Moorpark hereby agree as follows.

### **Relationship of Parties**

This Agreement is between the City of Moorpark and Benesyst. Benesyst, in performing its obligation under this Agreement, is acting only as an agent of City of Moorpark and the rights and responsibilities of the parties shall be determined in accordance with the law of agency, except as otherwise herein provided. The City of Moorpark hereby delegates to Benesyst authority to make determinations on behalf of the City of Moorpark with respect to benefit payments under the Plan and to pay such benefits, subject, however, to a right of City of Moorpark to review and modify any such determination. Any modification request(s) must be in writing. For purposes of ERISA and any applicable state and federal legislation of a similar nature, City of Moorpark, or such person as it may designate, shall be deemed the administrator of the Plans and the fiduciary for review of denied claims for benefits. To the extent permitted by law, City of Moorpark shall have the discretion to establish eligibility, coverage, and benefits under the Plan and City of Moorpark shall have the discretion to determine all matters relating to the interpretation of the Plan. Any determination by City of Moorpark shall be in writing, and final, binding and conclusive, in the absence of clear and convincing evidence that City of Moorpark acted arbitrarily and capriciously. Benesyst is absolved of any liability resulting from any City of Moorpark modification or revision of Benesyst's determinations or standard policies relating to Plan administration.



## Responsibilities of Benesyst

- A. Incorporate terms of the Plan document(s) into Benesyst's system so that FSA administration complies with the provisions of such document(s). If City of Moorpark incorporates, revises, rewrites, restates or amends its Plan document(s) so as to cause additional administrative steps or expense Benesyst may adjust its administrative fees accordingly.
- B. Acting on the achieved electronic data interfaces between all applicable City of Moorpark carriers or vendors and Benesyst and/or its debit card affiliate(s) so as to enable claims to be processed on a more automated basis and with less paperwork for Plan participants.
- C. Prepare and provide file specification for FSA electronic eligibility data which City of Moorpark agrees to use to report participants' necessary demographic and Plan information.
- D. Prepare and provide file specifications for FSA electronic contribution data for City of Moorpark to report payroll amounts redirected to the FSAs each pay cycle.
- E. Process initial enrollment data supplied electronically by City of Moorpark to initiate the administration function, process the distribution of the Benesyst Benny™ Benefits Card, establish web portal access as well as interactive voice response system access for the applicable services.
- F. Prepare and mail Confirmation Letters, available for an additional cost, which verify annual elections, payroll deductions and other relevant data, as agreed.
- G. Prepare and ship "Welcome Materials", available for an additional cost, to either the primary City of Moorpark address or individually to each participant's residence address, as instructed by City of Moorpark.
- H. Printed and/or customized materials may be prepared for an additional cost, as agreed.
- I. For purposes of the FSA plan, prepare and provide a written interpretation of the results of the non-discrimination testing performed at least once annually. The results of these tests will depend on key-employee and highly compensated employees as identified in the data supplied before the beginning of the Plan year by City of Moorpark.
- J. Process requests for FSA benefits and disburse payment using Benesyst's normal check and ACH processing and audit procedures and in accordance with the terms of the Plan and this Agreement.
- K. Provide all necessary and applicable customer service to plan participants making every effort to minimize employer involvement.
- L. Process and transmit payment to Plan participants submitting claims manually or via Benesyst's Online FSA Claim Wizard according to the following schedule: approved Healthcare FSA reimbursement checks and direct deposit ("ACH") payments within five business days of receipt of claims at Benesyst offices; approved Dependent Daycare FSA reimbursement checks and ACH payments within two business days of receipt of claims at Benesyst offices. Turnaround time during a peak activity period such as calendar or plan year end may occasionally be slightly longer.
- M. Process all adjustments as appropriate and void and re-release checks as appropriate and approved by City of Moorpark.
- N. If optional Positive Pay Services are agreed-to and contracted for, relay Positive Pay data relating to all claim checks issued to the bank at which City of Moorpark's "primary" bank account is being maintained daily, according to Benesyst and bank procedures and specifications.
- O. Manage the relationship, responsibilities and performance of the Benesyst Benny™ Benefits Card vendor.



- P. Contact Plan participants, as needed, to ensure benefit card transactions qualify under Section 213 of the Internal Revenue Code are otherwise substantiated according to IRS regulations.
- Q. Attempt to collect any Plan indebtedness according to standard collection procedures, referring uncollectible accounts to City of Moorpark for internal collection.
- R. Enable all participants to establish an account, login and utilize the Benesyst Employee Self-Serve Portal.
- S. Prepare Thirty Day Year-End Warning Statements as requested by City of Moorpark for FSA plan participants for an additional cost, and mail directly to each participant's residence thirty days prior to the end of the active plan year.
- T. Prepare a report containing specific information for City of Moorpark to use in the annual preparation of its IRS Form 5500 for the FSA Plan. Benesyst will transfer this information to an actual IRS Form 5500 for subsequent review and submission to the IRS by City of Moorpark or for incorporation by City of Moorpark into a 5500 of its own. These documents will be provided within 60 days of the end of the appeals period, and in no event later than fourteen days prior to the filing deadline. Complete forfeiture information will be provided to City of Moorpark at this time.
- U. Benesyst will maintain all appropriate regulatory approvals necessary to provide the services specified in this Agreement. Benesyst will promptly notify City of Moorpark of the commencement of any disciplinary proceeding against it or any of its principal officers relating to any state or federal third party administrator regulation.
- V. Benesyst will make comprehensive online reporting available to those City of Moorpark staff members who have been granted the proper security roles by City of Moorpark on our online secure Portal. All reporting data is encrypted, easy-to-read and download into City of Moorpark systems.



## Responsibilities of City of Moorpark

- A. Provide Benesyst with a copy of its valid legal plan document and Summary Plan Description (“SPD”), secure new Plan documents and SPDs from City of Moorpark’s legal counsel or contract with Benesyst to provide plan documents. City of Moorpark will update such documents from time to time as it deems necessary. In each case, Benesyst will be furnished with complete copies of all Plan documents in advance of their effective date.
- B. Distribute SPDs and HIPAA Privacy Notices to employees of City of Moorpark in compliance with the law.
- C. Provide both initial and ongoing electronic eligibility and payroll deduction data for each plan participant to Benesyst in the electronic formats specified by Benesyst in its published file specifications.
- D. Maintain documentation of enrollments, changes, included Qualified Changes in Family Status, and terminations to the extent required by Federal and State Law.
- E. Provide written authorization to City of Moorpark’s insurance carriers requesting that they provide the applicable data file containing the financial portion of claims information to Benesyst’s benefit card partner as required in order to replace the employee-furnished expense documentation related to the participants’ use of the Benesyst Benny™ Benefits Card with carrier-furnished documentation.
- F. Distribute “Welcome Materials” and other printed and/or customized materials to each participant, individually, where such materials have been bulk-shipped by Benesyst to City of Moorpark either as a part of the Service Agreement or for an additional cost, as agreed.
- G. Establish a bank account at the bank designated by Benesyst for use as a “collateral” account out of which MasterCard®, in connection with the Benesyst Benny™ Benefits Card system, will draft funds sufficient to satisfy each card swipe made by City of Moorpark Plan participants using the Benesyst Benny™ Benefits Card in achieving payment for expenses in conjunction with the terms of the Plan.
- H. Establish or designate a primary City of Moorpark Bank Account to fund both daily checks and ACH payments released by Benesyst in connection with approved manually-submitted reimbursement requests and to replenish the designated “collateral account” for aggregate card swipe transactions in connection with plan activity after each daily or weekly accounting period, as agreed.
- I. Transfer funds by permitting an ACH transfer or originating a federal wire transfer of funds daily, or otherwise at the agreed-upon frequency, which shall, in no event, be longer than seven days from the date of the prior transfer, the amounts of which will correspond to all claims paid via the Benesyst Benny™ Benefits Card during each applicable claim-payment period and since the prior transfer of funds. This amount shall be transferred to the bank account established as the City of Moorpark ‘collateral’ bank account. This amount transferred must correspond to the amount requested by the bank which will, in turn, correspond to City of Moorpark’s Healthcare FSA participant Benesyst Benny™ Benefits Card-based withdrawals for benefit card transactions. These amounts are withdrawn from the imprest (or “collateral”) amount in this City of Moorpark “collateral” account. The imprest amount will be agreed upon by both Benesyst and City of Moorpark during implementation. City of Moorpark agrees to be responsible to restore via federal wire transfer within two business days after notification, funds sufficient to cover the total amount by which the imprest amount has been reduced through City of Moorpark FSA participants’ use of the Benesyst Benny™ Benefits Card.



- J. Take any necessary action related to the results of Benesyst provided non-discrimination test reports and their written interpretation.
- K. In the event Benesyst's collection attempts are unsuccessful in recovering Plan funds in connection with Benefit Card overpayments made to the participant for card swipe transactions deemed ineligible by Benesyst, City of Moorpark will make its own legally compliant collection efforts, working directly with the participant, according to its reasonable preferences for collection.
- L. Have authorized City of Moorpark HR and/or benefits staff review applicable Benesyst secure online financial reporting on a regular basis as a safety precaution to ensure that eligibility and funding correspond directly to the intended City of Moorpark source data. All Benesyst reporting is easy to read, reformat, download and transfer to internal City of Moorpark applications.
- M. Provide contribution data in advance of each payday to Benesyst in an electronic format specified by Benesyst and send to Benesyst via Benesyst's secure web site or other mutually agreed upon transfer method.
- N. Furnish Benesyst with a Signature Authorization Card or three samples of a City of Moorpark authorized signer's signature as well as MICR encoding instructions or sample check for use in set-up of Benesyst's MICR Chek system and ACH payment, as applicable, as well as other authorizations as reasonably required in connection with the Benesyst Banking Implementation Process.
- O. Provide authorization for any existing or newly contracted health insurance carriers to provide claims EOB data to Benesyst's Benny™ Benefits Card vendor as needed.
- P. Promptly report changes in eligibility and contributions resulting from participant terminations and Qualified Changes in Status to Benesyst, using the fields in the Benesyst Eligibility and Contribution data files in accordance with Benesyst file specifications and procedures mutually agreed upon by the parties.
- Q. File the prepared or revised IRS Form 5500 in accordance with federal law. In the case of a late filing, it is City of Moorpark's responsibility to file for an extension and to assume any consequence of late filing or failure to file the IRS Form 5500.
- R. Pay fees to Benesyst in compensation for its implementation and administrative services in accordance with the Fees and Terms of Payment section of this Agreement or as otherwise agreed in writing.
- S. Permit Benesyst to list City of Moorpark as one of its new clients on the News and Events area of its website.



## **Fees and Terms of Payment**

As an indication of good faith and in compensation for Benesyst services, City of Moorpark agrees to pay an amount equal to the set-up fees plus the per-participant enrollment fee, as billed in accordance with the attached Schedule of Fees, with the signing of this contract or the start of implementation services, whichever occurs first. Each month, at least two weeks in advance of the due date, Benesyst will submit a statement to City of Moorpark indicating the total service fees for the following month. Fees for the upcoming month will be payable based on City of Moorpark participation data included on the most recent contribution file received by Benesyst prior to the invoice preparation date. City of Moorpark agrees to pay Benesyst the stated amount, as billed, by the 1st of the month for which the services will be rendered. (See Schedule of Fees.)

Invoices that are not paid within 30 days of the due date will be subject to an interest charge of 1.25% per month calculated on the unpaid balance until paid. Please refer to the Schedule of Fees at the end of this agreement.

Charges for additional shipping and handling beyond the scope of this Agreement will be payable within seven days of the invoice date. All rates are subject to change in direct and specific compensation for any change in postal rates imposed by the U.S. Postal Service.

Benesyst reserves the right to charge the employer its prevailing hourly rate if inaccurate or incomplete information is communicated to Benesyst that necessitates duplication of communication or record keeping functions, or for reporting or breakdowns beyond those stipulated in this Agreement.

Separate fees may be chargeable for materials beyond the quantities called for in the monthly billing volumes, for additional administrative tasks such as payroll cycle changes after the annual election date and for reporting needs which cannot be met by the Benesyst online reporting engine. In all these matters, Benesyst will, however, endeavor to be as reasonable and accommodating as possible.

## **Rate Guarantee**

Benesyst guarantees the rates as shown on the Schedule of Fees through March 31, 2010. Benesyst has the right to change the Schedule of Fees at any time if number of eligible employees reduces by 20 percent or more from the number provided by City of Moorpark and reiterated in the Assumptions section of this agreement. Otherwise, rates can be changed on April 1, 2010 and on each Agreement anniversary thereafter, by giving at least 30 days written notice to City of Moorpark.

## **Reports and Data; Record Ownership**

Benesyst will provide City of Moorpark with all data reasonably necessary for the financial management and administrative control of the Plan, including access to the Benesyst comprehensive online reporting engine's plan and financial accounting reports, among others. Such reports and data shall be in the electronic or printed format used by Benesyst under its standard administration procedures, unless otherwise agreed to by the parties. These reports are downloadable as industry standard spreadsheets and can be saved, as desired, on City of Moorpark's storage media. These records and reports will be maintained by City of Moorpark

All documents, records, reports and data recorded in Benesyst's data processing systems (hereinafter "Records"), related to the receipt, processing and payment of claims under the Plans including all claim histories maintained by Benesyst shall at all times be the property of City of Moorpark, subject to Benesyst's right to possession and use during the continuance of the Agreement and Benesyst's right to maintain such Records in such form as Benesyst normally maintains such Records.



Upon termination of the Agreement, benefit payment information exclusively contained in the Records shall be delivered or otherwise made available to City of Moorpark, or any successor administrator authorized by City of Moorpark, in Benesyst's standard format and in a reasonable and mutually agreeable time and place.

## **Term and Termination of Agreement**

The initial term of this Agreement shall commence at the start of implementation activity and shall continue and remain in effect through the end of the first full plan year under Benesyst administration, or as otherwise specified in the Rate Guarantee section of the Agreement, if longer. Thereafter, the Agreement will automatically renew on a year-to-year basis unless and until such time as this Agreement is terminated.

This Agreement may be terminated at the option of either party, with or without cause, in advance of the expiration of the initial term or any renewal term by providing the other party with at least 30 days advance written notice.

Additionally, this Agreement may be terminated by either party effective:

1. Upon the failure of the other party to cure any monetary default (including, but not limited to, failure to pay Benesyst's fees and charges other than those fees and charges reasonably in dispute) within ten calendar days after written notice thereof;
2. Upon the failure of the other party to cure any material, non-monetary default within 20 calendar days after the written notice thereof, or to commence within that same period to cure any such default that cannot reasonably be resolved within 20 days and to be resolved within a period not to exceed 90 calendar days;
3. Immediately upon the date the other party becomes insolvent, has a receiver or bankruptcy trustee appointed for it or makes a general assignment for the benefit of creditors; or
4. Upon the effective date of any fee adjustment proposed by Benesyst in accordance with the terms of this Agreement, if City of Moorpark does not agree to such adjustment.

In the event of termination of the Agreement, Benesyst shall have the responsibility to complete the processing of requests for benefit payment under the Plans that are received by Benesyst prior to the termination date of the Agreement. However, Benesyst shall, upon City of Moorpark's request, continue to provide run-out claims processing services under the Agreement for a period not to exceed 4 months. During this run-out period, Benesyst will be entitled to charges equal to an average monthly charge during the prior six months less 25% multiplied by the number of months of run-out. The resulting total amount must be paid, in its entirety, in advance of the run-out period for run-out claims administration services to commence.

In the event City of Moorpark cancels services at any point during the implementation process and after execution of the Letter of Intent, other than for a critical failure of Benesyst to perform according to its responsibilities as defined herein, City of Moorpark agrees to pay the implementation fees in their entirety, in addition to any and all ongoing administrative fees incurred.



## **Business Associate Contract Provisions Under HIPAA**

### **Definitions**

Catchall definition: Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule.

- A. Business Associate. "Business Associate" shall mean Benesyst, Inc.
- B. Covered Electronic Transactions. "Covered Electronic Transactions" shall have the meaning given the term "transaction" in 45 C.F.R. 160.103.
- C. Covered Entity. "Covered Entity" shall mean the group health plans sponsored by the City of Moorpark Flexible Benefit Plan.
- D. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- E. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- F. Protected Health Information. "Protected Health Information" shall have the same meaning as the term protected health information in 45 CFR 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- G. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.103.
- H. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or designee.
- I. Standard for Electronic Transaction Rule. "Standards for Electronic Transactions Rule" means the final regulations issued by HHS concerning standard transactions and code sets under the Administrative Simplification provisions of HIPAA, 45 CFR Part 160 and Part 162.
  - a. Security Incident. "Security Incident" shall have the same meaning as the term "security incident" in 45 CFR 164.304.
  - b. Security Rule. "Security Rule" shall mean the Security Standards and Implementation Specifications at 45 CFR Part 160 and Part 164 subpart C.

### **Obligations and Activities of Business Associate**

- A. Business Associate agrees to not use or disclose Protected Health Information ("PHI") other than as permitted or required by the Agreement or as Required by Law.
- B. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement. Business Associate will implement administrative, physical and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity as required by the Security Rule. Upon request by Covered Entity, business Associate will provide evidence of all such safeguards utilized by Business Associate to safeguard electronic PHI.



- C. 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 in violation of the requirements of this Agreement.
- D. Business Associate agrees to report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware and any security incident of which it becomes aware.
- E. 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 to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. Moreover, Business Associate shall ensure that any such agent or subcontractor agrees to implement reasonable and appropriate safeguards to protect Covered Entity's PHI.
- F. Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner as negotiated, 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.
- G. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request Covered Entity or an Individual. Business Associate shall respond to any request from Covered Entity for access by an individual within five (5) days of such request and shall make any amendment requested by Covered Entity within ten (10) days of such request. The information shall be provided in the form or format requested, if it is readily producible in such form or format, or in summary, if the individual has agreed in advance to accept the information in summary form.
- H. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to Covered Entity or the Secretary, in a time and manner negotiated or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- I. Business Associate agrees to 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.
- J. Business Associate agrees to provide to Covered Entity or an Individual, in time and manner negotiated, information collected in accordance with the Notices Section of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- K. In the event the Business Associate transmits or receives any Covered Electronic Transaction on behalf of the Covered Entity, it shall comply with all applicable provisions of the Standards for Electronic Transactions Rule to the extent required by law, and shall ensure that any agents that assist Business Associate in conducting Covered Electronic Transactions on behalf of the Covered Entity agree in writing to comply with the Standards for Electronic Transactions Rule to the extent required by law.

### **General Use and Disclosure Provisions**

Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI solely to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.



## **Obligations of Covered Entity**

Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

- A. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- B. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- C. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

## **Permissible Requests by Covered Entity**

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity. The Business Associate will use the data to administer activities.

## **Term and Termination of the Business Associate Portion of this Agreement**

- A. Term. The Term of this Agreement shall be effective as of January 1, 2008 and shall remain in effect until terminated in accordance with this section. Provided, however, that any termination shall not affect the respective obligations or rights of the parties arising under this Agreement prior to the effective date of termination, all of which shall continue in accordance with their terms.
- B. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
  2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
  3. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- C. Upon the termination of all business arrangements hereunder between the parties, either party may terminate this Agreement by providing written notice to the other party.
- D. Effect of Termination.
  1. Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created 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.
  2. In the event the Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon negotiated terms that return or destruction of PHI is unfeasible; Business Associate shall extend the protections of this Agreement to such



PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI

- E. Ineligible persons. Business Associate represents and warrants to Covered Entity that Business Associate (i) is not currently excluded, debarred, or otherwise ineligible to participate in any federal health care program as defined in 42 U.S.C. Section 1320a-7b(f) (“the Federal Healthcare Program”); (ii) has not been convicted of a criminal offense related to the provision of health care items or services and not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs, and (iii) is not under investigation or otherwise aware of any circumstances which may result in Business Associate being excluded from participation in the Federal Healthcare Programs. This shall be an ongoing representation and warranty during the term of this Agreement, and Business Associate shall immediately notify Covered Entity of any change in the status of the representations and warranty set forth in this section. Any breach of this section shall give Covered Entity the right to terminate this Agreement immediately for cause.

### **Miscellaneous**

- A. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- B. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- C. Survival. The respective rights and obligations of Business Associate under Term and Termination, Paragraph (C) of this Section of this Agreement shall survive the termination of this Agreement.
- D. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

### **General Provisions of Agreement**

Benesyst shall use at least a degree of ordinary care and reasonable diligence in the exercise of its duties under this Agreement that an administrator of claims under an insured or uninsured employee benefit plan would use acting in like circumstances and familiar with such matters.

Neither party may assign any of its rights under this Agreement without the prior written consent of the other party which consent shall not be unreasonably withheld. Benesyst and City of Moorpark shall in any event remain fully liable for all of their obligations under this Agreement. However, upon written notice to the other party, either party may assign this Agreement to a successor in title to substantially all of its business or assets. Subject to the foregoing, all of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the successors and permitted assigns of City of Moorpark and Benesyst.

No modification, waiver or amendment of any term or condition of this Agreement shall be effective unless and until it shall be reduced to writing and signed on behalf of Benesyst and City of Moorpark.

Except to the extent federal law (including but not limited to, ERISA) applies, this Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota; provided, however, that ERISA shall exclusively govern and control all matters relating to the Plans, and ERISA shall supersede and preempt any and all state laws, including those of the State of Minnesota, relating to the Plans.



## Indemnification

Benesyst shall be liable for and shall protect, hold harmless and indemnify City of Moorpark and its elected officials, officers and employees from and against all claims, demands, lawsuits, judgments, injuries, penalties, losses, damages, costs, expenses, attorney's fees and court costs suffered by City of Moorpark its elected officials, officers, employees, contractors and subcontractors, resulting from the acts, errors, malfeasance, nonfeasance, tortuous acts or negligent acts of Benesyst arising out of its performance of the agreed-upon administrative services, so long as City of Moorpark is not in material default under this Agreement.

Furthermore, Benesyst holds City of Moorpark and its elected officials, officers and employees harmless from all claims, demands, lawsuits, judgments, damages, losses, injuries or liability of a personal injury nature which occur while Benesyst or any of its employees, agents, contractors/ subcontractors are in a City of Moorpark building or on City of Moorpark on City of Moorpark property for any reason including reasons relating to this Agreement.

Benesyst shall investigate, defend and indemnify City of Moorpark, its elected officials, officers and employees from any claims, lawsuits, demands, judgments and all liability including, but not limited to, monetary or property damage, lost profit, personal injury, wrongful death, general liability, automobile, infringement of copyright/patent/trademark, professional errors and omissions arising out of an error, a negligent act, or negligent omission of Benesyst or of Benesyst's contractors/subcontractors, or the willful misconduct of Benesyst or Benesyst's contractors/subcontractors in performing the services described in this Agreement, or normally associated with, this type of contracted work. The duty to defend shall include any suits or actions in law or equity concerning any activity, product or work required under this Agreement, and also include the payment of all court costs, attorney fees, expert witness costs, investigation costs, claims adjusting costs and any other costs required for and related to such litigation.

City of Moorpark does not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance by City of Moorpark or the deposit with City of Moorpark, of any insurance certificates or policies described herein.

City of Moorpark acknowledges that it is responsible for any and all consequences arising from erroneous information or misinformation provided by City of Moorpark or any benefit provider(s) to Benesyst; arising from the failure of City of Moorpark to notify Benesyst of a change in eligibility, election or employment status; arising from City of Moorpark's part or any other party's part in benefit administration, or for actions initiated prior to Benesyst's services or for which Benesyst bears no responsibility under this Agreement as amended.

City of Moorpark agrees to investigate, defend and indemnify Benesyst, its officers and employees from any claims, lawsuits, demands, judgments and all liability including, but not limited to, monetary or property damage, lost profit, personal injury, wrongful death, general liability, automobile, infringement of copyright/patent/trademark, errors and omissions arising out of an error, a negligent act, or negligent omission of City of Moorpark or of City of Moorpark's contractors/subcontractors, in performing its responsibilities as described in this Agreement. The duty to defend shall include any suits or actions in law or equity concerning any activity, product or work required of City of Moorpark under this Agreement, and also include the payment of all court costs, attorney's fees, expert witness costs, investigation costs, claims adjusting costs and any other costs required for and reasonably related to such litigation.



## Confidentiality Provisions

- A. "Confidential Information" shall mean any and all information of either party, which is of a confidential, proprietary, or trade secret nature, whether or not marked as confidential information, and that is furnished or disclosed to the other party under this Agreement. Confidential information includes, but is not limited to, the specific terms of this Agreement, and any other information that is marked as "Confidential," "Proprietary," "Trade Secret" or in some other manner to indicate its confidential, proprietary or trade secret nature.
- B. Treatment of Confidential Information. During the term of this Agreement and subsequent thereto, the receiving party will keep all Confidential Information in confidence and will not, without prior written consent of the disclosing party, publish, disclose or otherwise make available, directly or indirectly, an item of Confidential Information to any person other than those of the receiving party's employees, agents, or contractors who need to know the same in the performance of their duties for the receiving party. The receiving party further agrees that it will only use the Confidential Information in connection with the services and for no other purpose. The receiving party shall protect and maintain the confidentiality of all Confidential Information with at least the same degree of care as it employs to protect its own confidential information, including, but not limited to, taking appropriate action by instruction or agreement with its employees, agents or contractors to inform them of the trade secret, proprietary and confidential nature of the Confidential Information and to obtain their written agreement to comply with the terms of this section. The receiving party will be liable to the disclosing party for noncompliance by agents or contractors to the same extent it would be liable for noncompliance by its employees.
- C. Return of Confidential Information and Intellectual Property. All of the disclosing Party's Confidential Information, including all physical embodiments thereof, that are in the possession of the receiving Party shall be returned to the disclosing Party within thirty (30) days after disclosing Party's request for its return or destroyed at the disclosing Party's direction. Such return of Confidential Information and physical embodiments thereof will not affect the receiving Party's obligation to otherwise maintain the confidentiality of the disclosing Party written certification of compliance therewith within fifteen (15) days of such written request.
- D. Exclusions. The receiving party's confidentiality obligations shall not extend to information that: (a) was known to the receiving party prior to its receipt from the disclosing party without an obligation to keep it confidential; or (b) is lawfully obtained by the receiving party from a third party through no breach of any agreement with the disclosing party and without an obligation to keep it confidential; or (c) is or becomes publicly available other than as a result of any act or failure to act of the receiving party or any of its employees, agents or contractors provided that such exclusions do not apply to any confidential information related to employees, including, but not limited to, protected health information, social security numbers or other such information.



**Notices**

All notices, requests, demands and other communications required to be given hereunder shall be in writing and shall be deemed to have been duly given one day after delivery by hand or via a nationally recognized overnight courier or five days after mailing, certified or registered mail, return receipt requested to the party for whom intended at the address specified in this Article. Either party may designate an alternate address for notices by giving written notice thereof in accordance with the provisions of this Article.

**Notices to Benesyst:** All notices to Benesyst shall be directed as follows:

Benesyst, Inc.  
800 Washington Avenue North  
8<sup>th</sup> Floor  
Minneapolis, MN 55401  
Attn: Robert Contin, CEO

**Notices to City of Moorpark:** All notices to City of Moorpark shall be directed as follows:

City of Moorpark  
799 Moorpark Avenue  
Moorpark, CA 93021  
Attn: City Manager

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized to do so.

**BENESYST, INC.**

\_\_\_\_\_  
Robert P. Contin, CEO

\_\_\_\_\_  
Date

**City of Moorpark**

\_\_\_\_\_  
Steven Kueny, City Manager

\_\_\_\_\_  
Date



## FSA Schedule of Fees: City of Moorpark

Effective Date: March 1, 2008

Rate Guarantee: 24 months

### Assumptions

Benefit Eligible Employees: 60                      FSAs:                      Start-up

### First Year Implementation Fees

Comprehensive Plan Design and Set-Up:	\$	750.00
Upgrade/Restatement of Legal Documents (optional):	\$	490.00

### Initial Plan Communications Fees

Call Center, Online & Interactive Voice Response ("IVR") Enrollment Support Access, and Resources per eligible employee charged once annually. This includes:	\$	0.75
---	----	------

- All Call Center (customer care/informational) services related to FSA enrollment for all eligible employees prior to and during enrollment and the plan year
- Online reference resources and tools including: FAQ's, Automated Tax-Savings Calculator, Election Calculation Worksheets, and general informational and communications materials in PDF Form
- FSA Enrollment Brochures (tri-fold) bulk-shipped to Company headquarters (up to total number of eligible employees)

### Initial Set-up of FSA Participants & Post Enrollment Communications

Participant Set-up	\$	1.50
--------------------	----	------

Enrolled FSA Participant set-up, including Online Portal and IVR account set-up for enrolled participants. Charged once annually per enrolled participant.

### Printed Enrollment Confirmation Statement

Participant set-up, per enrolled participant, with post-enrollment printed materials (Confirmation Letter,) sent to participant's home	\$	0.88
--	----	------



## Monthly FSA Administrative Service Fees

Comprehensive Administrative Services include:

- Healthcare and Daycare reimbursement by paper claim by mail or fax, and Online Portal-based Claims Wizard,
- Processing all enrollment changes and terminations via electronic eligibility files
- Processing all FSA contributions (payroll deduction amounts) via electronic files
- Online access to FSA Summary and detailed claims and contribution history
- Full FSA Call Center Services
- IVR automated telephonic access to FSA summary data
- Daily line-by line accurate and consistent claims adjudications and guaranteed rapid turnaround time Claims disbursement with mailed paper, explanation of benefits (EOBs)
- Full employer services on Benesyst H.R. Portal including FSA reporting engine (includes disbursement detail reporting) – easy viewable, printable and downloadable contribution, disbursement (check registers) and YTD reports with available filters and date ranges
- All non-discrimination testing, IRS Form 5500 preparation, year-end FSA Plan Report Card and other required services
- Direct Deposit set-up and banking services with the City of Moorpark's designated bank

Health Care FSA, per participant	\$	4.28
Dependent Daycare FSA, per participant	\$	4.28
Debit Card Fee	\$	0.90

### Optional Services Monthly Fees

Direct Deposit Services with Paper Voucher to Home Address, per FSA participant	\$	0.25
Use of Benesyst Disbursement Account per participant <i>(Optional)</i>	\$	0.60
Stop Payment Fee (only if using Benesyst Disbursement Account), per check <i>(Optional)</i>	\$	29.00



## Subsequent Year Plan Communication Fees

Call Center, Online & IVR Enrollment Support Access, Resources **\$0.75**

This includes:

- All Call Center (customer care/informational) services related to FSA enrollment for all eligible employees prior to and during enrollment and the plan year
- Online reference resources and tools including: FAQ's, Automated Tax-Savings Calculator, Election Calculation Worksheets, and general informational and communications materials in PDF Form
- FSA Enrollment Brochures (tri-fold) bulk-shipped to Company headquarters (up to total number of eligible employees)

## Subsequent Year Set-up of FSA Participants & Post Enrollment Communications

Participant Set-up **\$ 1.50**

Enrolled FSA Participant set-up, including Online Portal and IVR account set-up for enrolled participants. Charged once annually per enrolled participant.

### Printed Enrollment Confirmation Statement

Participant set-up, per enrolled participant, with post-enrollment printed materials (Confirmation Letter,) sent to participant's home **\$ 0.88**

### **Miscellaneous FSA Services Fees**

Quarterly Statements and/or Year-End Statements mailed to participant's home address, per statement:	\$	0.88
Direct Deposit Set-up, (if direct deposit set up via paper form or through our website per form processed. No charge if direct deposit information is transmitted through the eligibility file)	\$	1.70
Scrub/formatting charge (for files not meeting our file specification), per file; and customized, ad-hoc reports or audits, minimum one hour upon advanced approval by the City of Moorpark.		
• FSA Administrator completing request, per hour:	\$	75.00
• Management and/or IT completing request, per hour:	\$	150.00

### **Miscellaneous Bulk-Shipped Materials to HR Fees**

FSA Enrollment & Participation Booklets, per book:	\$	1.40
FSA Enrollment & Participation Booklets Spanish, per book:	\$	1.40
Extra FSA Enrollment Brochures (tri-fold brochures)	\$	0.34
Shipping of Enrollment Materials, as necessary to more than one location, charge per locations plus actual UPS shipping charges billed:	\$	15.00
Requested Customization of Materials, charged on the basis of time and printing costs/materials.	\$	TBD